Fiscal Council

Joe Negron, Chair
Fred Brummer, Vice Chair

Friday, April 21, 2006
11:15 a.m. – 1:00 p.m.
212 Knott

Second Revised

Allan G. Bense
Speaker

Joe Negron
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Fiscal Council

Start Date and Time:	Friday, April 21, 2006 11:15 am
End Date and Time:	Friday, April 21, 2006 01:00 pm
Location:	212 Knott Building
Duration:	1.75 hrs

Consideration of the following bill(s):

HB 1473 CS Energy by Hasner
HB 857 Insurance Premium Tax by Mahon
HB 141 CS Workers' Compensation for First Reponders by Adams
HB 753 CS Deferral of Ad Valorem Property Taxes by Rivera
HJR 353 CS Increase in Homestead Exemption by Lopez-Cantera
HB 29 CS Tax on Sales, Use, and Other Transactions by Sansom
HB 69 CS Exemptions from the Tax on Sales, Use, and Other Transactions by Meadows
HB 237 CS Employment Requirements for Law Enforcement Personnel by Berfield
HB 241 CS Florida KidCare Program by Vana
HB 381 Firefighter Pensions by Gibson, H.
HB 421 (IF RECEIVED) -- Tax on Sales, Use, and Other Transactions by Reagan
HB 597 CS Contracting for Efficiency or Conservation Measures by State Agencies by Cannon
HB 897 CS Florida Retirement System by Davis, M.
HB 979 CS Property Tax Administration by Seiler
HB 1253 Broward County, Florida by Sobel
HB 1251 CS Firefighter and Municipal Police Pensions by Davis, D.
HB 1269 CS Local Occupational License Taxes by Cusack
HB 1431 CS Impact Fees by Cretul
HB 1623 CS Youth and Young Adults with Disabilities by Bean
HB 7109 Homestead Property Assessments by Finance & Tax Committee
HJR 7129 Conservation and Protection of Natural Resources and Scenic Beauty, Including Fish and Wildlife by Environmental Regulation Committee
HB 7173 Welfare of Children by Future of Florida's Families Committee
HB 7181 State Planning and Budgeting by State Administration Appropriations Committee
HB 7189 State Financial Matters by Finance & Tax Committee
HB 7197 Governmental Operations by State Administration Appropriations Committee
HB 7207 Water Management Districts by Agriculture & Environment Appropriations Committee
HB 7213 Quick Action Closing Fund by Transportation & Economic Development Appropriations Committee
HB 7235 Continuing Implementation of Constitutional Revision 7 to Article V by Judiciary Appropriations Committee
HB 1219 City of Tampa, Hillsborough County by Joyner
HB 891 Local Occupational License Taxes by Goldstein
HB 1311 CS Qualified Job-Training Organizations by Troutman
HB 1471 CS Energy Diversity and Efficiency by Attkisson
HB 987 CS Tax on Sales, Use, and Other Transactions by Gottlieb
HB 1245 North Broward Hospital District, Broward County by Sobel

NOTICE FINALIZED on 04/20/2006 16:23 by SLB

Florida House of Representatives

Fiscal Council

Allan Bense
Speaker

Joe Negron
Chair

AGENDA
Friday, April 21, 2006
11:15 a.m. – 1:00 p.m.
212 Knott Building

I. Meeting Call to Order

II. Opening Remarks by Chair

III. Consideration of the following bill(s)

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HB 1245 North Broward Hospital District, Broward County by Sobel
HB 1253 Broward County, Florida by Sobel

IV.Closing Remarks and Adjournment

221 Capitol Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-6204

HB 1473 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1473 Energy
SPONSOR(S): Hasner and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	17 Y, 0 N	Holt	Holt
2) Fiscal Council		Dixon/Diez-Arquelles	Kelly
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1473 implements recommendations from the Florida Energy Plan. In general, the bill creates and revises several sections of law to devise a methodology for advancing the development of renewable technologies, promoting economic growth, diversifying fuel supply, as well as, streamlining the Power Plant Siting Act. More specifically, the bill:

- Creates the Renewable Energy Technologies Grants Program;
- Creates the Energy-Efficient Products Sales Tax Holiday;
- Creates the Solar Energy System Incentive Program;
- Creates the Florida Energy Council;
- Creates a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies;
- Creates a corporate investment tax credit for renewable energy technologies;
- Directs the Public Service Commission (PSC) to consider fuel diversity in reviewing 10-year site plans;
- Allows the PSC to require electric utilities to have their infrastructure exceed the National Electric Safety Code standards;
- Requires the PSC to direct a study of the electric transmission grid as well as examine the hardening of Florida's infrastructure to address issues arising from the 2004 and 2005 hurricane seasons; and
- Streamlines the Power Plant Siting Act by setting new timelines and streamlining procedures.

The Revenue Estimating Conference estimates that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will result in a negative fiscal impact of $11.0 million to state government and $1.2 million to local governments in FY 2006-07, and of $16.5 million to state government and $1.2 million to local governments in FY 2007-08. HB 5001, the General Appropriations Act, contains $15 million ($8.6m in General Revenue and $6.4 in Trust) for the Renewable Energy Technologies Grant Program and $5 million in General Revenue for the Solar Energy System Incentives Program.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates the Florida Energy Council to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on energy issues. It also requires the PSC to direct a study on Florida's electric transmission grid. The report is to additionally address hardening of the state's infrastructure in response to the issues arising from the 2004 and 2005 hurricane seasons.

Ensure Lower Taxes-The bill creates the following: Renewable Energy Technologies Grant Program, Energy-Efficient Products Sales Tax Holiday, Solar Energy Systems Rebate Program, sales tax exemption for equipment, machinery and other renewable energy technologies, and renewable energy technologies investment tax credit.

Promote Personal Responsibility/Empower Families-The bill contains rebates and tax incentives to promote the sale of energy-efficient products and the use of renewable energy technologies.

Maintain Public Security-The bill provides incentives for the investment in renewable energy and alternative fuels, which may reduce the state's dependence on imported fossil fuels. The bill requires the PSC to consider fuel diversity when analyzing the utilities' 10-year site plans, thereby also potentially easing the state's dependence on any particular fuel for the generation of electricity. The bill also allows the PSC to require electric utilities to construct their infrastructure to standards that exceed the National Electric Safety Code.

B. EFFECT OF PROPOSED CHANGES:

General Background

On November 10, 2005, Governor Jeb Bush issued Executive Order #05-241 directing the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. On December 14, 2005, the Secretary of DEP hosted the Florida Energy Forum where various parties were able to provide input in developing the plan. As required by the Executive Order, DEP issued the Florida Energy Plan on January 17, 2005.

The energy plan contained recommendations that spanned several areas. Those areas covered issues of diversification, conservation, and economic incentives. HB 1473 comprehensively implements initiatives from each of those areas.

According to research conducted by DEP in developing the Florida Energy Plan, the following background information was provided:

Florida's economy and quality of life depends on a secure, adequate and reliable supply of energy. As the fourth most populous state, Florida ranks third nationally in total energy consumption. With more than 17 million citizens and nearly 1,000 new residents arriving daily, Florida is one of the fastest growing states in the nation. Because of its expanding economy, current forecasts indicate that Florida's electricity consumption will increase by close to 30 percent over the next ten years.

Since the last review of Florida's energy policy in 2000, several unpredictable events have heightened concern over energy reliability, security, and supply. The 2003 blackout in the northeast, along with

tremendous back-to-back hurricane seasons in 2004 and 2005, demonstrated the impact power outages and fuel interruptions have on the nation's economic welfare.

Producing less than one percent of the energy it consumes and limited by its geography, Florida is more susceptible to interruptions in energy supply than any other state. Unlike other states that rely on petroleum pipelines for fuel delivery, more than 98 percent of Florida's transportation fuel arrives by sea. The state's reliance on imported petroleum products, in addition to its anticipated growth in consumption, underscores its vulnerability to fluctuations in the market and interruptions in fuel production, supply and delivery.

Energy Production and a Growing Economy

Florida depends almost exclusively on other states and nations for supplies of oil and gasoline, generating less than one percent of the nation's crude oil production annually. To generate electricity, Florida primarily relies on natural gas, coal and oil imports.

Together, fossil fuels represent 86 percent of Florida's total generating capacity. Less than 10 percent of its generating capacity is derived from cleaner nuclear and renewable fuels. In fact, no new nuclear plants have entered service in Florida since 1983.

Current forecasts indicate that new generation capacity will be 80 percent natural gas-fired and 19 percent coal-fired. Meeting these projections could prove expensive at today's prices and lead to an over-reliance on one fuel type, affecting the reliability of electric utility generation supply in Florida. While expansions for natural gas capacity are needed and already underway, improving generation fuel diversity would enhance reliability over the long-term. Too great a reliance on a single fuel source leaves Floridians subject to the risks of price volatility and supply interruption.

A New Class of Energy

Although the nation's reliance on traditional fossil fuels is currently high, Florida is investing in alternative fuels and developing "next generation" energy technologies. In 2003, Governor Jeb Bush launched "H2 Florida" to accelerate the commercialization of hydrogen technologies and spur economic investment in Florida's economy. With a four to one return on investment, Florida and its federal partners have invested $9 million to date in hydrogen infrastructure. Construction of a "hydrogen highway" is underway, 28 hydrogen demonstration projects are in progress and more than 100 hydrogen research and development projects are taking place at Florida's universities.

Utilization of biofuels is in its infancy with the cost of renewable fuels relatively high compared with traditional hydrocarbon fuels. Currently, Florida has just one biodiesel facility and, absent a manufacturing plant, imports ethanol from refineries outside of the state. Increasing production, supply and infrastructure of biofuels through financial incentives would provide both economic and environmental returns for the state. Likewise, a stronger investment both residentially and commercially in solar technology would not only reduce utility costs but generate pollution-free power for Floridians. To date, solar technology has remained largely inefficient and expensive, however, costs are gradually decreasing as system quality and reliability increases. To encourage continued investment in solar energy, systems received a permanent exemption from Florida sales and use tax in 2005.

Proposed Changes

Section 1: Legislative findings and intent: This section provides legislative findings and intent. Generally, the Legislature finds that advancing the development of renewable energy efficiency and technologies is important for the state's future, its energy stability and diversity, its environment, and the protection of its citizens' public health. Moreover, the development of renewable energy technologies has a correlated effect in reducing the demand for foreign fuels. To assist in the widespread commercialization and application of renewable energy, the findings promote marketing, among other

things, to stimulate economic growth, to generate ongoing research and development, to use the abundance of natural and renewable energy sources. These objectives are in addition to using the state's ability to attract significant federal research and development funds for its general welfare.

Section 2: Short title: The bill provides that ss. 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3: Purpose: This act is intended to provide matching grants to stimulate in-state capital investment and promote statewide utilization of renewable technologies. In order to accomplish these goals, the targeted grants program is designed to: 1) advance renewable technologies, and 2) encourage the residential and commercial use of incentives, such as rebates, tax exemptions, and regulatory certainty.

Section 4: Definitions: The bill provides the following definitions:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.
(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.
(3) "Commission" means the Florida Public Service Commission.
(4) "Department" means the Department of Environmental Protection.
(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.
(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.
(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.
(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.
(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.
(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5: Renewable Energy Technologies Grant Program: The bill establishes within DEP the Renewable Energy Technologies Grant Program. The program provides renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies. Eligible entities for award consideration include: 1) municipalities and county governments, 2) established for-profit companies licensed to do business in the state, 3) in-state universities and colleges, 4) not-for-profit organizations, 5) other qualified persons, as determined by the department. Rulemaking authority is granted to DEP for adoption of application requirements, ranking application, and administering grant awards. Criteria are provided in the bill for DEP to consider when assessing applications for an award. It is also incumbent upon DEP to solicit the expertise of other state agencies and such solicited agencies shall be cooperative with DEP.

Section 6: Energy-Efficient Products Sales Tax Holiday: During the period from 12:01 a.m., October 5, through midnight, October 11, in each year from 2006 to 2009, a tax-free week is established by the bill, and it shall be designated the Energy Efficiency Week. Specifically, the tax levied under ch. 212, F.S., may not be collected on the sale of energy-efficient products having a per product selling price of $1,500 or less. This exemption only applies to items that are for noncommercial home or personal use. "Energy-efficient product" is defined as a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency and by the United States

Department of Energy as meeting or exceeding each agency's requirements for energy efficiency or that has been designated as meeting or exceeding the requirements under the Energy Star Program of either agency.

Section 7: Solar Energy System Incentives Program: Under this program, three solar rebate incentives are created. From July 1, 2006, through June 30, 2010, any Florida resident who purchases and installs a solar photovoltaic system, a solar thermal system, or a solar thermal pool heater is eligible to apply. However, application for a rebate must be made within 90 days after the purchase, and each system must meet the specific criteria outlined in the bill.

In general, the new solar photovoltaic system must be 2 kilowatts or larger, and the new solar thermal system must provide at least 50 percent of a building's hot water consumption. For the specific eligibility requirements, s. 337.806 reads in part:

> (2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.
> (a) Eligibility requirements. A solar photovoltaic system qualifies for a rebate if:
> 1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.
> 2. The system complies with state interconnection standards as provided by the commission.
> 3. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:
> 1. $20,000 for a residence.
> 2. $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization.
> (3) SOLAR THERMAL SYSTEM INCENTIVE.
> (a) Eligibility requirements. A solar thermal system qualifies for a rebate if:
> 1. The system is installed by a state-licensed solar or plumbing contractor.
> 2. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. Authorized rebates for installation of solar thermal systems shall be as follows:
> 1. $500 for a residence.
> 2. $15 per 1,000 Btu for a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization including condominiums or apartment buildings. Btu must be verified by approved metering equipment.
> (4) SOLAR THERMAL POOL HEATER INCENTIVES.—
> (a) Eligibility requirements. – A solar thermal pool heater qualifies for a rebate if:
> 1. The system is installed by a state-licensed solar or plumbing contractor.
> 2. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. – Authorized rebates for installation of solar thermal pool heaters shall by $100 per installation.

Moreover, the total dollar amount of all DEP-issued rebates is subject to any fiscal year appropriation for the program. DEP will publish on a regular basis a running rebate fund balance for each fiscal year. If applications exceed the available funds, unfunded applications roll-over to the next year with priority

consideration. DEP shall adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to develop rebate applications and administer the issuance of rebates.

Section 8: Florida Energy Council: The bill creates the Florida Energy Council within DEP as an energy advisory group. The council is to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on current and projected energy issues including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency and conservation. This diverse council shall be comprised of stakeholders, and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, environmental, consumer and public health use the principles of reliability, efficiency, affordability, and diversity in developing its recommendations. There will be nine voting members:

- The Secretary of DEP, or designee, serves as the council's chair
- The Chair of PSC, or designee, serves as the council's vice chair
- The Commissioner of Agriculture and Consumer Services, or designee
- Two members appointed by the Governor
- Two members appointed by the President of the Senate
- Two members appointed by the Speaker of the House of Representatives

Prior to September 1, 2006, all initial appointments shall be made. The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives are for a term of two years, with members serving until their successors are appointed. Any vacancies are filled in the same manner as original appointments and are for the remainder of a vacated membership. Members are entitled to travel reimbursement and per diem, but they serve without compensation.

Additionally, DEP provides primary staff support to the council and it shall electronically record the meetings and preserve those recordings pursuant to chapters 119 and 257. Rulemaking authority is granted to DEP to implement the provisions of this section.

Section 9: Sales Tax Exemption: A sales tax exemption is created in s. 212.08, F.S., for equipment, machinery, and other materials for renewable energy technologies, and is available to a purchaser through a refund of previously paid taxes. This exemption is designed to assist in stimulating the development of in-state hydrogen technologies and biofuels. Enhancing the production, distribution and retail mechanisms supporting biofuels, this incentive may result in a reduction in the consumption of fossil fuels. There are currently four hydrogen fueling stations planned for installation, and those facilities are partially funded by DEP. Florida has no ethanol fuel production facilities or retail outlets selling ethanol blends to the public.

The bill creates the following definitions as used in this section:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

The bill provides that the in-state sale or use of the following items is excluded from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in tax each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided by this subsection.

DEP is the designated lead agency for submitting the list of items eligible for the exemption to the Department of Revenue (DOR). The bill directs DEP, in consultation with DOR, to develop the application for exemption, along with minimal criteria for the application content. Applicants are to also submit a sworn statement of information accuracy and to the section requirements being met. An application processing schedule is also outlined in the bill.

Rulemaking is granted to DOR for governing the manner and form of the refund applications and to additionally establish guidelines for requisites of an affirmative showing of qualification for exemption.

Rulemaking is also granted to DEP to ensure the exemptions do not exceed the provided limits, and DEP shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

This exemption is repealed on July 1, 2010.

Section 10: Confidentiality and information sharing: This section allows for the sharing of information between DEP and DOR related to the sales tax exemption and investment tax credit.

Section 11: Corporate income tax: This is a conforming change.

Section 12: Renewable energy technologies investment tax credit: The bill establishes the renewable energy technologies tax credit. Definitions in this section mirror those used in s. 212.08(7) for biodiesel, ethanol, and hydrogen fuel cell. A term is added to this section for "eligible cost" which means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all tax payers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subsection.

The bill outlines and application process that is handled through DEP for this credit. Rulemaking authority is granted DOR relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

DEP shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13: Adjusted federal income: This section makes a conforming change.

Section 14: Ten-year site plans: Pursuant to s. 186.801, F.S., all major generating electric utilities are required to annually submit a Ten-Year Site Plan to the PSC for review. Each Ten-Year Site Plan contains projections of the utility's electric power needs for the next ten years and the general location of proposed power plant sites and major transmission facilities. As a result, the PSC performs a preliminary study of each Ten-Year Site Plan to determine whether it is "suitable" or "unsuitable." To aid in its review, the PSC receives comments from state, regional, and local planning agencies regarding various issues. Upon review completion, the PSC forwards its Ten-Year Site Plan review, to DEP for use in subsequent power plant siting proceedings.

To implement the provisions s. 186.801, F. S., the PSC has adopted Rules 25-22.070 through 25-22.072, F.A.C. These rules require electric utilities to file an annual Ten-Year Site Plans by April 1. However, utilities whose existing generating capacity is below 250 megawatts (MW) are exempt from this requirement unless the utility plans to build a new unit larger than 75 MW within the ten-year planning period.

In evaluating the 10-year site plans, the PSC is required to review:

- Need for electrical power in the area to be served.
- Anticipated environmental impact.
- Possible alternatives to the proposed plan.
- Views of appropriate local, state, and federal agencies.
- Consistency with the state comprehensive plan.
- Information of the state on energy availability and consumption.

The bill adds the "effect on fuel diversity within the state" to the above objectives considered by the PSC in evaluating the10-year site plans.

Section 15: Jurisdiction of the PSC: Section 366.04, F.S., provides that the jurisdiction of the PSC includes prescribing and enforcing safety standards for electric transmission and distribution. This bill adds the phrase "at a minimum" when describing the safety standards the PSC must adopt. This allows the PSC to adopt stricter safety standards than the National Electrical Safety Code (NESC) as needed to protect Florida's electric system from disasters.

Section 16: Powers of the PSC: Section 366.05(1), F.S., reads in part:

366.05 Powers.—

> (1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities. . .

The bill amends this section to give the PSC the power to adopt construction standards that exceed the NESC in order to ensure the reliable provision of service. In addition, the PSC is given the power to order the replacement of plant by a public utility.

Section 366.05(8), F.S., gives the PSC power over the state's electrical grid, and the authority, following certain proceeding, to require the installation or repair of necessary facilities if inadequacies with respect to the grid exist. The bill amends this section to strengthen PSC authority to require utilities to build additional facilities or repair existing facilities if the PSC determines that the electric grid is inadequate with respect to "fuel diversity or fuel supply reliability."

Section 17: The bill requires the PSC to direct a study on Florida's electric transmission grid. The study shall examine the efficiency and reliability of power transfer and emergency contingency conditions. Additionally, the study must examine the hardening of infrastructure to address issues raised from the 2004 and 2005 hurricane seasons. The results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Sections 18 through 40: These sections amend the Florida Electrical Power Plant Siting Act (PPSA). On the recommendation of the Florida Energy Plan, the proposed changes are to streamline the siting process by setting new timelines, streamlining procedures, and streamlining the determination of consistency with land use, among other things.

Created by the Legislature in 1973, the PPSA provides for certification (licensure) of steam electric or solar power plants which are 75 megawatts or larger in size. The plants can be gas-fired, combined-cycle units, nuclear units, or others that are fueled by more conventional means. Combustion turbine units can be permitted in conjunction with a certified facility, or as an addition via the modification process, but as a stand alone, this type of unit does not trigger the certification process.

DEP is the lead agency for coordinating the siting process. Plant certification may include the plant's directly associated facilities, which are necessary for the construction and operation, such as natural gas pipeline, rail lines, roadways, and electrical transmission lines. Final certification is issued by the siting board (Governor & Cabinet).

Section 18: Definitions: The bill amends several definitions s. 403.503, F.S., in order to broaden, delete and conform terms as used in this section. However, noteworthy are the amendments to two terms: 1) The revision to "electrical power plant" clarifies that associated facilities to be included in the definition of plant are those that are owned by the applicant. This gives the applicant the option to include associated facilities not owned by the applicant. 2) The revision to "completeness" is amended to incorporate the concept of "sufficiency". This change combines two review processes.

Section 19: Department of Environmental Protection; powers and duties: The bill broadens DEP powers and duties by expanding its rulemaking authority to include construction as a component to be included as it sets forth rules for environmental precautions in relation to power plants. DEP has the authority to issue final orders when there is no certification hearing, resulting in a significant saving in overall licensing time. DEP is also given the authority to issue emergency orders when emergency conditions require a short turn-around time. Other additional powers and duties include acting as clerk for the siting board as well as administering and managing the terms and conditions of the certification order, supporting documents and records for the life of the facility.

Section 20: Application for permits: The bill amends s. 403.5055, F.S., to provide that DEP include in its project analysis copies of proposed permits under federally delegated or approved permit programs. The bill modifies the section to require such inclusion only if the permit is available at the time DEP issues its project analysis.

Section 21: Applicability and certification: The bill amends s. 405.506, F.S., relating to applicability and certification to include "thresholds." The section is amended to exempt cogeneration facilities which are expanding by less than 35 megawatts. This will assist in the development and utilization of an additional resource. The term "maximum electrical generator rating" replaces the term "maximum normal generator nameplate rating" in order to more accurately reflect the term of art in the industry.

Section 22: Distribution of application: Section 403.5064, F.S., is amended to read "Application schedules" in lieu of "Distribution of application." The date of certification commencement shall begin when the applicant distributes the appropriate number of certification applications and submits the application fee pursuant to 403.518, F.S. This change in the date of commencement will result in a time savings of approximately 22 days because the distribution to the affected parties is done sooner.

A provision is added to provide that any amendment made prior to certification will be addressed as part of the original certification proceeding; however, the amendment may create a good cause of altering the time limits.

Further, this section provides that within 7 days after DEP files its proposed schedule, the administrative law judge (ALJ) will issue an order establishing a schedule for matters contained in the proposed schedule. The bill also clarifies notice provisions in order to reference the new notice section.

Section 23: Appointment of administrative law judge: This section is amended to clarify that the ALJ has all powers and duties granted pursuant to chapter 120, F.S., and by the laws and rules of DEP.

Section 24: Determination of completeness: The bill amends this section to give the applicant 30 days rather than 15 days to respond to a notice of incompleteness. A statement of completeness shall be filed with the Division of Administrative Hearings (DOAH), the applicant, and the parties, within 40 days in lieu of 15 days, after filing an application. The bill outlines the procedure for an applicant to follow when DEP declares an application incomplete.

Section 25: Informational public meetings: Section 403.50663, F.S., is created to establish that a local government or a regional planning council in whose jurisdiction the proposed plant exist may hold an information public meeting to inform the public about the proposed site and its associated facilities. The meeting must be noticed not less than 5 days prior to the date; however, the failure to hold an informational public meeting or the procedure used for the informational meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Further, the bill clarifies that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

Section 26: Land use consistency: Section 403.50665, F.S., is created to generally streamline the land use determination, and to require that the applicant includes a description in the application of land use consistency with existing land use plans and zoning ordinances. If a local government makes an affirmative determination that the site and or facilities are consistent with local land use, but a substantially affected individual disputes the local government's determination, that person has 15 days to file a petition disputing the determination.

If it is determined by the local government that the proposed site, or directly associated facility, does conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 27: Determination of Sufficiency: Section 403.5067, F.S., is repealed. This review is combined with the completeness review.

Section 28: Preliminary statement of issues, reports, project analyses, and studies: The bill amends s. 403.507, F.S., relating to preliminary statements of issues, reports, project analyses, and studies. It changes the date for the filing of preliminary statements of issues from 60 days after distribution of the application, to 40 days after the application has been determined complete. It now requires agency reports to be filed 100 days after the application has been determined complete, expediting the review process by approximately 32 days.

The bill also clarifies that the Department of Community Affairs shall address emergency management in its report, and water management district reports shall include issues related to impact on water resources, impact on regional water supply planning, and impact on district-owned lands and works.

The Department of Transportation (DOT) is added to the list of agencies that must address the impact of the proposed plant on matters within its jurisdiction. DOT is typically involved in the certification process, but its statutory addition as a reporting agency ties in with its addition to the list of parties to the proceeding. It also establishes DOT as an agency eligible for reimbursement from the application fee.

The bill deletes the provisions related to the PSC filing of its determination and relocates it to a separate section. Additionally, prior to DEP issuing its project analysis; the PSC must have made an affirmative determination of need. While the need determination is currently required prior to the certification hearing, this language is amended to provide for instances when a hearing may be canceled.

Section 29: Land use and certification hearings: The bill amends s. 403.508, F.S., relating to land use and certification hearings. The bill addresses both types of hearings:

(1) Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board. The bill further readjusts processing time in order to conform to responses to determination of incompleteness. However, this does not impact the overall issuance of the final certification.

(2) Certification hearing: changes the date for the holding of the certification hearing to from 300 to 265 days after the filing of the application. The DEP analysis would have been filed approximately 95 days earlier. Moreover, according to DEP, this length of time is needed to account for the possibility of an application being incomplete as filed, but it was rendered complete before the deadline for the tolling of the time clock. This provision also provides adequate time to prepare for the hearing.

A key substantive change is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. If there are no disputed issues of fact or law, no later than 29 days before the certification hearing, but with enough time to provide three days notice of canceling the hearing, DEP or the applicant may request that the certification hearing be canceled. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and DEP would prepare the Final Order. This new option would shorten the process by as much as four and a half months, and would save the applicant and the agencies expense.

The bill also makes numerous technical changes to this section, including the relocation of provisions to group related activities and improve the chronological sequencing of events. Additionally, DOT is added to the list of parties, and process deadlines are revised to conform to other deadline changes. The language regarding "public notice" has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

The bill also conforms existing provisions related to the conduct of the hearing, parties, and intervention, and retains existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

Section 30: Final Disposition of the Application: The bill amends s. 403.509, F.S., relating to the final disposition of application. The bill adds a provision allowing DEP to issue the final order on certification, if the ALJ has cancelled the certification hearing. This would only apply if there are no controversial issues, and could save several months.

The bill requires the applicant to seek before, during or after, the certification any necessary land easements for state lands from the Board of Trustees or relevant water management district. The certification may be made contingent on the applicant receiving the appropriate interest.

This section also creates criteria for approval or denial of the application, which is drawn from the intent language, and criteria listed elsewhere in the act. In order to make the act internally consistent regarding federally delegated/approved permits, provisions related to these permits are deleted.

Section 31: Effect of Certification: The bill amends s. 403.511, F.S., relating to the effect of certification. The bill deletes language to conform to the provisions that allow the Secretary of DEP to sign certifications, under certain circumstances. Language is added to this section to clarify that local land use permits and zoning ordinances are preempted by the PPSA. This section further clarifies that federal permits are to be issued under their own program guidelines and not those of the Siting Board or PPSA. Subsection (8) is also added to this section and reads:

> (8) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32: Filing of Notice of Certified Corridor Route: The bill creates s. 403.5112, F.S., relating to filing of notice of certified corridor route. This provision is drawn from s. 403.5312, F.S., contained in the Transmission Line Siting Act, but which technically applies to the PPSA, as well. This section provides that within 60 days after a directly associated linear facility is certified, the applicant must file notice of the certified route with DEP and the clerk of the circuit court in each county through which the corridor will pass.

The notice is to consist of maps and aerial photographs clearly showing the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. The clerk is to record the filing in the official record of the county for the duration of the certification, or until the applicant certifies to DEP and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the county, whichever is sooner.

Section 33: Postcertification Amendments: The bill creates s. 403.5113, F.S., related to post-certification amendments. This is essentially a technical addition clarifying the difference in required actions between amendments submitted by the applicant during the application review, and those submitted after certification. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

If subsequent to certification, a licensee proposes a material change to the certification, the licensee must submit to DEP a written request for amendment and a description of the proposed change to the application. DEP has 30 days to determine whether or not the proposed change requires the conditions of certification to be modified. If DEP concludes that the change would not require a modification of the conditions of certification, DEP must provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

If DEP concludes that the change would require a modification of the conditions of certification, DEP sends written notification to the licensee stating that the proposed changes require a request for modification.

Section 34: Public Notice; Costs of Proceeding: The bill amends s. 403.5115 F.S., relating to public notice. This language in this section conforms to requirements to other provisions, updates methods for notification to allow for notice as specified in ch. 120, F.S., and makes clarifications. The applicant is responsible for publishing and paying for the notices in newspapers of general circulation relating to its filings with DEP, hearings, the cancellation of hearings, modifications, and supplemental applications.

DEP is required to provide the notices in the manner specified by ch. 120, F.S., and provide copies to persons who have been placed on its mailing list pertaining to various filings and hearing, the cancellation of hearings and any notice of stipulations, proposed agency actions and petitions for modification.

Section 35: Review: The bill amends the judicial review provisions in s. 403.513, F.S. to conform its requirements to other provisions. The bill clarifies that when possible, separate appeals of the certification order and any DEP permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

Section 36: Modification of Certification: Modifications of certification are frequently necessary, in part because a life-of-the-facility license was granted. However, not all changes at a certified facility necessitate a formal modification, rather, an approved amendment may suffice. A "modification" is any change in the certification order after issuance, including a change in the conditions of certification. For example, a condition might specify that the chemical treatment system for the facility only be allowed a 30 foot mixing zone, and if the applicant wishes to have a 40 foot mixing zone, a modification would be necessary. However, if a construction shed was to be moved and this was not mentioned in the conditions nor are there any foreseeable impacts, an amendment would be approved.

According to DEP, modifications can be approved by the Siting Board, but this authority is most frequently delegated to the Secretary of DEP. However, if a dispute arises, the decision-making authority reverts to the Siting Board.

The bill amends s. 403.516, F.S., relating to the modification of certification. This section makes edits to clarify and streamline unclear provisions related to modification of certifications. Additionally, it conforms requirements to other provisions regarding federally delegated or approved permits.

Section 37: Supplemental Applications for Sites Certified for Ultimate Site Capacity: The bill amends s. 403.517, F.S., relating to supplemental applications certified for ultimate site capacity. These applications are for certification of the construction of electrical power plants to be located at sites which have been previously certified for ultimate site capacity. Supplemental applications are limited to electrical power plants using a fuel type previously certified for the site.

This section is amended to add that these applications include all new directly associated facilities that support the construction and operation of the electrical power plant. The bill also simplifies and clarifies language regarding procedural steps for applications at facilities that have previously been certified, but are expanding. Additionally, the definition of "ultimate site capacity" was deleted and transferred to the definitions section.

Section 38: Existing Electrical Power Plant Site Certification: The bill amends s. 403.5175, F.S., relating to existing electrical power plant site certification to make technical edits conforming this section to other sections of the PPSA.

Section 39: Disposition of Fees: For the siting of a power plant, the applicant must pay DEP a $2,500 fee upon filing the notice of intent and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of this fee goes to DEP for its costs associated with coordinating the review, acting on the application, and covering its associated costs. Twenty percent goes to DOAH to cover its costs associated with conducting the hearing. The remaining twenty-percent may be provided to various agencies to reimburse them for their costs associated with their participation in the proceeding.

The bill amends s. 403.518, F.S., relating to the disposition of fees to take into account the potential cancellation of the certification hearing. Currently, DOAH receives 20 percent of the application fee to cover its administrative costs. Under the new provisions, DOAH would receive 5 percent up front to cover

its initial administration costs. DOAH would receive an additional 5 percent if a land use hearing is held and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will receive the 20 percent it currently receives. The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year. In other words, a grandfathering exists for certain applications in the process, i.e. those requiring cancellation of certification.

DEP shall establish rules for determining a certification modification fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

Section 40: Applicability of Revisions: The bill provides that any applicant for power plant certification under the PPSA is to be processed under the law applicable when the application was filed, except that provisions relating to the cancellation of the certification hearing, the provisions related to the final disposition of the application and issuance of the written order by the secretary of DEP, and notice of the cancellation of the certification hearing may apply to any application for power plant certification. This will have the effect of leaving the existing time frame in place for any application which is pending when the bill becomes law.

Section 41: Exclusive Forum for Determination of Need: The need determination process can occur prior to the filing of a certification application, or afterwards; however, it is usually recommended that it be commenced beforehand. Need determination is a formal process required under s. 403.519, F.S., and is conducted by the PSC. The PSC reviews the need for the generation capacity which the proposed facility would produce in relation to the needs of the region, and to the state as a whole. The PSC also looks at whether the facility would be the most cost-effective means of obtaining generating capacity. If the PSC makes a negative determination, or recommends that an alternative approach is more suitable, then either the pending application need not be submitted, or should be revised. If the application has already been submitted, then the certification application process comes to a halt.

Section 403.519(2), F.S., requires the PSC to publish notices in the newspaper of its need determination hearing 45 days before the date set for the hearing. The bill shifts this responsibility to the applicant and shortens the time frame to 21 days before the hearing. In addition, it states that the PSC shall continue to post a notice in the Florida Administrative Weekly at least seven days prior to the date of the hearing.

The bill amends s. 403.519(3), F.S., allowing the PSC to take into account the need for fuel diversity and supply reliability when making a need determination. The PSC currently includes fuel issues in its need determination proceeding, but the bill requires it to be addressed in the PSC's deliberations. The bill does not specify if the need for fuel diversity and supply reliability refers to the state as a whole or to the specific applicant.

Section 42: Effective Date: This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Provides legislative findings and intent.

Section 2 Creates s. 377.801, F.S., provides Short title.

Section 3 Creates s. 377.802, F.S., provides purpose.

Section 4 Creates s. 377.803, F.S., provides definitions.

Section 5 Creates s. 377.804, F.S., Renewable Energy Technologies Grant Program.

Section 6 Creates s. 377.805, F.S., Energy-Efficient Appliances Rebate Program.

Section 7 Creates s. 377.806, F.S., Solar Energy Systems Rebate Program.

Section 8	Creates s. 377.901, F.S., Florida Energy Council.
Section 9	Creates s. 212.08(7)(ccc), F.S., sales tax exemption for equipment, machinery and other renewable energy technologies.
Section 10	Adds s. 213.053(7)(y), F.S., relating to confidentiality and information sharing.
Section 11	Amends s. 220.02(8), F.S., relating to tax credits against corporate income tax or franchise tax.
Section 12	Creates s. 220.192, F.S., Renewable energy technologies investment tax credit.
Section 13	Amends s. 220.13, F.S., relating to definition of "adjusted federal income."
Section 14	Amends s. 186.801(2), F.S., relating to ten-year site plan.
Section 15	Amends s. 366.04(6), F.S., relating to jurisdiction of the Public Service Commission.
Section 16	Amends s. 366.05(1) and (8), F.S., related to powers of the Public Service Commission
Section 17	Requires the Public Service Commission to direct a study.
Section 18	Amends s. 403.503, F.S., provides definitions for the Florida Electrical Power Plant Siting Act.
Section 19	Amends s. 403.504, F.S., relating to powers and duties of the Department of Environmental Protection.
Section 20	Amends s. 403.5505, F.S., relation to applications for permits pursuant to s. 403.0885, F.S. (Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program).
Section 21	Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.
Section 22	Amends s. 403.5064, F.S., relating to distribution of certification application and related schedule.
Section 23	Amends s. 403.5065, F.S., relating to appointment, powers, and duties of an administrative law judge.
Section 24	Amends s. 403.5066, F.S., relating to determination of completeness.
Section 25	Creates s. 403.50663, F.S., relating to informational public meetings.
Section 26	Creates s. 403.50665, F.S., relating to land use consistency determination.
Section 27	Repeals s. 403.5067, F.S., determination of sufficiency.
Section 28	Amends s. 403.507, F.S., preliminary statement of issues, reports, project analyses, and studies.
Section 29	Amends s. 403.508, F.S., relating to land use and certification hearings.
Section 30	Amends s. 403.509, F.S, relating to final disposition of the application.
Section 31	Amends s. 403.511, F.S., relating to effect of certification.

Section 32 Creates s. 403.5112, F.S. relating to filing of notice of certified corridor route.

Section 33 Creates s. 403.5113, F.S., relating to post certification amendments.

Section 34 Amends s. 403.5115, F.S., relating to public notice and costs of proceeding.

Section 35 Amends s. 403.513, F.S., relating to judicial review.

Section 36 Amends s. 403.516, F.S., relating to modification of certification.

Section 37 Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity.

Section 38 Amends s. 403.5175, F.S., relating to electrical power plant site certifications

Section 39 Amends s. 403.518, F.S., relating to fees and disposition.

Section 40 Provides for the applicability of revisions to the Power Plant Siting Act

Section 41 Amends s. 403.519, F.S., relating to determination of need.

Section 42 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	($11.0m)	($16.5m)
State Trust	(Insignificant)	(Insignificant)
Total	($11.0m)	($16.5m)

2. Expenditures:

Renewable Energy Technologies Grant Program
According to DEP, there will be recurring costs associated with administering the programs provided for under the act. At this time, the Energy Office staff time is paid through a grant from the United States Department of Energy and administering grant programs would be an allowable cost under the federal grant. However, the additional workload may create a need for hiring additional staff.

Solar Energy System Incentives Program
The fiscal impact of the Solar Energy System Incentives Program is indeterminate at this time. The availability of the rebates is subject to the amount appropriated to the program each fiscal year. DEP will incur some expenses associated with administering this program.

Florida Energy Council

The Energy Council may incur costs associated with conducting its duties, and DEP may incur administrative costs associated with staffing the council. There is no appropriation for these expenses.

Sales Tax Exemption and Corporate Income Tax Credit Administration
According to DEP, it will either administer the tax incentive program or contract with an outside organization to do so. The costs associated with this incentive are recurring in nature. The Energy Office staff is paid through a grant from the U.S. Department of Energy and administration of a tax incentive program for biofuels and hydrogen would be allowable under the federal grant. However, the additional workload may create a need for hiring additional staff.

According to DOR, it will need one additional position at a recurring cost of $48,708 to administer these programs. For the 2006-2007 fiscal year, DOR expects to incur $4,834 in non-recurring expenses.

Public Service Commission
According to PSC, it may see an increased workload as a result of the additional authority monitoring system reliability as it relates to fuel diversity. The PSC will also incur costs related to the study it is required to direct.

Power Plant Siting Act
For the siting of a power plant, an applicant must pay DEP a $2,500 fee upon filing the notice of intent, and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of the fees are allocated to DEP to cover its review, the processing of the application, and other associated costs.

Twenty percent of the fees are allocated to DOAH to cover its administrative costs associated with conducting the hearing. However, under this bill, DOAH will receive 5 percent up front to cover its initial administration costs, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will be allocated the 20 percent it currently receives.

The remaining twenty percent may be provided to various agencies to reimburse them for their costs associated with their participation in a PPSA proceeding.

The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year.

Other Costs

DEP and DOR will incur expenses associated with the rulemaking requirements. In addition, DEP and the PSC may incur expenses associated with revising their current rules to conform to the statutory changes.

DEP, DOR, and the PSC will also incur some costs implementing various portions of the bill and administering various programs. Among these costs are those that will be incurred by DOR to administer the Energy-Efficient Products Sales Tax Holiday. However, all of these costs are indeterminate at this time.

The cost of the grant program is limited to the amount appropriated each year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, and the sales tax exemptions for renewable energy technologies will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	$ (0.2m)	$ (0.2m)
Local Gov't. Half Cent	(0.5m)	(0.5m)
Local Option	(0.5m)	(0.5m)
Total Local Impact	(1.2m)	(1.2m)

Local governments would be eligible to receive grants under the Renewable Energy Technologies Grant Program.

2. Expenditures:

In the long-run, local governments may save funds as a result of canceling the certification hearing under the PPSA; however, local governments may also incur expenses related to holding informational public meetings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax exemptions and tax credits included in this bill will reduce the private sector's tax burden on certain items used for the production of renewable energy technologies.

Persons that purchase the solar energy items covered by this bill will benefit by receiving a rebate. Also, persons that purchase the items covered by this bill during Energy Efficiency Week may save money by not having to pay a sales tax. In addition, the solar rebates and the Energy-Efficient Products Sales Tax Holiday may prompt some consumers to purchase more of the eligible items, thereby causing an increase in the number of sales by Florida retailers.

Power plant siting applicants could realize a direct economic benefit from a streamlined permitting process, including the ability to begin construction at an earlier date.

D. FISCAL COMMENTS:

The bill does not contain an appropriation for the expenses related to the Florida Energy Council.

The bill does not provide an appropriation for DOR to administer the Energy-Efficient Products Sales Tax Holiday.

HB 5001, the General Appropriations Act, contains a $5 million General Revenue appropriation for the Solar Energy System Rebates Program. There is also an appropriation of $15 million ($8.6m in General Revenue and $6.4 in Trust) for Renewable Energy Technology Grants including $5 million (GR) for the Farm to Fuel program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority in the following instances:

DEP may adopt rules:

a. to administer the Renewable Energy Technologies Grant Program.
b. to designate rebate amounts and administer the issuance of Solar Energy Systems Incentive Program.
c. to implement provisions related to the Florida Energy Council.
d. to implement guidelines, rules, and application materials for the Renewable Energy Technologies Investment Tax Credit.
e. to ensure sales tax exemptions do not exceed the provided limits, regularly publish the amount of sales tax remaining in each fiscal year.
f. to determine the appropriate fee for a certificate modification under the Florida Electric Power Plant Siting Act.
g. to amend its power plant siting rules to conform to change to the Florida Electric Power Plant Siting Act.
h. to include "construction" as a component to be included in rules for environmental precautions in relation to the PPSA.

DOR is required to adopt rules regarding the manner and form of sales tax refund applications and may establish guidelines for an affirmative showing of qualification for exemptions. Also, DOR has the authority to adopt rules relating to forms required to claim the Renewable Energy Technologies Investment Tax Credit, the requirements and basis for establishing an entitlement to a credit, and examination and audit procedures required to administer the credit.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 279, the bill provides that during the sales tax holiday, the tax levied under ch. 212, F.S., may not, be levied. This language is permissive. In order to provide that the tax cannot be levied, this language should be changed to shall not.

On lines 468 through 473, the bill provides a sales tax exemption for materials used in the distribution of ethanol from E10 to E85; however, the exemption for gasoline fueling station pump retrofits for ethanol applies from E10 through E100. This is a consistency concern.

Other Comments

The PSC may need rulemaking authority to amend some of its current rules to conform to provisions contained in this bill.

According to the PSC, the January 30, 2007 deadline to perform all the study components may be difficult to achieve. Even with the bill taking effect upon becoming law, the PSC will only have seven to eight months to perform the required study and get the report approved by the Commissioners. The PSC is currently working with the Florida Reliability Coordinating Council (FRCC) on a new transmission planning process, and this involvement may enhance the proposed study on Florida's electric transmission grid. The purpose of the new FRCC transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning and to provide a better transmission expansion plan from a statewide perspective. The utilities will file their first reports utilizing this new planning process in this month (April 2006). Additionally, the PSC has opened a docket proposing rules governing the placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground, to address the effects of extreme weather events.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications adopted a strike-all amendment and nine amendments to the strike-all. These amendments provided the following:

A) Renewable Energy and Energy Efficiency Act:

1. Amends definition of "renewable energy resource" to more clearly specify targeted resources.
2. Modifies grant program language to clarify criteria and DEP duties.
3. Removes the energy-efficient appliance rebate program and creates the new Energy-Efficient Products Sales Tax Holiday.
4. Revises language to incorporate concepts into the existing solar energy rebate program, including providing incentives for solar pool heaters, setting rebate amounts, establishing eligibility criteria, and setting rebate caps.

B) Florida Energy Council

1. Adds the Commissioner of Agriculture and Consumer Services to the membership of the council.
2. Adds that the Secretary of DEP, the Chair of the PSC, and the Commissioner of DACS may appoint a designee.
3. Adds that the Council's recommendations shall be guided by the principles of reliability, efficiency, affordability, and diversity.

C) Tax Incentives

1. Amends definitions of "Biodiesel" and "Ethanol" to reflect more accepted definitions of those terms, and revises related concepts to clarify what is eligible for tax incentives.
2. Makes technical corrections for proper operation of the tax programs.

D) Public Service Commission

1. Clarifies the PSC is to direct a broad study all forms of system hardening.

E) Power Plant Siting Act

1. Clarifies definitions.
2. Clarifies the interaction with federal permit programs.
3. Amends the applicability section to exempt cogeneration facilities which are expanding by less than 35 megawatts.
4. Changes the section on completeness to give the applicant 30 days, rather than 15, to respond to a notice of incompleteness. Other formatting changes were made to make this section clearer.
5. Streamlines the process on the determination of consistency with land use to ensure that the applicant files the necessary information, and that the local government's abilities in issuing a statement of inconsistency are protected.

CHAMBER ACTION

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1 The Utilities & Telecommunications Committee recommends the
2 following:
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4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to energy; providing legislative findings
8 and intent; creating s. 377.801, F.S.; creating the
9 "Florida Renewable Energy Technologies and Energy
10 Efficiency Act"; creating s. 377.802, F.S.; stating the
11 purpose of the act; creating s. 377.803, F.S.; providing
12 definitions; creating s. 377.804, F.S.; creating the
13 Renewable Energy Technologies Grants Program; providing
14 program requirements and procedures, including matching
15 funds; creating s. 377.805, F.S.; establishing an energy-
16 efficient products sales tax holiday; specifying a period
17 during which the sale of energy-efficient products is
18 exempt from certain tax; providing a limitation; providing
19 a definition; creating s. 377.806, F.S.; creating the
20 Solar Energy System Incentives Program; providing program
21 requirements, procedures, and limitations; requiring the
22 Department of Environmental Protection to adopt rules;
23 creating s. 377.901, F.S.; creating the Florida Energy

24 Council within the Department of Environmental Protection;
25 providing purpose and composition; providing for
26 appointment of members and terms; providing for
27 reimbursement for travel expenses and per diem; requiring
28 the department to provide certain services to the council;
29 providing rulemaking authority; amending s. 212.08, F.S.;
30 providing definitions for the terms "biodiesel,"
31 "ethanol," and "hydrogen fuel cells"; providing tax
32 exemptions in the form of a rebate for the sale or use of
33 certain equipment, machinery, and other materials for
34 renewable energy technologies; providing eligibility
35 requirements and tax credit limits; directing the
36 Department of Revenue to adopt rules; directing the
37 Department of Environmental Protection to determine and
38 publish certain information relating to such exemptions;
39 providing for expiration of the exemption; amending s.
40 213.053, F.S.; authorizing the Department of Revenue to
41 share certain information with the Department of
42 Environmental Protection for specified purposes; amending
43 s. 220.02, F.S.; providing the order of application of the
44 renewable energy technologies investment tax credit;
45 creating s. 220.192, F.S.; providing definitions;
46 establishing a corporate tax credit for certain costs
47 related to renewable energy technologies; providing
48 eligibility requirements and credit limits; providing
49 certain authority to the Department of Environmental
50 Protection and the Department of Revenue; directing the
51 Department of Environmental Protection to determine and

52 publish certain information; providing for expiration of
53 the tax credit; amending s. 220.13, F.S.; providing an
54 addition to the definition of "adjusted federal income";
55 amending s. 186.801, F.S.; revising the provisions of
56 electric utility 10-year site plans to include the effect
57 on fuel diversity; amending s. 366.04, F.S.; revising the
58 safety standards for public utilities; amending s. 366.05,
59 F.S.; authorizing the Public Service Commission to adopt
60 certain construction standards and make certain
61 determinations; directing the commission to conduct a
62 study and provide a report by a certain date; amending s.
63 403.503, F.S.; revising and providing definitions
64 applicable to the Florida Electrical Power Plant Siting
65 Act; amending s. 403.504, F.S.; providing the Department
66 of Environmental Protection with additional powers and
67 duties relating to the Florida Electrical Power Plant
68 Siting Act; amending s. 403.5055, F.S.; revising
69 provisions for certain permits associated with
70 applications for electrical power plant certification;
71 amending s. 403.506, F.S.; revising provisions relating to
72 applicability and certification of certain power plants;
73 amending s. 403.5064, F.S.; revising provisions for
74 distribution of applications and schedules relating to
75 certification; amending s. 403.5065, F.S.; revising
76 provisions relating to the appointment of administrative
77 law judges and specifying their powers and duties;
78 amending s. 403.5066, F.S.; revising provisions relating
79 to the determination of completeness for certain

80 applications; creating s. 403.50663, F.S.; authorizing
81 certain local governments and regional planning councils
82 to hold an informational public meeting about a proposed
83 electrical power plant or associated facilities; providing
84 requirements and procedures therefor; creating s.
85 403.50665, F.S.; requiring local governments to file
86 certain land use determinations; providing requirements
87 and procedures therefor; repealing s. 403.5067, F.S.,
88 relating to the determination of sufficiency for certain
89 applications; amending s. 403.507, F.S.; revising required
90 preliminary statement provisions for affected agencies;
91 requiring a report as a condition precedent to the project
92 analysis and certification hearing; amending s. 403.508,
93 F.S.; revising provisions relating to land use and
94 certification hearings, including cancellation and
95 responsibility for payment of expenses and costs;
96 requiring certain notice; amending s. 403.509, F.S.;
97 revising provisions relating to the final disposition of
98 certain applications; providing requirements and
99 provisions with respect thereto; amending s. 403.511,
100 F.S.; revising provisions relating to the effect of
101 certification for the construction and operation of
102 proposed electrical power plants; providing that issuance
103 of certification meets certain coastal zone consistency
104 requirements; creating s. 403.5112, F.S.; requiring filing
105 of notice for certified corridor routes; providing
106 requirements and procedures with respect thereto; creating
107 s. 403.5113, F.S.; authorizing postcertification

108 amendments for power plant site certification
109 applications; providing requirements and procedures with
110 respect thereto; amending s. 403.5115, F.S.; requiring
111 certain public notice for activities relating to
112 electrical power plant site application, certification,
113 and land use determination; providing requirements and
114 procedures with respect thereto; directing the Department
115 of Environmental Protection to maintain certain lists and
116 provide copies of certain publications; amending s.
117 403.513, F.S.; revising provisions for judicial review of
118 appeals relating to electrical power plant site
119 certification; amending s. 403.516, F.S.; revising
120 provisions relating to modification of certification for
121 electrical power plant sites; amending s. 403.517, F.S.;
122 revising provisions relating to supplemental applications
123 for sites certified for ultimate site capacity; amending
124 s. 403.5175, F.S.; revising provisions relating to
125 existing electrical power plant site certification;
126 revising the procedure for reviewing and processing
127 applications; requiring additional information to be
128 included in certain applications; amending s. 403.518,
129 F.S.; revising the allocation of proceeds from certain
130 fees collected; providing for reimbursement of certain
131 expenses; directing the Department of Environmental
132 Protection to establish rules for determination of certain
133 fees; eliminating certain operational license fees;
134 providing for the application, processing, approval, and
135 cancellation of electrical power plant certification;

136 amending s. 403.519, F.S.; directing the Public Service
137 Commission to consider fuel diversity and reliability in
138 certain determinations; providing an effective date.
139
140 Be It Enacted by the Legislature of the State of Florida:
141
142 Section 1. Legislative findings and intent.--The
143 Legislature finds that advancing the development of renewable
144 energy technologies and energy efficiency is important for the
145 state's future, its energy stability, and the protection of its
146 citizens' public health and its environment. The Legislature
147 finds that the development of renewable energy technologies and
148 energy efficiency in the state will help to reduce demand for
149 foreign fuels, promote energy diversity, enhance system
150 reliability, reduce pollution, educate the public on the promise
151 of renewable energy technologies, and promote economic growth.
152 The Legislature finds that there is a need to assist in the
153 development of market demand that will advance the
154 commercialization and widespread application of renewable energy
155 technologies. The Legislature further finds that the state is
156 ideally positioned to stimulate economic development through
157 such renewable energy technologies due to its ongoing and
158 successful research and development track record in these areas,
159 an abundance of natural and renewable energy sources, an ability
160 to attract significant federal research and development funds,
161 and the need to find and secure renewable energy technologies
162 for the benefit of its citizens, visitors, and environment.

163 Section 2. Section 377.801, Florida Statutes, is created
164 to read:
165 377.801 Short title.--Sections 377.801-377.806 may be
166 cited as the "Florida Renewable Energy Technologies and Energy
167 Efficiency Act."
168 Section 3. Section 377.802, Florida Statutes, is created
169 to read:
170 377.802 Purpose.--This act is intended to provide matching
171 grants to stimulate capital investment in the state and to
172 enhance the market for and promote the statewide utilization of
173 renewable energy technologies. The targeted grants program is
174 designed to advance the already growing establishment of
175 renewable energy technologies in the state and encourage the use
176 of other incentives such as tax exemptions and regulatory
177 certainty to attract additional renewable energy technology
178 producers, developers, and users to the state. This act is also
179 intended to provide incentives for the purchase of energy-
180 efficient appliances and rebates for solar energy equipment
181 installations for residential and commercial buildings.
182 Section 4. Section 377.803, Florida Statutes, is created
183 to read:
184 377.803 Definitions.--As used in ss. 377.801-377.806, the
185 term:
186 (1) "Act" means the Florida Renewable Energy Technologies
187 and Energy Efficiency Act.
188 (2) "Approved metering equipment" means a device capable
189 of measuring the energy output of a solar thermal system that
190 has been approved by the commission.

191 (3) "Commission" means the Florida Public Service
192 Commission.
193 (4) "Department" means the Department of Environmental
194 Protection.
195 (5) "Person" means an individual, partnership, joint
196 venture, private or public corporation, association, firm,
197 public service company, or any other public or private entity.
198 (6) "Renewable energy" means electrical, mechanical, or
199 thermal energy produced from a method that uses one or more of
200 the following fuels or energy sources: hydrogen, biomass, solar
201 energy, geothermal energy, wind energy, ocean energy, waste
202 heat, or hydroelectric power.
203 (7) "Renewable energy technology" means any technology
204 that generates or utilizes a renewable energy resource.
205 (8) "Solar energy system" means equipment that provides
206 for the collection and use of incident solar energy for water
207 heating, space heating or cooling, or other applications that
208 require a conventional source of energy such as petroleum
209 products, natural gas, or electricity that performs primarily
210 with solar energy. In other systems in which solar energy is
211 used in a supplemental way, only those components that collect
212 and transfer solar energy shall be included in this definition.
213 (9) "Solar photovoltaic system" means a device that
214 converts incident sunlight into electrical current.
215 (10) "Solar thermal system" means a device that traps heat
216 from incident sunlight in order to heat water.
217 Section 5. Section 377.804, Florida Statutes, is created
218 to read:

219 377.804 Renewable Energy Technologies Grants Program.--
220 (1) The Renewable Energy Technologies Grants Program is
221 established within the department to provide renewable energy
222 matching grants for demonstration, commercialization, research,
223 and development projects relating to renewable energy
224 technologies.
225 (2) Matching grants for renewable energy technology
226 demonstration, commercialization, research, and development
227 projects may be made to any of the following:
228 (a) Municipalities and county governments.
229 (b) Established for-profit companies licensed to do
230 business in the state.
231 (c) Universities and colleges in the state.
232 (d) Utilities located and operating within the state.
233 (e) Not-for-profit organizations.
234 (f) Other qualified persons, as determined by the
235 department.
236 (3) The department may adopt rules pursuant to ss.
237 120.536(1) and 120.54 to provide for application requirements,
238 provide for ranking of applications, and administer the awarding
239 of grants under this program.
240 (4) Factors the department shall consider in awarding
241 grants include, but are not limited to:
242 (a) The availability of matching funds or other in-kind
243 contributions applied to the total project from an applicant.
244 The department shall give greater preference to projects that
245 provide such matching funds or other in-kind contributions.

246 (b) The degree to which the project stimulates in-state
247 capital investment and economic development in metropolitan and
248 rural areas, including the creation of jobs and the future
249 development of a commercial market for renewable energy
250 technologies.
251 (c) The extent to which the proposed project has been
252 demonstrated to be technically feasible based on pilot project
253 demonstrations, laboratory testing, scientific modeling, or
254 engineering or chemical theory that supports the proposal.
255 (d) The degree to which the project incorporates an
256 innovative new technology or an innovative application of an
257 existing technology.
258 (e) The degree to which a project generates thermal,
259 mechanical, or electrical energy by means of a renewable energy
260 resource that has substantial long-term production potential.
261 (f) The degree to which a project demonstrates efficient
262 use of energy and material resources.
263 (g) The degree to which the project fosters overall
264 understanding and appreciation of renewable energy technologies.
265 (h) The ability to administer a complete project.
266 (i) Project duration and timeline for expenditures.
267 (j) The geographic area in which the project is to be
268 conducted in relation to other projects.
269 (k) The degree of public visibility and interaction.
270 (5) The department shall solicit the expertise of other
271 state agencies in evaluating project proposals. State agencies
272 shall cooperate with the Department of Environmental Protection
273 and provide such assistance as required.

274 Section 6. Section 377.805, Florida Statutes, is created
275 to read:
276 377.805 Energy-efficient products sales tax holiday.--The
277 period from 12:01 a.m., October 5, through midnight, October 11,
278 in each year from 2006 to 2009, shall be designated "Energy
279 Efficiency Week," and the tax levied under chapter 212 may not
280 be collected on the sale of an energy-efficient product having a
281 selling price of $1,500 or less per product during that period.
282 This exemption applies only when the energy-efficient product is
283 purchased for noncommercial home or personal use and does not
284 apply when the product is purchased for trade, business, or
285 resale. As used in this subsection, the term "energy-efficient
286 product" means a dishwasher, clothes washer, air conditioner,
287 ceiling fan, incandescent or florescent light bulb,
288 dehumidifier, programmable thermostat, or refrigerator that has
289 been designated by the United States Environmental Protection
290 Agency and by the United States Department of Energy as meeting
291 or exceeding each agency's requirements for energy efficiency or
292 that has been designated as meeting or exceeding the
293 requirements under the Energy Star Program of either agency.
294 Section 7. Section 377.806, Florida Statutes, is created
295 to read:
296 377.806 Solar Energy System Incentives Program.--
297 (1) PURPOSE.--The Solar Energy System Incentives Program
298 is established within the department to provide financial
299 incentives for the purchase and installation of solar energy
300 systems. Any resident of the state who purchases and installs a
301 new solar energy system of 2 kilowatts or larger for a solar

302 photovoltaic system, a solar energy system that provides at
303 least 50 percent of a building's hot water consumption for a
304 solar thermal system, or a solar thermal pool heater, from July
305 1, 2006, through June 30, 2010, is eligible for a rebate on a
306 portion of the purchase price of that solar energy system.
307 (2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--
308 (a) Eligibility requirements.--A solar photovoltaic system
309 qualifies for a rebate if:
310 1. The system is installed by a state-licensed master
311 electrician, electrical contractor, or solar contractor.
312 2. The system complies with state interconnection
313 standards as provided by the commission.
314 3. The system complies with all applicable building codes
315 as defined by the local jurisdictional authority.
316 (b) Rebate amounts.--The rebate amount shall be set at $4
317 per watt based on the total wattage rating of the system. The
318 maximum allowable rebate per solar photovoltaic system
319 installation shall be as follows:
320 1. Twenty thousand dollars for a residence.
321 2. One hundred thousand dollars for a place of business, a
322 publicly owned or operated facility, or a facility owned or
323 operated by a private, not-for-profit organization, including
324 condominiums or apartment buildings.
325 (3) SOLAR THERMAL SYSTEM INCENTIVE.--
326 (a) Eligibility requirements.--A solar thermal system
327 qualifies for a rebate if:
328 1. The system is installed by a state-licensed solar or
329 plumbing contractor.

330 2. The system complies with all applicable building codes
331 as defined by the local jurisdictional authority.
332 (b) Rebate amounts.--Authorized rebates for installation
333 of solar thermal systems shall be as follows:
334 1. Five hundred dollars for a residence.
335 2. Fifteen dollars per 1,000 Btu for a maximum of $5,000
336 for a place of business, a publicly owned or operated facility,
337 or a facility owned or operated by a private, not-for-profit
338 organization, including condominiums or apartment buildings. Btu
339 must be verified by approved metering equipment.
340 (4) SOLAR THERMAL POOL HEATER INCENTIVE.--
341 (a) Eligibility requirements.--A solar thermal pool heater
342 qualifies for a rebate if the system is installed by a state-
343 licensed solar or plumbing contractor and the system complies
344 with all applicable building codes as defined by the local
345 jurisdictional authority.
346 (b) Rebate amount.--Authorized rebates for installation of
347 solar thermal pool heaters shall be $100 per installation.
348 (5) APPLICATION.--Application for a rebate must be made
349 within 90 days after the purchase of the solar energy equipment.
350 (6) REBATE AVAILABILITY.--The department shall determine
351 and publish on a regular basis the amount of rebate funds
352 remaining in each fiscal year. The total dollar amount of all
353 rebates issued by the department is subject to the total amount
354 of appropriations in any fiscal year for this program. If funds
355 are insufficient during the current fiscal year, any requests
356 for rebates received during that fiscal year may be processed
357 during the following fiscal year. Requests for rebates received

358 in a fiscal year that are processed during the following fiscal
359 year shall be given priority over requests for rebates received
360 during the following fiscal year.
361 (7) RULES.--The department shall adopt rules pursuant to
362 ss. 120.536(1) and 120.54 to develop rebate applications and
363 administer the issuance of rebates.
364 Section 8. Section 377.901, Florida Statutes, is created
365 to read:
366 377.901 Florida Energy Council.--
367 (1) The Florida Energy Council is created within the
368 Department of Environmental Protection to provide advice and
369 counsel to the Governor, the President of the Senate, and the
370 Speaker of the House of Representatives on the energy policy of
371 the state. The council shall advise the state on current and
372 projected energy issues, including, but not limited to,
373 transportation, generation, transmission, distributed
374 generation, fuel supply issues, emerging technologies,
375 efficiency, and conservation. In developing its recommendations,
376 the council shall be guided by the principles of reliability,
377 efficiency, affordability, and diversity.
378 (2)(a) The council shall be comprised of a diversity of
379 stakeholders and may include utility providers, alternative
380 energy providers, researchers, environmental scientists, fuel
381 suppliers, technology manufacturers, persons representing
382 environmental, consumer, and public health interests, and
383 others.
384 (b) The council shall consist of nine voting members as
385 follows:

386 1. The Secretary of Environmental Protection, or his or
387 her designee, who shall serve as chair of the council.
388 2. The chair of the Public Service Commission, or his or
389 her designee, who shall serve as vice chair of the council.
390 3. One member shall be the Commissioner of Agriculture, or
391 his or her designee.
392 4. Two members who shall be appointed by the Governor.
393 5. Two members who shall be appointed by the President of
394 the Senate.
395 6. Two members who shall be appointed by the Speaker of
396 the House of Representatives.
397 (c) All initial members shall be appointed prior to
398 September 1, 2006. Appointments made by the Governor, the
399 President of the Senate, and the Speaker of the House of
400 Representatives shall be for terms of 2 years each. Members
401 shall serve until their successors are appointed. Vacancies
402 shall be filled in the manner of the original appointment for
403 the remainder of the term that is vacated.
404 (d) Members shall serve without compensation but are
405 entitled to reimbursement for travel expenses and per diem
406 related to council duties and responsibilities pursuant to s.
407 112.061.
408 (3) The department shall provide primary staff support to
409 the council and shall ensure that council meetings are
410 electronically recorded. Such recording shall be preserved
411 pursuant to chapters 119 and 257.

412 (4) The department may adopt rules pursuant to ss.
413 120.536(1) and 120.54 to implement the provisions of this
414 section.
415 Section 9. Paragraph (ccc) is added to subsection (7) of
416 section 212.08, Florida Statutes, to read:
417 212.08 Sales, rental, use, consumption, distribution, and
418 storage tax; specified exemptions.--The sale at retail, the
419 rental, the use, the consumption, the distribution, and the
420 storage to be used or consumed in this state of the following
421 are hereby specifically exempt from the tax imposed by this
422 chapter.
423 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
424 entity by this chapter do not inure to any transaction that is
425 otherwise taxable under this chapter when payment is made by a
426 representative or employee of the entity by any means,
427 including, but not limited to, cash, check, or credit card, even
428 when that representative or employee is subsequently reimbursed
429 by the entity. In addition, exemptions provided to any entity by
430 this subsection do not inure to any transaction that is
431 otherwise taxable under this chapter unless the entity has
432 obtained a sales tax exemption certificate from the department
433 or the entity obtains or provides other documentation as
434 required by the department. Eligible purchases or leases made
435 with such a certificate must be in strict compliance with this
436 subsection and departmental rules, and any person who makes an
437 exempt purchase with a certificate that is not in strict
438 compliance with this subsection and the rules is liable for and

439 shall pay the tax. The department may adopt rules to administer
440 this subsection.
441 (ccc) Equipment, machinery, and other materials for
442 renewable energy technologies.--
443 1. As used in this paragraph, the term:
444 a. "Biodiesel" means the mono-alkyl esters of long-chain
445 fatty acids derived from plant or animal matter for use as a
446 source of energy and meeting the specifications for biodiesel
447 and biodiesel blends with petroleum products as adopted by the
448 Department of Agriculture and Consumer Services. Biodiesel may
449 refer to biodiesel blends designated BXX, where XX represents
450 the volume percentage of biodiesel fuel in the blend.
451 b. "Ethanol" means nominally anhydrous denatured alcohol
452 produced by the fermentation of plant sugars meeting the
453 specifications for fuel ethanol and fuel ethanol blends with
454 petroleum products as adopted by the Department of Agriculture
455 and Consumer Services. Ethanol may refer to fuel ethanol blends
456 designated EXX, where XX represents the volume percentage of
457 fuel ethanol in the blend.
458 c. "Hydrogen fuel cells" means equipment using hydrogen or
459 a hydrogen-rich fuel in an electrochemical process to generate
460 energy, electricity, or the transfer of heat.
461 2. The sale or use of the following in the state is exempt
462 from the tax imposed by this chapter:
463 a. Hydrogen-powered vehicles, materials incorporated into
464 hydrogen-powered vehicles, and hydrogen-fueling stations, up to
465 a limit of $2 million in taxes each state fiscal year.

466 b. Commercial stationary hydrogen fuel cells, up to a
467 limit of $1 million in taxes each state fiscal year.
468 c. Materials used in the distribution of biodiesel (B10-
469 B100) and ethanol (E10-E85), including fueling infrastructure,
470 transportation, and storage, up to a limit of $1 million in
471 taxes each state fiscal year. Gasoline fueling station pump
472 retrofits for ethanol (E10-E100) distribution qualify for the
473 exemption provided in this sub-subparagraph.
474 3. The Department of Environmental Protection shall
475 provide to the department a list of items eligible for the
476 exemption provided in this paragraph.
477 4.a. The exemption provided in this paragraph shall be
478 available to a purchaser only through a refund of previously
479 paid taxes.
480 b. To be eligible to receive the exemption provided in
481 this paragraph, a purchaser shall file an application with the
482 Department of Environmental Protection. The application shall be
483 developed by the Department of Environmental Protection, in
484 consultation with the department, and shall require:
485 (I) The name and address of the person claiming the
486 refund.
487 (II) A specific description of the purchase for which a
488 refund is sought, including, when applicable, a serial number or
489 other permanent identification number.
490 (III) The sales invoice or other proof of purchase showing
491 the amount of sales tax paid, the date of purchase, and the name
492 and address of the sales tax dealer from whom the property was
493 purchased.

494 (IV) A sworn statement that the information provided is
495 accurate and that the requirements of this paragraph have been
496 met.
497 c. Within 30 days after receipt of an application, the
498 Department of Environmental Protection shall review the
499 application and shall notify the applicant of any deficiencies.
500 Upon receipt of a completed application, the Department of
501 Environmental Protection shall evaluate the application for
502 exemption and issue a written certification that the applicant
503 is eligible for a refund or issue a written denial of such
504 certification within 60 days after receipt of the application.
505 The Department of Environmental Protection shall provide the
506 department with a copy of each certification issued upon
507 approval of an application.
508 d. Each certified applicant shall be responsible for
509 forwarding a certified copy of the application and copies of all
510 required documentation to the department within 6 months after
511 certification by the Department of Environmental Protection.
512 e. The provisions of s. 212.095 do not apply to any refund
513 application made pursuant to this paragraph. A refund approved
514 pursuant to this paragraph shall be made within 30 days after
515 formal approval by the department.
516 f. The department shall adopt rules governing the manner
517 and form of refund applications and may establish guidelines as
518 to the requisites for an affirmative showing of qualification
519 for exemption under this paragraph.

520 g. The Department of Environmental Protection shall be
521 responsible for ensuring that the exemptions do not exceed the
522 limits provided in subparagraph 2.
523 5. The Department of Environmental Protection shall
524 determine and publish on a regular basis the amount of sales tax
525 funds remaining in each fiscal year.
526 6. This paragraph expires July 1, 2010.
527 Section 10. Paragraph (y) is added to subsection (7) of
528 section 213.053, Florida Statutes, to read:
529 213.053 Confidentiality and information sharing.--
530 (7) Notwithstanding any other provision of this section,
531 the department may provide:
532 (y) Information relative to ss. 212.08(7)(ccc) and 220.192
533 to the Department of Environmental Protection for use in the
534 conduct of its official business.
535
536 Disclosure of information under this subsection shall be
537 pursuant to a written agreement between the executive director
538 and the agency. Such agencies, governmental or nongovernmental,
539 shall be bound by the same requirements of confidentiality as
540 the Department of Revenue. Breach of confidentiality is a
541 misdemeanor of the first degree, punishable as provided by s.
542 775.082 or s. 775.083.
543 Section 11. Subsection (8) of section 220.02, Florida
544 Statutes, is amended to read:
545 220.02 Legislative intent.--
546 (8) It is the intent of the Legislature that credits
547 against either the corporate income tax or the franchise tax be

548 applied in the following order: those enumerated in s. 631.828,
549 those enumerated in s. 220.191, those enumerated in s. 220.181,
550 those enumerated in s. 220.183, those enumerated in s. 220.182,
551 those enumerated in s. 220.1895, those enumerated in s. 221.02,
552 those enumerated in s. 220.184, those enumerated in s. 220.186,
553 those enumerated in s. 220.1845, those enumerated in s. 220.19,
554 those enumerated in s. 220.185, ~~and~~ those enumerated in s.
555 220.187, and those enumerated in s. 220.192.
556 Section 12. Section 220.192, Florida Statutes, is created
557 to read:
558 220.192 Renewable energy technologies investment tax
559 credit.--
560 (1) DEFINITIONS.--For purposes of this section, the term:
561 (a) "Biodiesel" means biodiesel as defined in s.
562 212.08(7)(ccc).
563 (b) "Eligible costs" means:
564 1. Seventy-five percent of all capital costs, operation
565 and maintenance costs, and research and development costs
566 incurred between July 1, 2006, and June 30, 2010, up to a limit
567 of $3 million per state fiscal year for all taxpayers, in
568 connection with an investment in hydrogen-powered vehicles and
569 hydrogen vehicle fueling stations in the state, including, but
570 not limited to, the costs of constructing, installing, and
571 equipping such technologies in the state.
572 2. Seventy-five percent of all capital costs, operation
573 and maintenance costs, and research and development costs
574 incurred between July 1, 2006, and June 30, 2010, up to a limit
575 of $1.5 million per state fiscal year for all taxpayers, and

576 limited to a maximum of $12,000 per fuel cell, in connection
577 with an investment in commercial stationary hydrogen fuel cells
578 in the state, including, but not limited to, the costs of
579 constructing, installing, and equipping such technologies in the
580 state.
581 3. Seventy-five percent of all capital costs, operation
582 and maintenance costs, and research and development costs
583 incurred between July 1, 2006, and June 30, 2010, up to a limit
584 of $6.5 million per state fiscal year for all taxpayers, in
585 connection with an investment in the production, storage, and
586 distribution of biodiesel (B10-B100) and ethanol (E10-E100) in
587 the state, including the costs of constructing, installing, and
588 equipping such technologies in the state. Gasoline fueling
589 station pump retrofits for ethanol (E10-E100) distribution
590 qualify as an eligible cost under this subparagraph.
591 (c) "Ethanol" means ethanol as defined in s.
592 212.08(7)(ccc).
593 (d) "Hydrogen fuel cell" means hydrogen fuel cell as
594 defined in s. 212.08(7)(ccc).
595 (2) TAX CREDIT.--For tax years beginning on or after
596 January 1, 2007, a credit against the tax imposed by this
597 chapter shall be granted in an amount equal to the eligible
598 costs. Credits may be used in tax years beginning January 1,
599 2007, and ending December 31, 2010, after which the credit shall
600 expire. If the credit is not fully used in any one tax year
601 because of insufficient tax liability on the part of the
602 corporation, the unused amount may be carried forward and used
603 in tax years beginning January 1, 2007, and ending December 31,

604 2012, after which the credit carryover expires and may not be
605 used. A taxpayer that files a consolidated return in this state
606 as a member of an affiliated group under s. 220.131(1) may be
607 allowed the credit on a consolidated return basis up to the
608 amount of tax imposed upon the consolidated group. Any eligible
609 cost for which a credit is claimed and which is deducted or
610 otherwise reduces federal taxable income shall be added back in
611 computing adjusted federal income under s. 220.13.
612 (3) APPLICATION PROCESS.--Any corporation wishing to
613 obtain tax credits available under this section must submit to
614 the Department of Environmental Protection an application for
615 tax credit that includes a complete description of all eligible
616 costs for which the corporation is seeking a credit and a
617 description of the total amount of credits sought. The
618 Department of Environmental Protection shall make a
619 determination on the eligibility of the applicant for the
620 credits sought and certify the determination to the applicant
621 and the Department of Revenue. The corporation must attach the
622 Department of Environmental Protection's certification to the
623 tax return on which the credit is claimed. The Department of
624 Environmental Protection shall be responsible for ensuring that
625 the corporate income tax credits granted in each fiscal year do
626 not exceed the limits provided for in this section. The
627 Department of Environmental Protection is authorized to adopt
628 the necessary rules, guidelines, and application materials for
629 the application process.
630 (4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
631 CREDITS.--

632 (a) In addition to its existing audit and investigation
633 authority, the Department of Revenue may perform any additional
634 financial and technical audits and investigations, including
635 examining the accounts, books, and records of the tax credit
636 applicant, that are necessary to verify the eligible costs
637 included in the tax credit return and to ensure compliance with
638 this section. The Department of Environmental Protection shall
639 provide technical assistance when requested by the Department of
640 Revenue on any technical audits or examinations performed
641 pursuant to this section.
642 (b) It is grounds for forfeiture of previously claimed and
643 received tax credits if the Department of Revenue determines, as
644 a result of either an audit or examination or from information
645 received from the Department of Environmental Protection, that a
646 taxpayer received tax credits pursuant to this section to which
647 the taxpayer was not entitled. The taxpayer is responsible for
648 returning forfeited tax credits to the Department of Revenue,
649 and such funds shall be paid into the General Revenue Fund of
650 the state.
651 (c) The Department of Environmental Protection may revoke
652 or modify any written decision granting eligibility for tax
653 credits under this section if it is discovered that the tax
654 credit applicant submitted any false statement, representation,
655 or certification in any application, record, report, plan, or
656 other document filed in an attempt to receive tax credits under
657 this section. The Department of Environmental Protection shall
658 immediately notify the Department of Revenue of any revoked or
659 modified orders affecting previously granted tax credits.

660 Additionally, the taxpayer must notify the Department of Revenue
661 of any change in its tax credit claimed.
662 (d) The taxpayer shall file with the Department of Revenue
663 an amended return or such other report as the Department of
664 Revenue prescribes by rule and shall pay any required tax and
665 interest within 60 days after the taxpayer receives notification
666 from the Department of Environmental Protection that previously
667 approved tax credits have been revoked or modified. If the
668 revocation or modification order is contested, the taxpayer
669 shall file an amended return or other report as provided in this
670 paragraph within 60 days after a final order is issued following
671 proceedings.
672 (e) A notice of deficiency may be issued by the Department
673 of Revenue at any time within 3 years after the taxpayer
674 receives formal notification from the Department of
675 Environmental Protection that previously approved tax credits
676 have been revoked or modified. If a taxpayer fails to notify the
677 Department of Revenue of any changes to its tax credit claimed,
678 a notice of deficiency may be issued at any time.
679 (5) RULES.--The Department of Revenue shall have the
680 authority to adopt rules relating to the forms required to claim
681 a tax credit under this section, the requirements and basis for
682 establishing an entitlement to a credit, and the examination and
683 audit procedures required to administer this section.
684 (6) PUBLICATION.--The Department of Environmental
685 Protection shall determine and publish on a regular basis the
686 amount of available tax credits remaining in each fiscal year.

687 Section 13. Paragraph (a) of subsection (1) of section
688 220.13, Florida Statutes, is amended to read:
689 220.13 "Adjusted federal income" defined.--
690 (1) The term "adjusted federal income" means an amount
691 equal to the taxpayer's taxable income as defined in subsection
692 (2), or such taxable income of more than one taxpayer as
693 provided in s. 220.131, for the taxable year, adjusted as
694 follows:
695 (a) Additions.--There shall be added to such taxable
696 income:
697 1. The amount of any tax upon or measured by income,
698 excluding taxes based on gross receipts or revenues, paid or
699 accrued as a liability to the District of Columbia or any state
700 of the United States which is deductible from gross income in
701 the computation of taxable income for the taxable year.
702 2. The amount of interest which is excluded from taxable
703 income under s. 103(a) of the Internal Revenue Code or any other
704 federal law, less the associated expenses disallowed in the
705 computation of taxable income under s. 265 of the Internal
706 Revenue Code or any other law, excluding 60 percent of any
707 amounts included in alternative minimum taxable income, as
708 defined in s. 55(b)(2) of the Internal Revenue Code, if the
709 taxpayer pays tax under s. 220.11(3).
710 3. In the case of a regulated investment company or real
711 estate investment trust, an amount equal to the excess of the
712 net long-term capital gain for the taxable year over the amount
713 of the capital gain dividends attributable to the taxable year.

714 4. That portion of the wages or salaries paid or incurred
715 for the taxable year which is equal to the amount of the credit
716 allowable for the taxable year under s. 220.181. The provisions
717 of this subparagraph shall expire and be void on June 30, 2005.
718 5. That portion of the ad valorem school taxes paid or
719 incurred for the taxable year which is equal to the amount of
720 the credit allowable for the taxable year under s. 220.182. The
721 provisions of this subparagraph shall expire and be void on June
722 30, 2005.
723 6. The amount of emergency excise tax paid or accrued as a
724 liability to this state under chapter 221 which tax is
725 deductible from gross income in the computation of taxable
726 income for the taxable year.
727 7. That portion of assessments to fund a guaranty
728 association incurred for the taxable year which is equal to the
729 amount of the credit allowable for the taxable year.
730 8. In the case of a nonprofit corporation which holds a
731 pari-mutuel permit and which is exempt from federal income tax
732 as a farmers' cooperative, an amount equal to the excess of the
733 gross income attributable to the pari-mutuel operations over the
734 attributable expenses for the taxable year.
735 9. The amount taken as a credit for the taxable year under
736 s. 220.1895.
737 10. Up to nine percent of the eligible basis of any
738 designated project which is equal to the credit allowable for
739 the taxable year under s. 220.185.
740 11. The amount taken as a credit for the taxable year
741 under s. 220.187.

742 12. The amount taken as a credit for the taxable year
743 under s. 220.192.
744 Section 14. Subsection (2) of section 186.801, Florida
745 Statutes, is amended to read:
746 186.801 Ten-year site plans.--
747 (2) Within 9 months after the receipt of the proposed
748 plan, the commission shall make a preliminary study of such plan
749 and classify it as "suitable" or "unsuitable." The commission
750 may suggest alternatives to the plan. All findings of the
751 commission shall be made available to the Department of
752 Environmental Protection for its consideration at any subsequent
753 electrical power plant site certification proceedings. It is
754 recognized that 10-year site plans submitted by an electric
755 utility are tentative information for planning purposes only and
756 may be amended at any time at the discretion of the utility upon
757 written notification to the commission. A complete application
758 for certification of an electrical power plant site under
759 chapter 403, when such site is not designated in the current 10-
760 year site plan of the applicant, shall constitute an amendment
761 to the 10-year site plan. In its preliminary study of each 10-
762 year site plan, the commission shall consider such plan as a
763 planning document and shall review:
764 (a) The need, including the need as determined by the
765 commission, for electrical power in the area to be served.
766 (b) The effect on fuel diversity within the state.
767 (c) ~~(b)~~ The anticipated environmental impact of each
768 proposed electrical power plant site.
769 (d) ~~(c)~~ Possible alternatives to the proposed plan.

770 (e) ~~(d)~~ The views of appropriate local, state, and federal
771 agencies, including the views of the appropriate water
772 management district as to the availability of water and its
773 recommendation as to the use by the proposed plant of salt water
774 or fresh water for cooling purposes.
775 (f) ~~(e)~~ The extent to which the plan is consistent with the
776 state comprehensive plan.
777 (g) ~~(f)~~ The plan with respect to the information of the
778 state on energy availability and consumption.
779 Section 15. Subsection (6) of section 366.04, Florida
780 Statutes, is amended to read:
781 366.04 Jurisdiction of commission.--
782 (6) The commission shall further have exclusive
783 jurisdiction to prescribe and enforce safety standards for
784 transmission and distribution facilities of all public electric
785 utilities, cooperatives organized under the Rural Electric
786 Cooperative Law, and electric utilities owned and operated by
787 municipalities. In adopting safety standards, the commission
788 shall, at a minimum:
789 (a) Adopt the 1984 edition of the National Electrical
790 Safety Code (ANSI C2) as initial standards; and
791 (b) Adopt, after review, any new edition of the National
792 Electrical Safety Code (ANSI C2).
793
794 The standards prescribed by the current 1984 edition of the
795 National Electrical Safety Code (ANSI C2) shall constitute
796 acceptable and adequate requirements for the protection of the
797 safety of the public, and compliance with the minimum

798 requirements of that code shall constitute good engineering
799 practice by the utilities. The administrative authority referred
800 to in the 1984 edition of the National Electrical Safety Code is
801 the commission. However, nothing herein shall be construed as
802 superseding, repealing, or amending the provisions of s.
803 403.523(1) and (10).
804 Section 16. Subsections (1) and (8) of section 366.05,
805 Florida Statutes, are amended to read:
806 366.05 Powers.--
807 (1) In the exercise of such jurisdiction, the commission
808 shall have power to prescribe fair and reasonable rates and
809 charges, classifications, standards of quality and measurements,
810 including the ability to adopt construction standards that
811 exceed the National Electrical Safety Code for purposes of
812 ensuring the reliable provision of service, and service rules
813 and regulations to be observed by each public utility; to
814 require repairs, improvements, additions, replacements, and
815 extensions to the plant and equipment of any public utility when
816 reasonably necessary to promote the convenience and welfare of
817 the public and secure adequate service or facilities for those
818 reasonably entitled thereto; to employ and fix the compensation
819 for such examiners and technical, legal, and clerical employees
820 as it deems necessary to carry out the provisions of this
821 chapter; and to adopt rules pursuant to ss. 120.536(1) and
822 120.54 to implement and enforce the provisions of this chapter.
823 (8) If the commission determines that there is probable
824 cause to believe that inadequacies exist with respect to the
825 energy grids developed by the electric utility industry,

826 including inadequacies in fuel diversity or fuel supply
827 reliability, it shall have the power, after proceedings as
828 provided by law, and after a finding that mutual benefits will
829 accrue to the electric utilities involved, to require
830 installation or repair of necessary facilities, including
831 generating plants and transmission facilities, with the costs to
832 be distributed in proportion to the benefits received, and to
833 take all necessary steps to ensure compliance. The electric
834 utilities involved in any action taken or orders issued pursuant
835 to this subsection shall have full power and authority,
836 notwithstanding any general or special laws to the contrary, to
837 jointly plan, finance, build, operate, or lease generating and
838 transmission facilities and shall be further authorized to
839 exercise the powers granted to corporations in chapter 361. This
840 subsection shall not supersede or control any provision of the
841 Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.
842 Section 17. The Florida Public Service Commission shall
843 direct a study of the electric transmission grid in the state.
844 The study shall look at electric system reliability to examine
845 the efficiency and reliability of power transfer and emergency
846 contingency conditions. In addition, the study shall examine the
847 strengthening of infrastructure to address issues arising from
848 the 2004 and 2005 hurricane seasons. A report of the results of
849 the study shall be provided to the Governor, the President of
850 the Senate, and the Speaker of the House of Representatives by
851 January 30, 2007.
852 Section 18. Subsections (5), (8), (9), (12), (18), (24),
853 and (27) of section 403.503, Florida Statutes, are amended,

854 subsections (16) through (28) are renumbered as (17) through
855 (29), respectively, and a new subsection (16) is added to that
856 section, to read:
857 403.503 Definitions relating to Florida Electrical Power
858 Plant Siting Act.--As used in this act:
859 (5) "Application" means the documents required by the
860 department to be filed to initiate a certification review and
861 evaluation, including the initial document filing, amendments,
862 and responses to requests from the department for additional
863 data and information ~~proceeding and shall include the documents~~
864 ~~necessary for the department to render a decision on any permit~~
865 ~~required pursuant to any federally delegated or approved permit~~
866 ~~program~~.
867 (8) "Completeness" means that the application has
868 addressed all applicable sections of the prescribed application
869 format, and ~~but does not mean~~ that those sections are sufficient
870 in comprehensiveness of data or in quality of information
871 provided to allow the department to determine whether the
872 application provides the reviewing agencies adequate information
873 to prepare the reports required by s. 403.507.
874 (9) "Corridor" means the proposed area within which an
875 associated linear facility right-of-way is to be located. The
876 width of the corridor proposed for certification as an
877 associated facility, at the option of the applicant, may be the
878 width of the right-of-way or a wider boundary, not to exceed a
879 width of 1 mile. The area within the corridor in which a right-
880 of-way may be located may be further restricted by a condition
881 of certification. After all property interests required for the

882 right-of-way have been acquired by the licensee ~~applicant~~, the
883 boundaries of the area certified shall narrow to only that land
884 within the boundaries of the right-of-way.
885 (12) "Electrical power plant" means, for the purpose of
886 certification, any steam or solar electrical generating facility
887 using any process or fuel, including nuclear materials, except
888 that this term does not include any steam or solar electrical
889 generating facility of less than 75 megawatts in capacity unless
890 the applicant for such a facility elects to apply for
891 certification under this act, or any unit capacity expansion of
892 35 megawatts or less of an existing exothermic reaction
893 cogeneration unit that was originally built under a power plant
894 siting act exemption. This exemption does not apply if the unit
895 uses oil or natural gas for purposes other than startup. This
896 term ~~and~~ includes associated facilities to be owned by the
897 licensee which directly support the construction and operation
898 of the electrical power plant such as fuel unloading facilities,
899 pipelines necessary for transporting fuel for the operation of
900 the facility or other fuel transportation facilities, water or
901 wastewater transport pipelines, construction, maintenance and
902 access roads, railway lines necessary for transport of
903 construction equipment or fuel for the operation of the
904 facility, and those associated transmission lines owned by the
905 licensee which connect the electrical power plant to an existing
906 transmission network or rights-of-way to which the applicant
907 intends to connect~~, except that this term does not include any~~
908 ~~steam or solar electrical generating facility of less than 75~~
909 ~~megawatts in capacity unless the applicant for such a facility~~

910 ~~elects to apply for certification under this act~~. Associated
911 facilities ~~An associated transmission line~~ may include, at the
912 applicant's option, offsite associated facilities that will not
913 be owned by the applicant and any proposed terminal or
914 intermediate substations or substation expansions connected to
915 the associated transmission line.
916 (16) "Licensee" means an applicant that has obtained a
917 certification order for the subject project.
918 (19) ~~(18)~~ "Nonprocedural requirements of agencies" means
919 any agency's regulatory requirements established by statute,
920 rule, ordinance, zoning ordinance, land development code, or
921 comprehensive plan, excluding any provisions prescribing forms,
922 fees, procedures, or time limits for the review or processing of
923 information submitted to demonstrate compliance with such
924 regulatory requirements.
925 (25) ~~(24)~~ "Right-of-way" means land necessary for the
926 construction and maintenance of a connected associated linear
927 facility, such as a railroad line, pipeline, or transmission
928 line as owned by or proposed to be certified by the applicant.
929 The typical width of the right-of-way shall be identified in the
930 application. The right-of-way shall be located within the
931 certified corridor and shall be identified by the applicant
932 subsequent to certification in documents filed with the
933 department prior to construction.
934 (28) ~~(27)~~ "Ultimate site capacity" means the maximum
935 generating capacity for a site as certified by the board.
936 ~~"Sufficiency" means that the application is not only complete~~
937 ~~but that all sections are sufficient in the comprehensiveness of~~

938 ~~data or in the quality of information provided to allow the~~
939 ~~department to determine whether the application provides the~~
940 ~~reviewing agencies adequate information to prepare the reports~~
941 ~~required by s. 403.507.~~
942 Section 19. Subsections (1), (7), (9), and (10) of section
943 403.504, Florida Statutes, are amended, and new subsections (9),
944 (10), (11), and (12) are added to that section, to read:
945 403.504 Department of Environmental Protection; powers and
946 duties enumerated.--The department shall have the following
947 powers and duties in relation to this act:
948 (1) To adopt rules pursuant to ss. 120.536(1) and 120.54
949 to implement the provisions of this act, including rules setting
950 forth environmental precautions to be followed in relation to
951 the location, construction, and operation of electrical power
952 plants.
953 (7) To conduct studies and prepare a project ~~written~~
954 analysis under s. 403.507.
955 (9) To issue final orders after receipt of the
956 administrative law judge's order relinquishing jurisdiction
957 pursuant to s. 403.508(6).
958 (10) To act as clerk for the siting board.
959 (11) To administer and manage the terms and conditions of
960 the certification order and supporting documents and records for
961 the life of the facility.
962 (12) To issue emergency orders on behalf of the board for
963 facilities licensed under this act.
964 ~~(9) To notify all affected agencies of the filing of a~~
965 ~~notice of intent within 15 days after receipt of the notice.~~

966 ~~(10) To issue, with the electrical power plant~~
967 ~~certification, any license required pursuant to any federally~~
968 ~~delegated or approved permit program.~~
969 Section 20. Section 403.5055, Florida Statutes, is amended
970 to read:
971 403.5055 Application for permits pursuant to s.
972 403.0885.--In processing applications for permits pursuant to s.
973 403.0885 that are associated with applications for electrical
974 power plant certification:
975 (1) The procedural requirements set forth in 40 C.F.R. s.
976 123.25, including public notice, public comments, and public
977 hearings, shall be closely coordinated with the certification
978 process established under this part. In the event of a conflict
979 between the certification process and federally required
980 procedures for NPDES permit issuance, the applicable federal
981 requirements shall control.
982 ~~(2) The department's proposed action pursuant to 40 C.F.R.~~
983 ~~s. 124.6, including any draft NPDES permit (containing the~~
984 ~~information required under 40 C.F.R. s. 124.6(d)), shall within~~
985 ~~130 days after the submittal of a complete application be~~
986 ~~publicly noticed and transmitted to the United States~~
987 ~~Environmental Protection Agency for its review pursuant to 33~~
988 ~~U.S.C. s. 1342(d).~~
989 (2)~~(3)~~ If available at the time the department issues its
990 project analysis pursuant to s. 403.507(5), the department shall
991 include in its project analysis ~~written analysis pursuant to s.~~
992 ~~403.507(3)~~ copies of the department's proposed action pursuant
993 to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any

994 corresponding comments received from the United States
995 Environmental Protection Agency, the applicant, or the general
996 public; and the department's response to those comments.
997 (3) ~~(4)~~ The department shall not issue or deny the permit
998 pursuant to s. 403.0885 in advance of the issuance of the
999 electrical ~~electric~~ power plant certification under this part
1000 unless required to do so by the provisions of federal law. When
1001 possible, any hearing on a permit issued pursuant to s. 403.0885
1002 shall be conducted in conjunction with the certification hearing
1003 held pursuant to this act. The department's actions on an NPDES
1004 permit shall be based on the record and recommended order of the
1005 certification hearing, if the hearing on the NPDES was conducted
1006 in conjunction with the certification hearing, and of any other
1007 proceeding held in connection with the application for an NPDES
1008 permit, timely public comments received with respect to the
1009 application, and the provisions of federal law. The department's
1010 action on an NPDES permit, if issued, shall differ from the
1011 actions taken by the siting board regarding the certification
1012 order if federal laws and regulations require different action
1013 to be taken to ensure compliance with the Clean Water Act, as
1014 amended, and implementing regulations. Nothing in this part
1015 shall be construed to displace the department's authority as the
1016 final permitting entity under the federally approved state NPDES
1017 program. Nothing in this part shall be construed to authorize
1018 the issuance of a state NPDES permit which does not conform to
1019 the requirements of the federally approved state NPDES program.
1020 ~~The permit, if issued, shall be valid for no more than 5 years.~~

1021 ~~(5) The department's action on an NPDES permit renewal, if~~
1022 ~~issued, shall differ from the actions taken by the siting board~~
1023 ~~regarding the certification order if federal laws and~~
1024 ~~regulations require different action to be taken to ensure~~
1025 ~~compliance with the Clean Water Act, as amended, and~~
1026 ~~implementing regulations.~~
1027 Section 21. Section 403.506, Florida Statutes, is amended
1028 to read:
1029 403.506 Applicability, thresholds, and certification.--
1030 (1) The provisions of this act shall apply to any
1031 electrical power plant as defined herein, except that the
1032 provisions of this act shall not apply to any electrical power
1033 plant or steam generating plant of less than 75 megawatts in
1034 capacity or to any substation to be constructed as part of an
1035 associated transmission line unless the applicant has elected to
1036 apply for certification of such plant or substation under this
1037 act. The provisions of this act shall not apply to any unit
1038 capacity expansion of 35 megawatts or less of an existing
1039 exothermic reaction cogeneration unit that was exempt from this
1040 act when it was originally built; however, this exemption shall
1041 not apply if the unit uses oil or natural gas for purposes other
1042 than unit startup. No construction of any new electrical power
1043 plant or expansion in steam generating capacity as measured by
1044 an increase in the maximum electrical generator rating of any
1045 existing electrical power plant may be undertaken after October
1046 1, 1973, without first obtaining certification in the manner as
1047 herein provided, except that this act shall not apply to any
1048 such electrical power plant which is presently operating or

1049 under construction or which has, upon the effective date of
1050 chapter 73-33, Laws of Florida, applied for a permit or
1051 certification under requirements in force prior to the effective
1052 date of such act.
1053 (2) Except as provided in the certification, modification
1054 of nonnuclear fuels, internal related hardware, including
1055 increases in steam turbine efficiency, or operating conditions
1056 not in conflict with certification which increase the electrical
1057 output of a unit to no greater capacity than the maximum
1058 electrical generator rating ~~operating capacity~~ of the existing
1059 generator shall not constitute an alteration or addition to
1060 generating capacity which requires certification pursuant to
1061 this act.
1062 ~~(3) The application for any related department license~~
1063 ~~which is required pursuant to any federally delegated or~~
1064 ~~approved permit program shall be processed within the time~~
1065 ~~periods allowed by this act, in lieu of those specified in s.~~
1066 ~~120.60. However, permits issued pursuant to s. 403.0885 shall be~~
1067 ~~processed in accordance with 40 C.F.R. part 123.~~
1068 Section 22. Section 403.5064, Florida Statutes, is amended
1069 to read:
1070 403.5064 Application ~~Distribution of application~~;
1071 schedules.--
1072 (1) The formal date of filing of a certification
1073 application and commencement of the certification review process
1074 shall be when the applicant submits:

1075 (a) Copies of the certification application in a quantity
1076 and format as prescribed by rule to the department and other
1077 agencies identified in s. 403.507(2)(a).
1078 (b) The application fee specified under s. 403.518 to the
1079 department.
1080 (2) ~~(1)~~ Within 7 days after the filing of an application,
1081 the department shall provide to the applicant and the Division
1082 of Administrative Hearings the names and addresses of any
1083 additional ~~those affected or other~~ agencies or persons entitled
1084 to notice and copies of the application and any amendments.
1085 Copies of the application shall be distributed within 5 days
1086 after the provision of such names and addresses by the applicant
1087 to these additional agencies. This distribution shall not be a
1088 basis for altering the schedule of dates for the certification
1089 process.
1090 (3) Any amendment to the application made prior to
1091 certification shall be disposed of as part of the original
1092 certification proceeding. Amendment of the application may be
1093 considered good cause for alteration of time limits pursuant to
1094 s. 403.5095.
1095 (4) ~~(2)~~ Within 7 days after the filing of an application
1096 ~~completeness has been determined~~, the department shall prepare a
1097 proposed schedule of dates for determination of completeness,
1098 submission of statements of issues, ~~determination of~~
1099 ~~sufficiency, and~~ submittal of final reports, ~~from affected and~~
1100 ~~other agencies~~ and other significant dates to be followed during
1101 the certification process, including dates for filing notices of
1102 appearance to be a party pursuant to s. 403.508(3) ~~(4)~~. This

1103 schedule shall be timely provided by the department to the
1104 applicant, the administrative law judge, all agencies identified
1105 pursuant to subsection (2) ~~(1)~~, and all parties. Within 7 days
1106 after the filing of the proposed schedule, the administrative
1107 law judge shall issue an order establishing a schedule for the
1108 matters addressed in the department's proposed schedule and
1109 other appropriate matters, if any.
1110 (5) ~~(3) Within 7 days after completeness has been~~
1111 ~~determined, the applicant shall distribute copies of the~~
1112 ~~application to all agencies identified by the department~~
1113 ~~pursuant to subsection (1).~~ Copies of changes and amendments to
1114 the application shall be timely distributed by the applicant to
1115 all ~~affected~~ agencies and parties who have received a copy of
1116 the application.
1117 (6) Notice of the filing of the application shall be
1118 published in accordance with the requirements of s. 403.5115.
1119 Section 23. Section 403.5065, Florida Statutes, is amended
1120 to read:
1121 403.5065 Appointment of administrative law judge; powers
1122 and duties.--
1123 (1) Within 7 days after receipt of an application, ~~whether~~
1124 ~~complete or not,~~ the department shall request the Division of
1125 Administrative Hearings to designate an administrative law judge
1126 to conduct the hearings required by this act. The division
1127 director shall designate an administrative law judge within 7
1128 days after receipt of the request from the department. In
1129 designating an administrative law judge for this purpose, the
1130 division director shall, whenever practicable, assign an

1131 administrative law judge who has had prior experience or
1132 training in electrical power plant site certification
1133 proceedings. Upon being advised that an administrative law judge
1134 has been appointed, the department shall immediately file a copy
1135 of the application and all supporting documents with the
1136 designated administrative law judge, who shall docket the
1137 application.
1138 (2) The administrative law judge shall have all powers and
1139 duties granted to administrative law judges by chapter 120 and
1140 by the laws and rules of the department.
1141 Section 24. Section 403.5066, Florida Statutes, is amended
1142 to read:
1143 403.5066 Determination of completeness.--
1144 (1)(a) Within 30 days after the filing of an application,
1145 affected agencies shall file a statement with the department
1146 containing each agency's recommendations on the completeness of
1147 the application.
1148 (b) Within 40 ~~15~~ days after the filing ~~receipt~~ of an
1149 application, the department shall file a statement with the
1150 Division of Administrative Hearings, ~~and~~ with the applicant, and
1151 with all parties declaring its position with regard to the
1152 completeness~~, not the sufficiency,~~ of the application. The
1153 department's statement shall be based upon consultation with the
1154 affected agencies.
1155 (2) ~~(1)~~ If the department declares the application to be
1156 incomplete, the applicant, within 15 days after the filing of
1157 the statement by the department, shall file with the Division of

1158 Administrative Hearings, ~~and~~ with the department, and all
1159 parties ~~a statement~~:
1160 (a) A withdrawal of ~~Agreeing with the statement of the~~
1161 ~~department and withdrawing~~ the application;
1162 (b) A statement agreeing to supply the additional
1163 information necessary to make the application complete. Such
1164 additional information shall be provided within 30 days after
1165 the issuance of the department's statement on completeness of
1166 the application. The time schedules under this act shall not be
1167 tolled if the applicant makes the application complete within 30
1168 days after the issuance of the department's statement on
1169 completeness of the application. A subsequent finding by the
1170 department that the application remains incomplete, based upon
1171 the additional information submitted by the applicant or upon
1172 the failure of the applicant to timely submit the additional
1173 information, tolls the time schedules under this act until the
1174 application is determined complete; ~~Agreeing with the statement~~
1175 ~~of the department and agreeing to amend the application without~~
1176 ~~withdrawing it. The time schedules referencing a complete~~
1177 ~~application under this act shall not commence until the~~
1178 ~~application is determined complete; or~~
1179 (c) A statement contesting the department's determination
1180 of incompleteness; or ~~contesting the statement of the~~
1181 ~~department.~~
1182 (d) A statement agreeing with the department and
1183 requesting additional time beyond 30 days to provide the
1184 information necessary to make the application complete. If the

1185 applicant exercises this option, the time schedules under this
1186 act are tolled until the application is determined complete.
1187 (3)(a) ~~(2)~~ If the applicant contests the determination by
1188 the department that an application is incomplete, the
1189 administrative law judge shall schedule a hearing on the
1190 statement of completeness. The hearing shall be held as
1191 expeditiously as possible, but not later than 21 ~~30~~ days after
1192 the filing of the statement by the department. The
1193 administrative law judge shall render a decision within 7 ~~10~~
1194 days after the hearing.
1195 (b) Parties to a hearing on the issue of completeness
1196 shall include the applicant, the department, and any agency that
1197 has jurisdiction over the matter in dispute.
1198 (c) ~~(a)~~ If the administrative law judge determines that the
1199 application was not complete ~~as filed~~, the applicant shall
1200 withdraw the application or make such additional submittals as
1201 necessary to complete it. The time schedules referencing a
1202 complete application under this act shall not commence until the
1203 application is determined complete.
1204 (d) ~~(b)~~ If the administrative law judge determines that the
1205 application was complete at the time it was declared incomplete
1206 ~~filed~~, the time schedules referencing a complete application
1207 under this act shall commence upon such determination.
1208 (4) If the applicant provides additional information to
1209 address the issues identified in the determination of
1210 incompleteness, each affected agency may submit to the
1211 department, no later than 15 days after the applicant files the
1212 additional information, a recommendation on whether the agency

1213 believes the application is complete. Within 22 days after
1214 receipt of the additional information from the applicant
1215 submitted under paragraph (2)(b), paragraph (2)(d), or paragraph
1216 (3)(c), the department shall determine whether the additional
1217 information supplied by an applicant makes the application
1218 complete. If the department finds that the application is still
1219 incomplete, the applicant may exercise any of the options
1220 specified in subsection (2) as often as is necessary to resolve
1221 the dispute.
1222 Section 25. Section 403.50663, Florida Statutes, is
1223 created to read:
1224 403.50663 Informational public meetings.--
1225 (1) A local government within whose jurisdiction the power
1226 plant is proposed to be sited may hold one informational public
1227 meeting in addition to the hearings specifically authorized by
1228 this act on any matter associated with the electrical power
1229 plant proceeding. Such informational public meetings shall be
1230 held by the local government or by the regional planning council
1231 if the local government does not hold such meeting within 70
1232 days after the filing of the application. The purpose of an
1233 informational public meeting is for the local government or
1234 regional planning council to further inform the public about the
1235 proposed electrical power plant or associated facilities, obtain
1236 comments from the public, and formulate its recommendation with
1237 respect to the proposed electrical power plant.
1238 (2) Informational public meetings shall be held solely at
1239 the option of each local government or regional planning council
1240 if a public meeting is not held by the local government. It is

1241 the legislative intent that local governments or regional
1242 planning councils attempt to hold such public meetings. Parties
1243 to the proceedings under this act shall be encouraged to attend;
1244 however, no party other than the applicant and the department
1245 shall be required to attend such informational public meetings.
1246 (3) A local government or regional planning council that
1247 intends to conduct an informational public meeting must provide
1248 notice of the meeting to all parties not less than 5 days prior
1249 to the meeting.
1250 (4) The failure to hold an informational public meeting or
1251 the procedure used for the informational public meeting are not
1252 grounds for the alteration of any time limitation in this act
1253 under s. 403.5095 or grounds to deny or condition certification.
1254 Section 26. Section 403.50665, Florida Statutes, is
1255 created to read:
1256 403.50665 Land use consistency.--
1257 (1) The applicant shall include in the application a
1258 statement on the consistency of the site or any directly
1259 associated facilities with existing land use plans and zoning
1260 ordinances that were in effect on the date the application was
1261 filed and a full description of such consistency.
1262 (2) Within 80 days after the filing of the application,
1263 each local government shall file a determination with the
1264 department, the applicant, the administrative law judge, and all
1265 parties on the consistency of the site or any directly
1266 associated facilities with existing land use plans and zoning
1267 ordinances that were in effect on the date the application was
1268 filed, based on the information provided in the application. The

1269 applicant shall publish notice of the consistency determination
1270 in accordance with the requirements of s. 403.5115.
1271 (3) If any substantially affected person wishes to dispute
1272 the local government's determination, he or she shall file a
1273 petition with the department within 15 days after the
1274 publication of notice of the local government's determination.
1275 If a hearing is requested, the provisions of s. 403.508(1) shall
1276 apply.
1277 (4) The dates in this section may be altered upon
1278 agreement between the applicant, the local government, and the
1279 department pursuant to s. 403.5095.
1280 (5) If it is determined by the local government that the
1281 proposed site or directly associated facility does conform with
1282 existing land use plans and zoning ordinances in effect as of
1283 the date of the application and no petition has been filed, the
1284 responsible zoning or planning authority shall not thereafter
1285 change such land use plans or zoning ordinances so as to
1286 foreclose construction and operation of the proposed site or
1287 directly associated facilities unless certification is
1288 subsequently denied or withdrawn.
1289 Section 27. Section 403.5067, Florida Statutes, is
1290 repealed.
1291 Section 28. Section 403.507, Florida Statutes, is amended
1292 to read:
1293 403.507 Preliminary statements of issues, reports, project
1294 analyses, and studies.--
1295 (1) Each affected agency identified in paragraph (2)(a)
1296 shall submit a preliminary statement of issues to the

1297 department, ~~and~~ the applicant, and all parties no later than 40
1298 ~~60~~ days after the certification application has been determined
1299 ~~distribution of the~~ complete ~~application~~. The failure to raise
1300 an issue in this statement shall not preclude the issue from
1301 being raised in the agency's report.
1302 (2)(a) No later than 100 days after the certification
1303 application has been determined complete, the following agencies
1304 shall prepare reports as provided below and shall submit them to
1305 the department and the applicant ~~within 150 days after~~
1306 ~~distribution of the complete application~~:
1307 1. The Department of Community Affairs shall prepare a
1308 report containing recommendations which address the impact upon
1309 the public of the proposed electrical power plant, based on the
1310 degree to which the electrical power plant is consistent with
1311 the applicable portions of the state comprehensive plan,
1312 emergency management requirements, and other such matters within
1313 its jurisdiction. The Department of Community Affairs may also
1314 comment on the consistency of the proposed electrical power
1315 plant with applicable strategic regional policy plans or local
1316 comprehensive plans and land development regulations.
1317 ~~2. The Public Service Commission shall prepare a report as~~
1318 ~~to the present and future need for the electrical generating~~
1319 ~~capacity to be supplied by the proposed electrical power plant.~~
1320 ~~The report shall include the commission's determination pursuant~~
1321 ~~to s. 403.519 and may include the commission's comments with~~
1322 ~~respect to any other matters within its jurisdiction.~~
1323 2.~~3.~~ The water management district shall prepare a report
1324 as to matters within its jurisdiction, including but not limited

1325 to, the impact of the proposed electrical power plant on water
1326 resources, regional water supply planning, and district-owned
1327 lands and works.
1328 3.~~4.~~ Each local government in whose jurisdiction the
1329 proposed electrical power plant is to be located shall prepare a
1330 report as to the consistency of the proposed electrical power
1331 plant with all applicable local ordinances, regulations,
1332 standards, or criteria that apply to the proposed electrical
1333 power plant, including ~~adopted local comprehensive plans, land~~
1334 ~~development regulations, and~~ any applicable local environmental
1335 regulations adopted pursuant to s. 403.182 or by other means.
1336 4.~~5.~~ The Fish and Wildlife Conservation Commission shall
1337 prepare a report as to matters within its jurisdiction.
1338 5.~~6.~~ Each ~~The~~ regional planning council shall prepare a
1339 report containing recommendations that address the impact upon
1340 the public of the proposed electrical power plant, based on the
1341 degree to which the electrical power plant is consistent with
1342 the applicable provisions of the strategic regional policy plan
1343 adopted pursuant to chapter 186 and other matters within its
1344 jurisdiction.
1345 6. The Department of Transportation shall address the
1346 impact of the proposed electrical power plant on matters within
1347 its jurisdiction.
1348 (b)~~7.~~ Any other agency, if requested by the department,
1349 shall also perform studies or prepare reports as to matters
1350 within that agency's jurisdiction which may potentially be
1351 affected by the proposed electrical power plant.

1352 ~~(b) As needed to verify or supplement the studies made by~~
1353 ~~the applicant in support of the application, it shall be the~~
1354 ~~duty of the department to conduct, or contract for, studies of~~
1355 ~~the proposed electrical power plant and site, including, but not~~
1356 ~~limited to, the following, which shall be completed no later~~
1357 ~~than 210 days after the complete application is filed with the~~
1358 ~~department:~~
1359 ~~1. Cooling system requirements.~~
1360 ~~2. Construction and operational safeguards.~~
1361 ~~3. Proximity to transportation systems.~~
1362 ~~4. Soil and foundation conditions.~~
1363 ~~5. Impact on suitable present and projected water supplies~~
1364 ~~for this and other competing uses.~~
1365 ~~6. Impact on surrounding land uses.~~
1366 ~~7. Accessibility to transmission corridors.~~
1367 ~~8. Environmental impacts.~~
1368 ~~9. Requirements applicable under any federally delegated~~
1369 ~~or approved permit program.~~
1370 (3) ~~(c)~~ Each report described in subsection (2) ~~paragraphs~~
1371 ~~(a) and (b)~~ shall contain:
1372 (a) A notice of any nonprocedural requirements not
1373 specifically listed in the application from which a variance,
1374 exemption, exception ~~all information on variances, exemptions,~~
1375 ~~exceptions~~, or other relief is necessary in order for the
1376 proposed electrical power plant to be certified. Failure of such
1377 notification by an agency shall be treated as a waiver from
1378 nonprocedural requirements of that agency. However, no variance
1379 shall be granted from standards or regulations of the department

1380 applicable under any federally delegated or approved permit
1381 program, except as expressly allowed in such program. ~~which may~~
1382 ~~be required by s. 403.511(2) and~~
1383 (b) A recommendation for approval or denial of the
1384 application.
1385 (c) Any proposed conditions of certification on matters
1386 within the jurisdiction of such agency. For each condition
1387 proposed by an agency in its report, the agency shall list the
1388 specific statute, rule, or ordinance which authorizes the
1389 proposed condition.
1390 (d) The agencies shall initiate the activities required by
1391 this section no later than 30 days after the complete
1392 application is distributed. The agencies shall keep the
1393 applicant and the department informed as to the progress of the
1394 studies and any issues raised thereby.
1395 ~~(3) No later than 60 days after the application for a~~
1396 ~~federally required new source review or prevention of~~
1397 ~~significant deterioration permit for the electrical power plant~~
1398 ~~is complete and sufficient, the department shall issue its~~
1399 ~~preliminary determination on such permit. Notice of such~~
1400 ~~determination shall be published as required by the department's~~
1401 ~~rules for notices of such permits. The department shall receive~~
1402 ~~public comments and comments from the United States~~
1403 ~~Environmental Protection Agency and other affected agencies on~~
1404 ~~the preliminary determination as provided for in the federally~~
1405 ~~approved state implementation plan. The department shall~~
1406 ~~maintain a record of all comments received and considered in~~
1407 ~~taking action on such permits. If a petition for an~~

1408 ~~administrative hearing on the department's preliminary~~
1409 ~~determination is filed by a substantially affected person, that~~
1410 ~~hearing shall be consolidated with the certification hearing.~~
1411 (4)(a) No later than 150 days after the application is
1412 filed, the Public Service Commission shall prepare a report as
1413 to the present and future need for electrical generating
1414 capacity to be supplied by the proposed electrical power plant.
1415 The report shall include the commission's determination pursuant
1416 to s. 403.519 and may include the commission's comments with
1417 respect to any other matters within its jurisdiction.
1418 (b) Receipt of an affirmative determination of need by the
1419 submittal deadline under paragraph (a) shall be a condition
1420 precedent to issuance of the department's project analysis and
1421 conduct of the certification hearing.
1422 (5) ~~(4)~~ The department shall prepare a project ~~written~~
1423 analysis, which shall be filed with the designated
1424 administrative law judge and served on all parties no later than
1425 130 ~~240~~ days after the ~~complete~~ application is determined
1426 complete ~~filed with the department, but no later than 60 days~~
1427 ~~prior to the hearing~~, and which shall include:
1428 (a) A statement indicating whether the proposed electrical
1429 power plant and proposed ultimate site capacity will be in
1430 compliance and consistent with matters within the department's
1431 standard jurisdiction, including ~~with~~ the rules of the
1432 department, as well as whether the proposed electrical power
1433 plant and proposed ultimate site capacity will be in compliance
1434 with the nonprocedural requirements of the affected agencies.

1435 (b) Copies of the studies and reports required by this
1436 section ~~and s. 403.519~~.
1437 (c) The comments received by the department from any other
1438 agency or person.
1439 (d) The recommendation of the department as to the
1440 disposition of the application, of variances, exemptions,
1441 exceptions, or other relief identified by any party, and of any
1442 proposed conditions of certification which the department
1443 believes should be imposed.
1444 (e) If available, the recommendation of the department
1445 regarding the issuance of any license required pursuant to a
1446 federally delegated or approved permit program.
1447 ~~(f) Copies of the department's draft of the operation~~
1448 ~~permit for a major source of air pollution, which must also be~~
1449 ~~provided to the United States Environmental Protection Agency~~
1450 ~~for review within 5 days after issuance of the written analysis.~~
1451 (6) ~~(5)~~ Except when good cause is shown, the failure of any
1452 agency to submit a preliminary statement of issues or a report,
1453 or to submit its preliminary statement of issues or report
1454 within the allowed time, shall not be grounds for the alteration
1455 of any time limitation in this act. Neither the failure to
1456 submit a preliminary statement of issues or a report nor the
1457 inadequacy of the preliminary statement of issues or report are
1458 ~~shall be~~ grounds to deny or condition certification.
1459 Section 29. Section 403.508, Florida Statutes, is amended
1460 to read:
1461 403.508 Land use and certification hearings ~~proceedings~~,
1462 parties, participants.--

1463 (1)(a) If a petition for a hearing on land use has been
1464 filed pursuant to s. 403.50665, the designated administrative
1465 law judge shall conduct a land use hearing in the county of the
1466 proposed site or directly associated facility, as applicable, as
1467 expeditiously as possible, but not later than 30 ~~within 90~~ days
1468 after the department's receipt of the petition ~~a complete~~
1469 ~~application for electrical power plant site certification by the~~
1470 ~~department~~. The place of such hearing shall be as close as
1471 possible to the proposed site or directly associated facility.
1472 If a petition is filed, the hearing shall be held regardless of
1473 the status of the completeness of the application. However,
1474 incompleteness of information necessary for a local government
1475 to evaluate an application may be claimed by the local
1476 government as cause for a statement of inconsistency with
1477 existing land use plans and zoning ordinances under s.
1478 403.50665.
1479 (b) Notice of the land use hearing shall be published in
1480 accordance with the requirements of s. 403.5115.
1481 (c) ~~(2)~~ The sole issue for determination at the land use
1482 hearing shall be whether or not the proposed site is consistent
1483 and in compliance with existing land use plans and zoning
1484 ordinances. If the administrative law judge concludes that the
1485 proposed site is not consistent or in compliance with existing
1486 land use plans and zoning ordinances, the administrative law
1487 judge shall receive at the hearing evidence on, and address in
1488 the recommended order any changes to or approvals or variances
1489 under, the applicable land use plans or zoning ordinances which

1490 will render the proposed site consistent and in compliance with
1491 the local land use plans and zoning ordinances.
1492 (d) The designated administrative law judge's recommended
1493 order shall be issued within 30 days after completion of the
1494 hearing and shall be reviewed by the board within 60 ~~45~~ days
1495 after receipt of the recommended order by the board.
1496 (e) If it is determined by the board that the proposed
1497 site does conform with existing land use plans and zoning
1498 ordinances in effect as of the date of the application, or as
1499 otherwise provided by this act, the responsible zoning or
1500 planning authority shall not thereafter change such land use
1501 plans or zoning ordinances so as to foreclose construction and
1502 operation of ~~affect~~ the proposed electrical power plant on the
1503 proposed site or directly associated facilities unless
1504 certification is subsequently denied or withdrawn.
1505 (f) If it is determined by the board that the proposed
1506 site does not conform with existing land use plans and zoning
1507 ordinances, ~~it shall be the responsibility of the applicant to~~
1508 ~~make the necessary application for rezoning. Should the~~
1509 ~~application for rezoning be denied, the applicant may appeal~~
1510 ~~this decision to~~ the board~~, which~~ may, if it determines after
1511 notice and hearing and upon consideration of the recommended
1512 order on land use and zoning issues that it is in the public
1513 interest to authorize the use of the land as a site for an
1514 electrical power plant, authorize an amendment, rezoning,
1515 variance, or other approval ~~a variance~~ to the adopted land use
1516 plan and zoning ordinances required to render the proposed site
1517 consistent with local land use plans and zoning ordinances. The

1518 board's action shall not be controlled by any other procedural
1519 requirements of law. In the event a variance or other approval
1520 is denied by the board, it shall be the responsibility of the
1521 applicant to make the necessary application for any approvals
1522 determined by the board as required to make the proposed site
1523 consistent and in compliance with local land use plans and
1524 zoning ordinances. No further action may be taken on the
1525 complete application ~~by the department~~ until the proposed site
1526 conforms to the adopted land use plan or zoning ordinances or
1527 the board grants relief as provided under this act.
1528 (2)(a) ~~(3)~~ A certification hearing shall be held by the
1529 designated administrative law judge no later than 265 ~~300~~ days
1530 after the ~~complete~~ application is filed with the department~~;~~
1531 ~~however, an affirmative determination of need by the Public~~
1532 ~~Service Commission pursuant to s. 403.519 shall be a condition~~
1533 ~~precedent to the conduct of the certification hearing~~. The
1534 certification hearing shall be held at a location in proximity
1535 to the proposed site. ~~The certification hearing shall also~~
1536 ~~constitute the sole hearing allowed by chapter 120 to determine~~
1537 ~~the substantial interest of a party regarding any required~~
1538 ~~agency license or any related permit required pursuant to any~~
1539 ~~federally delegated or approved permit program.~~ At the
1540 conclusion of the certification hearing, the designated
1541 administrative law judge shall, after consideration of all
1542 evidence of record, submit to the board a recommended order no
1543 later than 45 ~~60~~ days after the filing of the hearing
1544 transcript. ~~In the event the administrative law judge fails to~~
1545 ~~issue a recommended order within 60 days after the filing of the~~

1546 ~~hearing transcript, the administrative law judge shall submit a~~
1547 ~~report to the board with a copy to all parties within 60 days~~
1548 ~~after the filing of the hearing transcript to advise the board~~
1549 ~~of the reason for the delay in the issuance of the recommended~~
1550 ~~order and of the date by which the recommended order will be~~
1551 ~~issued.~~
1552 (b) Notice of the certification hearing and notice of the
1553 deadline for filing of notice of intent to be a party shall be
1554 made in accordance with the requirements of s. 403.5115.
1555 (3)(a) ~~(4)(a)~~ Parties to the proceeding shall include:
1556 1. The applicant.
1557 2. The Public Service Commission.
1558 3. The Department of Community Affairs.
1559 4. The Fish and Wildlife Conservation Commission.
1560 5. The water management district.
1561 6. The department.
1562 7. The regional planning council.
1563 8. The local government.
1564 9. The Department of Transportation.
1565 (b) Any party listed in paragraph (a) other than the
1566 department or the applicant may waive its right to participate
1567 in these proceedings. If such listed party fails to file a
1568 notice of its intent to be a party on or before the 90th day
1569 prior to the certification hearing, such party shall be deemed
1570 to have waived its right to be a party.
1571 (c) Notwithstanding the provisions of chapter 120, upon
1572 the filing with the administrative law judge of a notice of
1573 intent to be a party no later than 75 days after the application

1574 is filed ~~at least 15 days prior to the date of the land use~~
1575 ~~hearing~~, the following shall also be parties to the proceeding:
1576 1. Any agency not listed in paragraph (a) as to matters
1577 within its jurisdiction.
1578 2. Any domestic nonprofit corporation or association
1579 formed, in whole or in part, to promote conservation or natural
1580 beauty; to protect the environment, personal health, or other
1581 biological values; to preserve historical sites; to promote
1582 consumer interests; to represent labor, commercial, or
1583 industrial groups; or to promote comprehensive planning or
1584 orderly development of the area in which the proposed electrical
1585 power plant is to be located.
1586 (d) Notwithstanding paragraph (e), failure of an agency
1587 described in subparagraph (c)1. to file a notice of intent to be
1588 a party within the time provided herein shall constitute a
1589 waiver of the right of that agency to participate as a party in
1590 the proceeding.
1591 (e) Other parties may include any person, including those
1592 persons enumerated in paragraph (c) who have failed to timely
1593 file a notice of intent to be a party, whose substantial
1594 interests are affected and being determined by the proceeding
1595 and who timely file a motion to intervene pursuant to chapter
1596 120 and applicable rules. Intervention pursuant to this
1597 paragraph may be granted at the discretion of the designated
1598 administrative law judge and upon such conditions as he or she
1599 may prescribe any time prior to 30 days before the commencement
1600 of the certification hearing.

1601 (f) Any agency, including those whose properties or works
1602 are being affected pursuant to s. 403.509(4), shall be made a
1603 party upon the request of the department or the applicant.
1604 (4)(a) The order of presentation at the certification
1605 hearing, unless otherwise changed by the administrative law
1606 judge to ensure the orderly presentation of witnesses and
1607 evidence, shall be:
1608 1. The applicant.
1609 2. The department.
1610 3. State agencies.
1611 4. Regional agencies, including regional planning councils
1612 and water management districts.
1613 5. Local governments.
1614 6. Other parties.
1615 (b) ~~(5)~~ When appropriate, any person may be given an
1616 opportunity to present oral or written communications to the
1617 designated administrative law judge. If the designated
1618 administrative law judge proposes to consider such
1619 communications, then all parties shall be given an opportunity
1620 to cross-examine or challenge or rebut such communications.
1621 (5) At the conclusion of the certification hearing, the
1622 designated administrative law judge shall, after consideration
1623 of all evidence of record, submit to the board a recommended
1624 order no later than 45 days after the filing of the hearing
1625 transcript.
1626 (6)(a) No earlier than 29 days prior to the conduct of the
1627 certification hearing, the department or the applicant may
1628 request that the administrative law judge cancel the

1629 certification hearing and relinquish jurisdiction to the
1630 department if all parties to the proceeding stipulate that there
1631 are no disputed issues of fact or law to be raised at the
1632 certification hearing, and if sufficient time remains for the
1633 applicant and the department to publish public notices of the
1634 cancellation of the hearing at least 3 days prior to the
1635 scheduled date of the hearing.
1636 (b) The administrative law judge shall issue an order
1637 granting or denying the request within 5 days after receipt of
1638 the request.
1639 (c) If the administrative law judge grants the request,
1640 the department and the applicant shall publish notices of the
1641 cancellation of the certification hearing, in accordance with s.
1642 403.5115.
1643 (d)1. If the administrative law judge grants the request,
1644 the department shall prepare and issue a final order in
1645 accordance with s. 403.509(1)(a).
1646 2. Parties may submit proposed recommended orders to the
1647 department no later than 10 days after the administrative law
1648 judge issues an order relinquishing jurisdiction.
1649 (7) The applicant shall pay those expenses and costs
1650 associated with the conduct of the hearings and the recording
1651 and transcription of the proceedings.
1652 ~~(6) The designated administrative law judge shall have all~~
1653 ~~powers and duties granted to administrative law judges by~~
1654 ~~chapter 120 and this chapter and by the rules of the department~~
1655 ~~and the Administration Commission, including the authority to~~

1656 ~~resolve disputes over the completeness and sufficiency of an~~
1657 ~~application for certification.~~
1658 ~~(7) The order of presentation at the certification~~
1659 ~~hearing, unless otherwise changed by the administrative law~~
1660 ~~judge to ensure the orderly presentation of witnesses and~~
1661 ~~evidence, shall be:~~
1662 ~~(a) The applicant.~~
1663 ~~(b) The department.~~
1664 ~~(c) State agencies.~~
1665 ~~(d) Regional agencies, including regional planning~~
1666 ~~councils and water management districts.~~
1667 ~~(e) Local governments.~~
1668 ~~(f) Other parties.~~
1669 (8) In issuing permits under the federally approved new
1670 source review or prevention of significant deterioration permit
1671 program, the department shall observe the procedures specified
1672 under the federally approved state implementation plan,
1673 including public notice, public comment, public hearing, and
1674 notice of applications and amendments to federal, state, and
1675 local agencies, to assure that all such permits issued in
1676 coordination with the certification of a power plant under this
1677 act are federally enforceable and are issued after opportunity
1678 for informed public participation regarding the terms and
1679 conditions thereof. When possible, any hearing on a federally
1680 approved or delegated program permit such as new source review,
1681 prevention of significant deterioration permit, or NPDES permit
1682 shall be conducted in conjunction with the certification hearing
1683 held under this act. ~~The department shall accept written comment~~

1684 ~~with respect to an application for, or the department's~~
1685 ~~preliminary determination on, a new source review or prevention~~
1686 ~~of significant deterioration permit for a period of no less than~~
1687 ~~30 days from the date notice of such action is published. Upon~~
1688 ~~request submitted within 30 days after published notice, the~~
1689 ~~department shall hold a public meeting, in the area affected,~~
1690 ~~for the purpose of receiving public comment on issues related to~~
1691 ~~the new source review or prevention of significant deterioration~~
1692 ~~permit. If requested following notice of the department's~~
1693 ~~preliminary determination, the public meeting to receive public~~
1694 ~~comment shall be held prior to the scheduled certification~~
1695 ~~hearing. The department shall also solicit comments from the~~
1696 ~~United States Environmental Protection Agency and other affected~~
1697 ~~federal agencies regarding the department's preliminary~~
1698 ~~determination for any federally required new source review or~~
1699 ~~prevention of significant deterioration permit.~~ It is the intent
1700 of the Legislature that the review, processing, and issuance of
1701 such federally delegated or approved permits be closely
1702 coordinated with the certification process established under
1703 this part. In the event of a conflict between the certification
1704 process and federally required procedures ~~contained in the state~~
1705 ~~implementation plan,~~ the applicable federal requirements ~~of the~~
1706 ~~implementation plan~~ shall control.
1707 Section 30. Section 403.509, Florida Statutes, is amended
1708 to read:
1709 403.509 Final disposition of application.--
1710 (1)(a) If the administrative law judge has granted a
1711 request to cancel the certification hearing and has relinquished

1712 jurisdiction to the department under the provisions of s.
1713 403.508(6), within 40 days thereafter, the secretary of the
1714 department shall act upon the application by written order in
1715 accordance with the terms of this act and the stipulation of the
1716 parties in requesting cancellation of the certification hearing.
1717 (b) If the administrative law judge has not granted a
1718 request to cancel the certification hearing under the provisions
1719 of s. 403.508(6), within 60 days after receipt of the designated
1720 administrative law judge's recommended order, the board shall
1721 act upon the application by written order, approving
1722 ~~certification~~ or denying certification ~~the issuance of a~~
1723 ~~certificate~~, in accordance with the terms of this act, and
1724 stating the reasons for issuance or denial. If certification ~~the~~
1725 ~~certificate~~ is denied, the board shall set forth in writing the
1726 action the applicant would have to take to secure the board's
1727 approval of the application.
1728 (2) The issues that may be raised in any hearing before
1729 the board shall be limited to those matters raised in the
1730 certification proceeding before the administrative law judge or
1731 raised in the recommended order. All parties, or their
1732 representatives, or persons who appear before the board shall be
1733 subject to the provisions of s. 120.66.
1734 (3) In determining whether an application should be
1735 approved in whole, approved with modifications or conditions, or
1736 denied, the board, or secretary when applicable, shall consider
1737 whether, and the extent to which, the location of the electrical
1738 power plant and directly associated facilities and their
1739 construction and operation will:

1740 (a) Provide reasonable assurance that operational
1741 safeguards are technically sufficient for the public welfare and
1742 protection.
1743 (b) Comply with applicable nonprocedural requirements of
1744 agencies.
1745 (c) Be consistent with applicable local government
1746 comprehensive plans and land development regulations.
1747 (d) Meet the electrical energy needs of the state in an
1748 orderly and timely fashion.
1749 (e) Provide a reasonable balance between the need for the
1750 facility as established pursuant to s. 403.519, and the impacts
1751 upon air and water quality, fish and wildlife, water resources,
1752 and other natural resources of the state resulting from the
1753 construction and operation of the facility.
1754 (f) Minimize, through the use of reasonable and available
1755 methods, the adverse effects on human health, the environment,
1756 and the ecology of the land and its wildlife and the ecology of
1757 state waters and their aquatic life.
1758 (g) Serve and protect the broad interests of the public.
1759 ~~(3) Within 30 days after issuance of the certification,~~
1760 ~~the department shall issue and forward to the United States~~
1761 ~~Environmental Protection Agency a proposed operation permit for~~
1762 ~~a major source of air pollution and must issue or deny any other~~
1763 ~~license required pursuant to any federally delegated or approved~~
1764 ~~permit program. The department's action on the license and its~~
1765 ~~action on the proposed operation permit for a major source of~~
1766 ~~air pollution shall be based upon the record and recommended~~
1767 ~~order of the certification hearing. The department's actions on~~

1768 ~~a federally required new source review or prevention of~~
1769 ~~significant deterioration permit shall be based on the record~~
1770 ~~and recommended order of the certification hearing and of any~~
1771 ~~other proceeding held in connection with the application for a~~
1772 ~~new source review or prevention of significant deterioration~~
1773 ~~permit, on timely public comments received with respect to the~~
1774 ~~application or preliminary determination for such permit, and on~~
1775 ~~the provisions of the state implementation plan.~~
1776 (4) The department's action on a federally required new
1777 source review or prevention of significant deterioration permit
1778 shall differ from the actions taken by the siting board
1779 regarding the certification if the federally approved state
1780 implementation plan requires such a different action to be taken
1781 by the department. Nothing in this part shall be construed to
1782 displace the department's authority as the final permitting
1783 entity under the federally approved permit program. Nothing in
1784 this part shall be construed to authorize the issuance of a new
1785 source review or prevention of significant deterioration permit
1786 which does not conform to the requirements of the federally
1787 approved state implementation plan. ~~Any final operation permit~~
1788 ~~for a major source of air pollution must be issued in accordance~~
1789 ~~with the provisions of s. 403.0872. Unless the federally~~
1790 ~~delegated or approved permit program provides otherwise,~~
1791 ~~licenses issued by the department under this subsection shall be~~
1792 ~~effective for the term of the certification issued by the board.~~
1793 ~~If renewal of any license issued by the department pursuant to a~~
1794 ~~federally delegated or approved permit program is required, such~~
1795 ~~renewal shall not affect the certification issued by the board,~~

1796 ~~except as necessary to resolve inconsistencies pursuant to s.~~
1797 ~~403.516(1)(a).~~
1798 (5) ~~(4)~~ In regard to the properties and works of any agency
1799 which is a party to the certification hearing, the board shall
1800 have the authority to decide issues relating to the use, the
1801 connection thereto, or the crossing thereof, for the electrical
1802 power plant and directly associated facilities ~~site~~ and to
1803 direct any such agency to execute, within 30 days after the
1804 entry of certification, the necessary license or easement for
1805 such use, connection, or crossing, subject only to the
1806 conditions set forth in such certification. However, the
1807 applicant shall seek any necessary interest in state lands the
1808 title to which is vested in the Board of Trustees of the
1809 Internal Improvement Trust Fund from the Board of Trustees or
1810 from the governing board of the water management district
1811 created pursuant to chapter 373 before, during, or after the
1812 certification proceeding, and certification may be made
1813 contingent upon issuance of the appropriate interest. Neither
1814 the applicant nor any party to the certification proceeding may
1815 directly or indirectly raise or relitigate any matter that was
1816 or could have been an issue in the certification proceeding in
1817 any proceeding before the Board of Trustees of the Internal
1818 Improvement Trust Fund wherein the applicant is seeking
1819 necessary interest in state lands, but the information presented
1820 in the certification proceeding shall be available for review by
1821 the Board of Trustees and its staff.
1822 (6) ~~(5)~~ Except as specified in subsection (4) ~~for the~~
1823 ~~issuance of any operation permit for a major source of air~~

1824 ~~pollution pursuant to s. 403.0872~~, the issuance or denial of the
1825 certification by the board or secretary of the department ~~and~~
1826 ~~the issuance or denial of any related department license~~
1827 ~~required pursuant to any federally delegated or approved permit~~
1828 ~~program~~ shall be the final administrative action required as to
1829 that application.
1830 ~~(6) All certified electrical power plants must apply for~~
1831 ~~and obtain a major source air operation permit pursuant to s.~~
1832 ~~403.0872. Major source air operation permit applications for~~
1833 ~~certified electrical power plants must be submitted pursuant to~~
1834 ~~a schedule developed by the department. To the extent that any~~
1835 ~~conflicting provision, limitation, or restriction under any~~
1836 ~~rule, regulation, or ordinance imposed by any political~~
1837 ~~subdivision of the state, or by any local pollution control~~
1838 ~~program, was superseded during the certification process~~
1839 ~~pursuant to s. 403.510(1), such rule, regulation, or ordinance~~
1840 ~~shall continue to be superseded for purposes of the major source~~
1841 ~~air operation permit program under s. 403.0872.~~
1842 Section 31. Section 403.511, Florida Statutes, is amended
1843 to read:
1844 403.511 Effect of certification.--
1845 (1) Subject to the conditions set forth therein, any
1846 certification ~~signed by the Governor~~ shall constitute the sole
1847 license of the state and any agency as to the approval of the
1848 site and the construction and operation of the proposed
1849 electrical power plant, except for the issuance of department
1850 licenses required under any federally delegated or approved

1851 permit program and except as otherwise provided in subsection
1852 (4).
1853 (2)(a) The certification shall authorize the licensee
1854 ~~applicant~~ named therein to construct and operate the proposed
1855 electrical power plant, subject only to the conditions of
1856 certification set forth in such certification, and except for
1857 the issuance of department licenses or permits required under
1858 any federally delegated or approved permit program.
1859 (b)1. Except as provided in subsection (4), the
1860 certification may include conditions which constitute variances,
1861 exemptions, or exceptions from nonprocedural requirements of the
1862 department or any agency which were expressly considered during
1863 the proceeding, including, but not limited to, any site specific
1864 criteria, standards, or limitations under local land use and
1865 zoning approvals which affect the proposed electrical power
1866 plant or its site, unless waived by the agency as provided below
1867 and which otherwise would be applicable to the construction and
1868 operation of the proposed electrical power plant.
1869 2. No variance, exemption, exception, or other relief
1870 shall be granted from a state statute or rule for the protection
1871 of endangered or threatened species, aquatic preserves,
1872 Outstanding National Resource Waters, or Outstanding Florida
1873 Waters or for the disposal of hazardous waste, except to the
1874 extent authorized by the applicable statute or rule or except
1875 upon a finding in the certification order ~~by the siting board~~
1876 that the public interests set forth in s. 403.509(3) ~~403.502~~ in
1877 certifying the electrical power plant at the site proposed by
1878 the applicant overrides the public interest protected by the

1879 statute or rule from which relief is sought. ~~Each party shall~~
1880 ~~notify the applicant and other parties at least 60 days prior to~~
1881 ~~the certification hearing of any nonprocedural requirements not~~
1882 ~~specifically listed in the application from which a variance,~~
1883 ~~exemption, exception, or other relief is necessary in order for~~
1884 ~~the board to certify any electrical power plant proposed for~~
1885 ~~certification. Failure of such notification by an agency shall~~
1886 ~~be treated as a waiver from nonprocedural requirements of the~~
1887 ~~department or any other agency. However, no variance shall be~~
1888 ~~granted from standards or regulations of the department~~
1889 ~~applicable under any federally delegated or approved permit~~
1890 ~~program, except as expressly allowed in such program.~~
1891 (3) The certification and any order on land use and zoning
1892 issued under this act shall be in lieu of any license, permit,
1893 certificate, or similar document required by any state,
1894 regional, or local agency pursuant to, but not limited to,
1895 chapter 125, chapter 161, chapter 163, chapter 166, chapter 186,
1896 chapter 253, chapter 298, chapter 370, chapter 373, chapter 376,
1897 chapter 380, chapter 381, chapter 387, chapter 403, except for
1898 permits issued pursuant to any federally delegated or approved
1899 permit program ~~s. 403.0885~~ and except as provided in ~~s.~~
1900 ~~403.509(3) and (6),~~ chapter 404~~,~~ or the Florida Transportation
1901 Code~~, or 33 U.S.C. s. 1341~~.
1902 (4) This act shall not affect in any way the ratemaking
1903 powers of the Public Service Commission under chapter 366; nor
1904 shall this act in any way affect the right of any local
1905 government to charge appropriate fees or require that

1906 construction be in compliance with applicable building
1907 construction codes.
1908 (5)(a) An electrical power plant certified pursuant to
1909 this act shall comply with rules adopted by the department
1910 subsequent to the issuance of the certification which prescribe
1911 new or stricter criteria, to the extent that the rules are
1912 applicable to electrical power plants. Except when express
1913 variances, exceptions, exemptions, or other relief have been
1914 granted, subsequently adopted rules which prescribe new or
1915 stricter criteria shall operate as automatic modifications to
1916 certifications.
1917 (b) Upon written notification to the department, any
1918 holder of a certification issued pursuant to this act may choose
1919 to operate the certified electrical power plant in compliance
1920 with any rule subsequently adopted by the department which
1921 prescribes criteria more lenient than the criteria required by
1922 the terms and conditions in the certification which are not
1923 site-specific.
1924 (c) No term or condition of certification shall be
1925 interpreted to preclude the postcertification exercise by any
1926 party of whatever procedural rights it may have under chapter
1927 120, including those related to rulemaking proceedings. This
1928 subsection shall apply to previously issued certifications.
1929 (6) No term or condition of a site certification shall be
1930 interpreted to supersede or control the provisions of a final
1931 operation permit for a major source of air pollution issued by
1932 the department pursuant to s. 403.0872 to a ~~such~~ facility
1933 certified under this part.

1934 (7) Pursuant to s. 380.23, electrical power plants are
1935 subject to the federal coastal consistency review program.
1936 Issuance of certification shall constitute the state's
1937 certification of coastal zone consistency.
1938 Section 32. Section 403.5112, Florida Statutes, is created
1939 to read:
1940 403.5112 Filing of notice of certified corridor route.--
1941 (1) Within 60 days after certification of a directly
1942 associated linear facility pursuant to this act, the applicant
1943 shall file, in accordance with s. 28.222, with the department
1944 and the clerk of the circuit court for each county through which
1945 the corridor will pass, a notice of the certified route.
1946 (2) The notice shall consist of maps or aerial photographs
1947 in the scale of 1:24,000 which clearly show the location of the
1948 certified route and shall state that the certification of the
1949 corridor will result in the acquisition of rights-of-way within
1950 the corridor. Each clerk shall record the filing in the official
1951 record of the county for the duration of the certification or
1952 until such time as the applicant certifies to the department and
1953 the clerk that all lands required for the transmission line
1954 rights-of-way within the corridor have been acquired within such
1955 county, whichever is sooner.
1956 Section 33. Section 403.5113, Florida Statutes, is created
1957 to read:
1958 403.5113 Postcertification amendments.--
1959 (1) If, subsequent to certification by the board, a
1960 licensee proposes any material change to the application and
1961 revisions or amendments thereto, as certified, the licensee

1962 shall submit a written request for amendment and a description
1963 of the proposed change to the application to the department.
1964 Within 30 days after the receipt of the request for the
1965 amendment, the department shall determine whether the proposed
1966 change to the application requires a modification of the
1967 conditions of certification.
1968 (2) If the department concludes that the change would not
1969 require a modification of the conditions of certification, the
1970 department shall provide written notification of the approval of
1971 the proposed amendment to the licensee, all agencies, and all
1972 other parties.
1973 (3) If the department concludes that the change would
1974 require a modification of the conditions of certification, the
1975 department shall provide written notification to the licensee
1976 that the proposed change to the application requires a request
1977 for modification pursuant to s. 403.516.
1978 Section 34. Section 403.5115, Florida Statutes, is amended
1979 to read:
1980 403.5115 Public notice; costs of proceeding.--
1981 (1) The following notices are to be published by the
1982 applicant:
1983 (a) Notice ~~A notice~~ of the filing of a notice of intent
1984 under s. 403.5063, which shall be published within 21 days after
1985 the filing of the notice. The notice shall be published as
1986 specified by subsection (2), except that the newspaper notice
1987 shall be one-fourth page in size in a standard size newspaper or
1988 one-half page in size in a tabloid size newspaper.

1989 (b) Notice ~~A notice~~ of filing of the application, which
1990 shall include a description of the proceedings required by this
1991 act, within 21 days after the date of the application filing ~~be~~
1992 ~~published as specified in subsection (2), within 15 days after~~
1993 ~~the application has been determined complete~~. Such notice shall
1994 give notice of the provisions of s. 403.511(1) and (2) ~~and that~~
1995 ~~the application constitutes a request for a federally required~~
1996 ~~new source review or prevention of significant deterioration~~
1997 ~~permit~~.
1998 (c) Notice of the land use determination made pursuant to
1999 s. 403.50665(1) within 15 days after the determination is filed.
2000 (d) Notice of the land use hearing, which shall be
2001 published as specified in subsection (2), no later than 15 ~~45~~
2002 days before the hearing.
2003 (e) ~~(d)~~ Notice of the certification hearing and notice of
2004 the deadline for filing notice of intent to be a party, which
2005 shall be published as specified in subsection (2), at least 65
2006 days before the date set for the certification ~~no later than 45~~
2007 ~~days before the~~ hearing.
2008 (f) Notice of the cancellation of the certification
2009 hearing, if applicable, no later than 3 days before the date of
2010 the originally scheduled certification hearing.
2011 (g) ~~(e)~~ Notice of modification when required by the
2012 department, based on whether the requested modification of
2013 certification will significantly increase impacts to the
2014 environment or the public. Such notice shall be published as
2015 specified under subsection (2):

2016 1. Within 21 days after receipt of a request for
2017 modification.~~, except that~~ The newspaper notice shall be of a
2018 size as directed by the department commensurate with the scope
2019 of the modification.
2020 2. If a hearing is to be conducted in response to the
2021 request for modification, then notice shall be published no
2022 later than 30 days before the hearing ~~provided as specified in~~
2023 ~~paragraph (d)~~.
2024 (h)~~(f)~~ Notice of a supplemental application, which shall
2025 be published as specified in paragraph (b) and subsection
2026 (2).~~follows:~~
2027 ~~1. Notice of receipt of the supplemental application shall~~
2028 ~~be published as specified in paragraph (b).~~
2029 ~~2. Notice of the certification hearing shall be published~~
2030 ~~as specified in paragraph (d).~~
2031 (i) Notice of existing site certification pursuant to s.
2032 403.5175. Notices shall be published as specified in paragraph
2033 (b) and subsection (2).
2034 (2) Notices provided by the applicant shall be published
2035 in newspapers of general circulation within the county or
2036 counties in which the proposed electrical power plant will be
2037 located. The newspaper notices shall be at least one-half page
2038 in size in a standard size newspaper or a full page in a tabloid
2039 size newspaper ~~and published in a section of the newspaper other~~
2040 ~~than the legal notices section~~. These notices shall include a
2041 map generally depicting the project and all associated
2042 facilities corridors. A newspaper of general circulation shall
2043 be the newspaper which has the largest daily circulation in that

2044 county and has its principal office in that county. If the
2045 newspaper with the largest daily circulation has its principal
2046 office outside the county, the notices shall appear in both the
2047 newspaper having the largest circulation in that county and in a
2048 newspaper authorized to publish legal notices in that county.
2049 (3) All notices published by the applicant shall be paid
2050 for by the applicant and shall be in addition to the application
2051 fee.
2052 (4) The department shall arrange for publication of the
2053 following notices in the manner specified by chapter 120 and
2054 provide copies of those notices to any persons who have
2055 requested to be placed on the departmental mailing list for this
2056 purpose:
2057 (a) Notice ~~Publish in the Florida Administrative Weekly~~
2058 ~~notices~~ of the filing of the notice of intent within 15 days
2059 after receipt of the notice.~~;~~
2060 (b) Notice of the filing of the application, no later than
2061 21 days after the application filing.~~;~~
2062 (c) Notice of the land use determination made pursuant to
2063 s. 403.50665(1) within 15 days after the determination is filed.
2064 (d) Notice of the land use hearing before the
2065 administrative law judge, if applicable, no later than 15 days
2066 before the hearing.~~;~~
2067 (e) Notice of the land use hearing before the board, if
2068 applicable.
2069 (f) Notice of the certification hearing at least 45 days
2070 before the date set for the certification hearing.~~;~~

2071 (g) Notice of the cancellation of the certification
2072 hearing, if applicable, no later than 3 days prior to the date
2073 of the originally scheduled certification hearing.
2074 (h) Notice of the hearing before the board, if
2075 applicable.~~;~~
2076 (i) Notice and of stipulations, proposed agency action, or
2077 petitions for modification.~~; and~~
2078 ~~(b) Provide copies of those notices to any persons who~~
2079 ~~have requested to be placed on the departmental mailing list for~~
2080 ~~this purpose.~~
2081 ~~(5) The applicant shall pay those expenses and costs~~
2082 ~~associated with the conduct of the hearings and the recording~~
2083 ~~and transcription of the proceedings.~~
2084 Section 35. Section 403.513, Florida Statutes, is amended
2085 to read:
2086 403.513 Review.--Proceedings under this act shall be
2087 subject to judicial review as provided in chapter 120. When
2088 possible, separate appeals of the certification order issued by
2089 the board and of any department permit issued pursuant to a
2090 federally delegated or approved permit program may ~~shall~~ be
2091 consolidated for purposes of judicial review.
2092 Section 36. Section 403.516, Florida Statutes, is amended
2093 to read:
2094 403.516 Modification of certification.--
2095 (1) A certification may be modified after issuance in any
2096 one of the following ways:
2097 (a) The board may delegate to the department the authority
2098 to modify specific conditions in the certification.

2099 (b)1. The department may modify specific conditions of a
2100 site certification which are inconsistent with the terms of any
2101 federally delegated or approved ~~final air pollution operation~~
2102 permit for the certified electrical power plant ~~issued by the~~
2103 ~~United States Environmental Protection Agency under the terms of~~
2104 ~~42 U.S.C. s. 7661d~~.
2105 2. Such modification may be made without further notice if
2106 the matter has been previously noticed under the requirements
2107 for any federally delegated or approved permit program.
2108 (c) The licensee may file a petition for modification with
2109 the department, or the department may initiate the modification
2110 upon its own initiative.
2111 1. A petition for modification must set forth:
2112 a. The proposed modification.
2113 b. The factual reasons asserted for the modification.
2114 c. The anticipated environmental effects of the proposed
2115 modification.
2116 2.~~(b)~~ The department may modify the terms and conditions
2117 of the certification if no party to the certification hearing
2118 objects in writing to such modification within 45 days after
2119 notice by mail to such party's last address of record, and if no
2120 other person whose substantial interests will be affected by the
2121 modification objects in writing within 30 days after issuance of
2122 public notice.
2123 3. If objections are raised or the department denies the
2124 request, the applicant or department may file a request ~~petition~~
2125 for a hearing on the modification with the department. Such
2126 request shall be handled pursuant to chapter 120 ~~paragraph (c)~~.

2127 ~~(c) A petition for modification may be filed by the~~
2128 ~~applicant or the department setting forth:~~
2129 ~~1. The proposed modification,~~
2130 ~~2. The factual reasons asserted for the modification, and~~
2131 ~~3. The anticipated effects of the proposed modification on~~
2132 ~~the applicant, the public, and the environment.~~
2133
2134 ~~The petition for modification shall be filed with the department~~
2135 ~~and the Division of Administrative Hearings.~~
2136 4. Requests referred to the Division of Administrative
2137 Hearings shall be disposed of in the same manner as an
2138 application, but with time periods established by the
2139 administrative law judge commensurate with the significance of
2140 the modification requested.
2141 (d) As required by s. 403.511(5).
2142 ~~(2) Petitions filed pursuant to paragraph (1)(c) shall be~~
2143 ~~disposed of in the same manner as an application, but with time~~
2144 ~~periods established by the administrative law judge commensurate~~
2145 ~~with the significance of the modification requested.~~
2146 (2) ~~(3)~~ Any agreement or modification under this section
2147 must be in accordance with the terms of this act. No
2148 modification to a certification shall be granted that
2149 constitutes a variance from standards or regulations of the
2150 department applicable under any federally delegated or approved
2151 permit program, except as expressly allowed in such program.
2152 Section 37. Section 403.517, Florida Statutes, is amended
2153 to read:

2154 403.517 Supplemental applications for sites certified for
2155 ultimate site capacity.--
2156 (1)(a) Supplemental ~~The department shall adopt rules~~
2157 ~~governing the processing of supplemental~~ applications may be
2158 submitted for certification of the construction and operation of
2159 electrical power plants to be located at sites which have been
2160 previously certified for an ultimate site capacity pursuant to
2161 this act. Supplemental applications shall be limited to
2162 electrical power plants using the fuel type previously certified
2163 for that site. Such applications shall include all new directly
2164 associated facilities that support the construction and
2165 operation of the electrical power plant. ~~The rules adopted~~
2166 ~~pursuant to this section shall include provisions for:~~
2167 ~~1. Prompt appointment of a designated administrative law~~
2168 ~~judge.~~
2169 ~~2. The contents of the supplemental application.~~
2170 ~~3. Resolution of disputes as to the completeness and~~
2171 ~~sufficiency of supplemental applications by the designated~~
2172 ~~administrative law judge.~~
2173 ~~4. Public notice of the filing of the supplemental~~
2174 ~~applications.~~
2175 ~~5. Time limits for prompt processing of supplemental~~
2176 ~~applications.~~
2177 ~~6. Final disposition by the board within 215 days of the~~
2178 ~~filing of a complete supplemental application.~~
2179 (b) The review shall use the same procedural steps and
2180 notices as for an initial application.

2181 (c) The time limits for the processing of a complete
2182 supplemental application shall be designated by the department
2183 commensurate with the scope of the supplemental application, but
2184 shall not exceed any time limitation governing the review of
2185 initial applications for site certification pursuant to this
2186 act, it being the legislative intent to provide shorter time
2187 limitations for the processing of supplemental applications for
2188 electrical power plants to be constructed and operated at sites
2189 which have been previously certified for an ultimate site
2190 capacity.
2191 (d) ~~(e)~~ Any time limitation in this section or in rules
2192 adopted pursuant to this section may be altered pursuant to s.
2193 403.5095 ~~by the designated administrative law judge upon~~
2194 ~~stipulation between the department and the applicant, unless~~
2195 ~~objected to by any party within 5 days after notice, or for good~~
2196 ~~cause shown by any party. The parties to the proceeding shall~~
2197 ~~adhere to the provisions of chapter 120 and this act in~~
2198 ~~considering and processing such supplemental applications~~.
2199 (2) ~~Supplemental applications shall be reviewed as~~
2200 ~~provided in ss. 403.507-403.511, except that the time limits~~
2201 ~~provided in this section shall apply to such supplemental~~
2202 ~~applications.~~
2203 ~~(3)~~ The land use and zoning consistency determination of
2204 s. 403.50665 ~~hearing requirements of s. 403.508(1) and (2)~~ shall
2205 not be applicable to the processing of supplemental applications
2206 pursuant to this section so long as:
2207 (a) The previously certified ultimate site capacity is not
2208 exceeded; and

2209 (b) The lands required for the construction or operation
2210 of the electrical power plant which is the subject of the
2211 supplemental application are within the boundaries of the
2212 previously certified site.
2213 ~~(4) For the purposes of this act, the term "ultimate site~~
2214 ~~capacity" means the maximum generating capacity for a site as~~
2215 ~~certified by the board.~~
2216 Section 38. Section 403.5175, Florida Statutes, is amended
2217 to read:
2218 403.5175 Existing electrical power plant site
2219 certification.--
2220 (1) An electric utility that owns or operates an existing
2221 electrical power plant as defined in s. 403.503(12) may apply
2222 for certification of an existing power plant and its site in
2223 order to obtain all agency licenses necessary to ensure ~~assure~~
2224 compliance with federal or state environmental laws and
2225 regulation using the centrally coordinated, one-stop licensing
2226 process established by this part. An application for site
2227 certification under this section must be in the form prescribed
2228 by department rule. Applications must be reviewed and processed
2229 using the same procedural steps and notices as for an
2230 application for a new facility ~~in accordance with ss. 403.5064-~~
2231 ~~403.5115~~, except that a determination of need by the Public
2232 Service Commission is not required.
2233 (2) An application for certification under this section
2234 must include:
2235 (a) A description of the site and existing power plant
2236 installations;

2237 (b) A description of all proposed changes or alterations
2238 to the site or electrical power plant, including all new
2239 associated facilities that are the subject of the application;
2240 (c) A description of the environmental and other impacts
2241 caused by the existing utilization of the site and directly
2242 associated facilities, and the operation of the electrical power
2243 plant that is the subject of the application, and of the
2244 environmental and other benefits, if any, to be realized as a
2245 result of the proposed changes or alterations if certification
2246 is approved and such other information as is necessary for the
2247 reviewing agencies to evaluate the proposed changes and the
2248 expected impacts;
2249 (d) The justification for the proposed changes or
2250 alterations;
2251 (e) Copies of all existing permits, licenses, and
2252 compliance plans authorizing utilization of the site and
2253 directly associated facilities or operation of the electrical
2254 power plant that is the subject of the application.
2255 (3) The land use and zoning determination ~~hearing~~
2256 requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply
2257 to an application under this section if the applicant does not
2258 propose to expand the boundaries of the existing site. If the
2259 applicant proposes to expand the boundaries of the existing site
2260 to accommodate portions of the plant or associated facilities, a
2261 land use and zoning determination shall be made ~~hearing must be~~
2262 ~~held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~;
2263 provided, however, that the sole issue for determination ~~through~~
2264 ~~the land use hearing~~ is whether the proposed site expansion is

2265 consistent and in compliance with the existing land use plans
2266 and zoning ordinances.
2267 (4) In considering whether an application submitted under
2268 this section should be approved in whole, approved with
2269 appropriate conditions, or denied, the board shall consider
2270 whether, and to the extent to which the proposed changes to the
2271 electrical power plant and its continued operation under
2272 certification will:
2273 (a) Comply with the provisions of s. 403.509(3).
2274 ~~applicable nonprocedural requirements of agencies;~~
2275 (b) Result in environmental or other benefits compared to
2276 current utilization of the site and operations of the electrical
2277 power plant if the proposed changes or alterations are
2278 undertaken.~~;~~
2279 ~~(c) Minimize, through the use of reasonable and available~~
2280 ~~methods, the adverse effects on human health, the environment,~~
2281 ~~and the ecology of the land and its wildlife and the ecology of~~
2282 ~~state waters and their aquatic life; and~~
2283 ~~(d) Serve and protect the broad interests of the public.~~
2284 (5) An applicant's failure to receive approval for
2285 certification of an existing site or an electrical power plant
2286 under this section is without prejudice to continued operation
2287 of the electrical power plant or site under existing agency
2288 licenses.
2289 Section 39. Section 403.518, Florida Statutes, is amended
2290 to read:
2291 403.518 Fees; disposition.--

2292 ~~(1)~~ The department shall charge the applicant the
2293 following fees, as appropriate, which, unless otherwise
2294 specified, shall be paid into the Florida Permit Fee Trust Fund:
2295 (1) ~~(a)~~ A fee for a notice of intent pursuant to s.
2296 403.5063, in the amount of $2,500, to be submitted to the
2297 department at the time of filing of a notice of intent. The
2298 notice-of-intent fee shall be used and disbursed in the same
2299 manner as the application fee.
2300 (2) ~~(b)~~ An application fee, which shall not exceed
2301 $200,000. The fee shall be fixed by rule on a sliding scale
2302 related to the size, type, ultimate site capacity, or increase
2303 in electrical generating capacity proposed by the application~~,~~
2304 ~~or the number and size of local governments in whose~~
2305 ~~jurisdiction the electrical power plant is located~~.
2306 (a) ~~1.~~ Sixty percent of the fee shall go to the department
2307 to cover any costs associated with coordinating the review
2308 ~~reviewing~~ and acting upon the application, to cover any field
2309 services associated with monitoring construction and operation
2310 of the facility, and to cover the costs of the public notices
2311 published by the department.
2312 (b) ~~2.~~ The following percentages ~~Twenty percent of the fee~~
2313 ~~or $25,000, whichever is greater,~~ shall be transferred to the
2314 Administrative Trust Fund of the Division of Administrative
2315 Hearings of the Department of Management Services: ~~.~~
2316 1. Five percent to compensate expenses from the initial
2317 exercise of duties associated with the filing of an application.
2318 2. An additional 5 percent if a land use hearing is held
2319 pursuant to s. 403.508.

2320 3. An additional 10 percent if a certification hearing is
2321 held pursuant to s. 403.508.
2322 (c)1.~~3.~~ Upon written request with proper itemized
2323 accounting within 90 days after final agency action by the board
2324 or withdrawal of the application, the agencies that prepared
2325 reports pursuant to s. 403.507 or participated in a hearing
2326 pursuant to s. 403.508 may submit a written request to the
2327 department for reimbursement of expenses incurred during the
2328 certification proceedings. The request shall contain an
2329 accounting of expenses incurred which may include time spent
2330 reviewing the application, ~~the department shall reimburse the~~
2331 ~~Department of Community Affairs, the Fish and Wildlife~~
2332 ~~Conservation Commission, and any water management district~~
2333 ~~created pursuant to chapter 373, regional planning council, and~~
2334 ~~local government in the jurisdiction of which the proposed~~
2335 ~~electrical power plant is to be located, and any other agency~~
2336 ~~from which the department requests special studies pursuant to~~
2337 ~~s. 403.507(2)(a)7. Such reimbursement shall be authorized for~~
2338 ~~the~~ preparation of any studies required of the agencies by this
2339 act, ~~and for~~ agency travel and per diem to attend any hearing
2340 held pursuant to this act, and for any agency or local
2341 government's provision of notice of public meetings or hearings
2342 required as a result of the application for certification
2343 ~~governments to participate in the proceedings~~. The department
2344 shall review the request and verify that the expenses are valid.
2345 Valid expenses shall be reimbursed; however, in the event the
2346 amount of funds available for reimbursement ~~allocation~~ is
2347 insufficient to provide for full compensation ~~complete~~

2348 ~~reimbursement~~ to the agencies requesting reimbursement,
2349 reimbursement shall be on a prorated basis.
2350 2. If the application review is held in abeyance for more
2351 than 1 year, the agencies may submit a request for
2352 reimbursement.
2353 (d)~~4.~~ If any sums are remaining, the department shall
2354 retain them for its use in the same manner as is otherwise
2355 authorized by this act; provided, however, that if the
2356 certification application is withdrawn, the remaining sums shall
2357 be refunded to the applicant within 90 days after withdrawal.
2358 (3)(a)~~(c)~~ A certification modification fee, which shall
2359 not exceed $30,000. The department shall establish rules for
2360 determining such a fee based on the equipment redesign, change
2361 in site size, type, increase in generating capacity proposed, or
2362 change in an associated linear facility location.
2363 (b) The fee shall be submitted to the department with a
2364 ~~formal~~ petition for modification ~~to the department~~ pursuant to
2365 s. 403.516. This fee shall be established, disbursed, and
2366 processed in the same manner as the application fee in
2367 subsection (2) ~~paragraph (b)~~, except that the Division of
2368 Administrative Hearings shall not receive a portion of the fee
2369 unless the petition for certification modification is referred
2370 to the Division of Administrative Hearings for hearing. If the
2371 petition is so referred, only $10,000 of the fee shall be
2372 transferred to the Administrative Trust Fund of the Division of
2373 Administrative Hearings of the Department of Management
2374 Services. ~~The fee for a modification by agreement filed pursuant~~
2375 ~~to s. 403.516(1)(b) shall be $10,000 to be paid upon the filing~~

2376 ~~of the request for modification. Any sums remaining after~~
2377 ~~payment of authorized costs shall be refunded to the applicant~~
2378 ~~within 90 days of issuance or denial of the modification or~~
2379 ~~withdrawal of the request for modification.~~
2380 (4) ~~(d)~~ A supplemental application fee, not to exceed
2381 $75,000, to cover all reasonable expenses and costs of the
2382 review, processing, and proceedings of a supplemental
2383 application. This fee shall be established, disbursed, and
2384 processed in the same manner as the certification application
2385 fee in subsection (2) ~~paragraph (b), except that only $20,000 of~~
2386 ~~the fee shall be transferred to the Administrative Trust Fund of~~
2387 ~~the Division of Administrative Hearings of the Department of~~
2388 ~~Management Services~~.
2389 (5) ~~(e)~~ An existing site certification application fee, not
2390 to exceed $200,000, to cover all reasonable costs and expenses
2391 of the review processing and proceedings for certification of an
2392 existing power plant site under s. 403.5175. This fee must be
2393 established, disbursed, and processed in the same manner as the
2394 certification application fee in subsection (2) ~~paragraph (b)~~.
2395 ~~(2) Effective upon the date commercial operation begins,~~
2396 ~~the operator of an electrical power plant certified under this~~
2397 ~~part is required to pay to the department an annual operation~~
2398 ~~license fee as specified in s. 403.0872(11) to be deposited in~~
2399 ~~the Air Pollution Control Trust Fund.~~
2400 Section 40. Any application for electrical power plant
2401 certification filed pursuant to ss. 403.501-403.518, Florida
2402 Statutes, shall be processed under the provisions of the law
2403 applicable at the time the application was filed, except that

2404 the provisions relating to cancellation of the certification
2405 hearing under s. 403.508(6), Florida Statutes, the provisions
2406 relating to the final disposition of the application and
2407 issuance of the written order by the secretary under s.
2408 403.509(1)(a), Florida Statutes, and notice of the cancellation
2409 of the certification hearing under s. 403.5115, Florida
2410 Statutes, may apply to any application for electrical power
2411 plant certification.
2412 Section 41. Section 403.519, Florida Statutes, is amended
2413 to read:
2414 403.519 Exclusive forum for determination of need.--
2415 (1) On request by an applicant or on its own motion, the
2416 commission shall begin a proceeding to determine the need for an
2417 electrical power plant subject to the Florida Electrical Power
2418 Plant Siting Act.
2419 (2) The applicant ~~commission~~ shall publish a notice of the
2420 proceeding in a newspaper of general circulation in each county
2421 in which the proposed electrical power plant will be located.
2422 The notice shall be at least one-quarter of a page and published
2423 at least 21 ~~45~~ days prior to the scheduled date for the
2424 proceeding. The commission shall publish notice of the
2425 proceeding in the manner specified by chapter 120 at least 21
2426 days prior to the scheduled date for the proceeding.
2427 (3) The commission shall be the sole forum for the
2428 determination of this matter, which accordingly shall not be
2429 raised in any other forum or in the review of proceedings in
2430 such other forum. In making its determination, the commission
2431 shall take into account the need for electric system reliability

2432 and integrity, the need for adequate electricity at a reasonable
2433 cost, the need for fuel diversity and supply reliability, and
2434 whether the proposed plant is the most cost-effective
2435 alternative available. The commission shall also expressly
2436 consider the conservation measures taken by or reasonably
2437 available to the applicant or its members which might mitigate
2438 the need for the proposed plant and other matters within its
2439 jurisdiction which it deems relevant. The commission's
2440 determination of need for an electrical power plant shall create
2441 a presumption of public need and necessity and shall serve as
2442 the commission's report required by s. 403.507(4)
2443 ~~403.507(2)(a)2~~. An order entered pursuant to this section
2444 constitutes final agency action.
2445 Section 42. This act shall take effect upon becoming a
2446 law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Insurance Premium Tax
SPONSOR(S): Mahon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 0 N	Levin	Diez-Arguelles
2) Civil Justice Committee	7 Y, 0 N	Blalock	Bond
3) Fiscal Council		Levin	Kelly
4)			
5)			

SUMMARY ANALYSIS

Title insurance is sold as part of the initial purchase or refinance of real property, and the purchaser of the title insurance pays a premium for the insurance coverage.

This bill reduces the amount of the premiums for title insurance subject to the 1.75 percent tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is not paid as a commission to a title insurance agent. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

This bill also amends the definition of "premium" by removing the reference to the 1.75 percent tax, in conformity to the other changes in the bill.

The fiscal impact of the bill is a negative ($2.6 million) in state revenues in FY 2006-07, a negative ($7.6 million) in state revenues in FY 2007-08, and a negative ($11.3 million) in state revenues in FY 2008-09.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes -- This bill will decrease premium taxes paid on title insurance policies.

B. EFFECT OF PROPOSED CHANGES:

Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insures remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to rules of DOR.

Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word "premium" as used throughout part XIII of the law governing title insurance does not include commission. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

Effect of Bill

This bill amends s. 624.509, F.S., to provide that the 1.75 percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill

the premium tax, may not exceed 20 percent of the total price paid for the title insurance in 2007; 45 percent in 2008; and 70 percent for 2009 and subsequent years.

This bill amends the definition for title insurance premium in s. 627.7711, F.S., to delete a cross-reference to section 624.509, F.S. This change conforms to the other changes proposed by the bill regarding the 1.75 percent.

C. SECTION DIRECTORY:

Section 1 amends s. 624.509, F.S., to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75 percent tax due on all insurance premiums, except annuity policies and contracts.

Section 2 amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. This bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by Section 1.

Section 3 provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered the fiscal impact of this bill at its meeting on February 24, 2006.

	FY 2006-2007	FY 2007-2008	FY 2008-2009
General Revenue	($2.6 million)	($7.6 million)	($11.3 million)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

When fully implemented, the fiscal impact of this bill will be negative ($11.3 million) recurring in state revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the insurance premium tax; amending s.
3 624.509, F.S.; providing for separate taxation of certain
4 title insurance gross receipts; providing limitations;
5 amending s. 627.7711, F.S.; revising the definition of the
6 term "premium"; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (1) of section 624.509, Florida
11 Statutes, is amended to read:
12 624.509 Premium tax; rate and computation.--
13 (1) In addition to the license taxes provided for in this
14 chapter, each insurer shall also annually, and on or before
15 March 1 in each year, except as to wet marine and transportation
16 insurance taxed under s. 624.510, pay to the Department of
17 Revenue a tax on insurance premiums, premiums for title
18 insurance, or assessments, including membership fees and policy
19 fees and gross deposits received from subscribers to reciprocal
20 or interinsurance agreements, and on annuity premiums or
21 considerations, received during the preceding calendar year, the
22 amounts thereof to be determined as set forth in this section,
23 to wit:
24 (a) An amount equal to 1.75 percent of the gross amount of
25 such receipts on account of life and health insurance policies
26 covering persons resident in this state and on account of all
27 other types of policies and contracts, ~~(~~except annuity policies
28 or contracts taxable under paragraph (b) and title insurance

29 policies or contracts written through affiliated and
30 nonaffiliated agencies taxable under paragraph (c),~~)~~ covering
31 property, subjects, or risks located, resident, or to be
32 performed in this state, omitting premiums on reinsurance
33 accepted, and less return premiums or assessments, but without
34 deductions:
35 1. For reinsurance ceded to other insurers;
36 2. For moneys paid upon surrender of policies or
37 certificates for cash surrender value;
38 3. For discounts or refunds for direct or prompt payment
39 of premiums or assessments; and
40 4. On account of dividends of any nature or amount paid
41 and credited or allowed to holders of insurance policies;
42 certificates; or surety, indemnity, reciprocal, or
43 interinsurance contracts or agreements.~~; and~~
44 (b) An amount equal to 1 percent of the gross receipts on
45 annuity policies or contracts paid by holders thereof in this
46 state.
47 (c) An amount equal to 1.75 percent of the gross receipts
48 on title insurance written through affiliated and nonaffiliated
49 agencies, less the portion of the gross receipts retained by or
50 paid under contract to the affiliated and nonaffiliated title
51 insurance agents. The reduction in the insurer's total amount of
52 title insurance premium gross receipts received through
53 affiliated and nonaffiliated agencies may not exceed the
54 following percentages of the total title insurance premium gross
55 receipts received by the insurer through affiliated and
56 nonaffiliated agencies:

57 1. For 2007, 20 percent.
58 2. For 2008, 45 percent.
59 3. For 2009 and subsequent years, 70 percent.
60 Section 2. Subsection (2) of section 627.7711, Florida
61 Statutes, is amended to read:
62 627.7711 Definitions.--As used in this part, the term:
63 (2) "Premium" means the charge, as specified by rule of
64 the commission, that is made by a title insurer for a title
65 insurance policy, including the charge for performance of
66 primary title services by a title insurer or title insurance
67 agent or agency, and incurring the risks incident to such
68 policy, under the several classifications of title insurance
69 contracts and forms~~, and upon which charge a premium tax is paid~~
70 ~~under s. 624.509~~. As used in this part or in any other law, with
71 respect to title insurance, the word "premium" does not include
72 a commission.
73 Section 3. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 141 CS Workers' Compensation For First Responders
SPONSOR(S): Adams and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration Appropriations Committee	11 Y, 0 N	Rayman	Belcher
2) Domestic Security Committee	8 Y, 0 N	Newton	Newton
3) Insurance Committee	16 Y, 0 N, w/CS	Callaway	Cooper
4) Fiscal Council		Rayman	Kelly
5)			

SUMMARY ANALYSIS

In 2003 the Legislature made numerous changes to chapter 440, F.S., governing workers' compensation. On August 19, 2003, Speaker Byrd created the Homeland Security Workers' Compensation Workgroup to study workers' compensation issues affecting first responders such as firefighters, police officers, and other emergency personnel. The workgroup's charge was to study workers' compensation problems and issues that particularly affect first responders, changes in current statutes that would alleviate those problems or address those issues, the fiscal impact of the recommended changes on the agencies that employ first responders, and the impact on public safety of making or not making the recommended changes.

Based on the oral and written testimony received during the workgroup meetings from stakeholders, the workgroup identified nine primary areas of concern for first responders created by the 2003 changes to worker's compensation. The areas of concern were: permanent total disability supplemental benefits (PTD supps); standard of proof for occupational disease, repetitive exposure, and exposure to toxic substances claims; attorney fees; psychiatric injuries (which includes three recommendations by the first responders); independent medical examinations (IMEs); the definition of "first responder"; and smallpox vaccinations.

This bill addresses some of the nine primary areas of concern presented to the workgroup. The bill loosens the compensability standard of proof for first responder injuries caused by occupational disease or exposure to toxic substances, allows first responders to receive payment of PTD supps after age 62 in certain instances, and allows first responders to receive workers' compensation for adverse reactions to small pox vaccines.

The National Council on Compensation Insurance (NCCI) estimates that costs for first responder classes would increase 3.6% ($8.2 million) if this proposal were enacted in its current form. Individual self-insureds do not report data to NCCI and are not included in NCCI's estimate. As a result, additional costs are expected from individual self-insureds that employ first responders or that do not participate in the Social Security program. This includes a number of major governmental agencies across the state.

According to the Department of Financial Services, the bill has little or no impact on the Risk Management Trust Fund.

The mandate provision appears to apply because the bill requires counties or municipalities to expend funds; therefore, requiring a 2/3 vote of the membership of each house. The bill includes a statement of important state interest.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill is likely to increase the cost of workers' compensation insurance paid by employers of first responders, primarily cities and counties.

B. EFFECT OF PROPOSED CHANGES:

In 2003 Special Session A, the Legislature made numerous changes to chapter 440, F.S., governing workers' compensation.[1] On August 19, 2003, Speaker Byrd created the Homeland Security Workers' Compensation Workgroup to study workers' compensation issues affecting first responders such as firefighters, police officers and other emergency personnel. The workgroup's charge was to study workers' compensation problems and issues that particularly affect first responders, changes in current statutes that would alleviate those problems or address those issues, the fiscal impact of the recommended changes on the agencies that employ first responders, and the impact on public safety upon making or not making the recommended changes. The workgroup held three meetings to gather testimony from interested parties and stakeholders about workers' compensation issues affecting first responders. Oral testimony was heard at each meeting from interested parties, and written testimony was also received by the workgroup. A written report was issued on February 3, 2004 covering the testimony heard at the workgroup meetings and the issues raised by the stakeholders.

Based on the oral and written testimony received during the workgroup meetings from stakeholders, the workgroup identified nine primary areas of concern for first responders created by the 2003 changes to worker's compensation.

Permanent Total Supplemental Benefits

The first area of concern was the revision to s. 440.15(1)(f)1, F.S., which ends payment of permanent total disability (PTD) supplemental benefits (cost-of-living adjustments) at age 62 for workers unless the worker has not been able to work enough quarters to qualify for Social Security retirement due to the work-related injury. According to testimony received at each meeting, some local governments have opted out of the Social Security program. Thus, their first responders are not eligible for Social Security retirement. These same first responders would not be eligible for PTD supplemental benefits after age 62 either under the current law.

The bill amends current law to allow any injured first responder to receive PTD supplemental benefits for life if the injured first responder is employed by an employer who does not participate in the Social Security program.

Standard of Proof for Occupational Disease and Exposure to Toxic Substances Claims

Another area of concern involved the change made to the standard of proof for occupational disease, repetitive exposure, and exposure to toxic substances claims.[2] The standard of proof is the level of proof necessary for the injured worker/claimant to prevail.

Section 440.09(1), F.S., requires that an accidental compensable injury must be the major contributing cause of any resulting injury, meaning the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only. Under s. 440.02(1), F.S. an injury or disease caused by a toxic substance requires clear and convincing

[1] Senate Bill 50A (chapter 2003-412, LOF)
[2] s. 440.02(1), F.S.; s. 440.09(1), F.S.

evidence establishing that exposure to the specific substance at the levels exposed to cause the injury or diseases sustained by the employee.

Section. 440.09, F.S. provides that in occupational disease cases both causation and sufficient exposure to a specific harmful substance known to be present in the workplace to support causation be proven by clear and convincing evidence. Currently, case law generally requires the claimant must prove a causal connection other than by merely showing that it is logical the injury arose out of the claimant's employment or that by a preponderance of the probabilities it appears that it arose out of such employment.

Courts have held that a higher standard of proof applies for occupational disease and exposure cases than other types of claims. Causation for exposure and occupational disease claims must be proven by clear evidence; a preponderance of the evidence is not enough. The District Court of Appeal noted:

> In cases involving diseases or physical defects of an employee as distinguished from external occurrences to an employee such as an automobile accident, a claimant must prove a causal connection other than by merely showing that it is logical that the injury arose out of the claimant's employment or that by a preponderance of the probabilities it appears that it arose out of such employment. There must be some clear evidence rather than speculation or conjecture establishing the causal connection between the claimant's injury and her employment.[3]

The firefighters contended, in part, at the workgroup meetings a heightened burden of proof for first responders to prove exposure to toxic substances is unwarranted because the dangerousness of certain substances has already been determined. The State Fire Marshal's office has published a list of toxic substances (Florida Substance List) that are hazardous and has required employers to notify fire departments of the existence of the toxic substance in the workplace.[4] By promulgating the Florida Substance List, the firefighters contend the State Fire Marshal's office has recognized the hazardous nature of the materials contained on the List and that these materials pose a particular hazard to firefighters exposed to the substances fires in a workplace or in a house. Thus, the firefighters argue it is illogical to make them prove by clear and convincing evidence their exposure to substances on the Florida Substance List caused the work-related injury. This standard requires proving the worker's specific exposure to the substance was toxic, and the exposure to the substance has already been determined to be toxic by the State Fire Marshal.

The bill provides an injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of evidence establishing that exposure to the specific substance to which the first responder was exposed at the exposure levels can cause the injury or disease sustained by the employee. In effect, this lowers the standard of proof for first responders to prove an injury caused by exposure to toxic substances to a preponderance of the evidence. Thus, other workers will be held to a higher standard of proof (i.e. clear and convincing evidence).

In cases involving occupational diseases, both causation and sufficient exposure to a specific substance must be shown to be present in the workplace to support causation and must be proven by a preponderance of evidence. This change in the law would appear to lower the standard for causation to a preponderance of evidence for first responders. All other workers must prove occupational disease by the higher clear and convincing standard.

The bill also provides a definition of the term "occupational disease." The bill provides that such term means "only a disease that is due to causes and conditions that are characteristic of and peculiar to a particular trade, occupation, process, or employment, and excludes all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public." This definition is modeled after the definition provided in Chapter 440, F.S.

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[3] Harris v. Joseph's of Greater Miami, 122 So.2d 561 (Fla. 1960).
[4] Rule 69A-62.004, F.A.C.

Attorney Fees

The third area of concern for first responders identified in the testimony to the workgroup was the limit on attorney fees imposed by chapter 2003-412, LOF. The 2003 legislation continued the use of the existing contingency fee schedule in awarding attorney's fees and eliminating the authorization for hourly fees in most cases. The fee for benefits secured are limited to 20 percent of the first $5,000 of benefits secured, 15 percent of the next $5,000 of benefits secured, 10 percent of the remaining amount of benefits secured to be provided during the first 10 years after the claim is filed, and 5 percent of the benefits secured after 10 years. Except for cases involving medical-only claims, the legislation eliminated the discretionary hourly fees. As an alternative to the contingency fee for medical-only claims, the judge of compensation claims may approve an attorney's fee not to exceed $1,500 once per accident, based on a maximum hourly rate of $150 per hour, if the judge of compensation claims determines that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney.

The bill does not address attorney's fees for first responder workers' compensation cases. Thus, attorneys representing first responders in workers' compensation cases will not be paid on an hourly basis. Rather, they will be paid in accordance with the contingency fee schedule unless the claim is medical-only and the $1,500 attorney fee provision applies.

Psychiatric Injuries

Three issues relating to medical benefits for psychiatric injuries were addressed by stakeholders in the workgroup meetings. The first issue was the creation of s. 440.093, F.S., in the 2003 revision, which precludes medical treatment for a psychiatric injury unless it is accompanied by a physical injury requiring medical treatment. The second issue was the 1-percent permanent impairment rating cap for psychiatric injuries imposed by s. 440.15(3) (c), F.S. Prior to the 2003 revision, there was no limit on the permanent impairment rating for a psychiatric injury. The third issue was the limit on payment of temporary indemnity benefits for psychiatric injuries to 6 months after maximum medical improvement (MMI) is obtained for the injured worker's physical injuries.[5]

Prior to the enactment of the 2003 reforms, a mental or nervous injury due to stress, fright, or excitement only, did not qualify as an accidental injury and was not compensable and the law also required that a mental or nervous injury occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence.[6] Florida case law determined that a mental or nervous injury, even with a physical injury or accident, was not compensable unless the physical injury was the causal factor.[7] The Florida Supreme Court stated:

> For a mental or nervous injury to be compensable in Florida there must have been a physical injury. Otherwise, the disability would have been caused only by a mental stimulus, and must be denied coverage under the statutory exclusion. A mere touching cannot suffice as a physical injury.[8]

Subsequently, the Florida First District Court of Appeal held that eligibility for compensation for psychiatric injury resulting from compensable work-related physical injury required a finding by clear and convincing evidence that the mental or nervous injury was directly linked to the initial injury, not that the physical injury was the major contributing cause of the psychiatric injury.[9]

The 2003 legislation continued the mental nervous injury exclusions and the clear and convincing evidence standard noted above and codified case law that prohibited the payment of benefits for

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[5] s. 440.093(3), F.S.
[6] s. 440.02(1), F.S.
[7] City of Holmes Beach v. Grace, 598 So.2d 71 (Fla. 1989).
[8] Id.
[9] Cromartie v. City of St. Petersburg, 840 So.2d 372 (Fla. 1st DCA 2003).

mental or nervous injuries without an accompanying physical injury; however, the law also provided that the physical injury must require medical treatment.[10] Before the 2003 legislative changes, case law provided that the lack of medical treatment was relevant to whether or not a sufficient injury had been sustained. The 2003 act required the compensable physical injury be the major contributing cause of the mental or nervous injury.[11] The act also provided that a physical injury resulted from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable. It limited the duration of "temporary benefits" for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement for the physical injury. In context, this six month limitation is understood to apply to the temporary disability benefits payable under s. 440.15, F.S., but not to medical benefits payable under s. 440.13, F.S. The act also placed a 1 percent limitation for permanent impairment benefits for psychiatric impairment. The permanent impairment benefit is based on the impairment rating schedule that provides the duration of the benefit is 3 weeks for each percent of impairment.

The bill does not address treatment for psychiatric injuries sustained by first responders. Thus, current law will apply to first responders sustaining psychiatric injuries as a result of a work related accident.

Independent Medical Examinations

Testimony was received at the workgroup meetings about the limit of one independent medical examination (IME) per employee per accident imposed by chapter 2003-412, LOF. Concern was also raised about that requirement in chapter 2003-412, LOF, that the employee pay for his or her IME. Prior to chapter 2003-412, LOF, the carriers paid for the injured worker's IMEs.

The bill does not address the IME issue for first responders. Thus, current law will govern IMEs by first responders and first responders will be limited to one IME per accident and will be required to pay for the IME.

Definition of First Responder

Current law provides no definition of the term "first responder." The bill proposes a definition of the term. Under the proposed definition, a first responder is a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., an emergency medical technician or paramedic as defined in s. 401.23, F.S., and a volunteer firefighter engaged in employment by the state or local government.

Smallpox Vaccination

At the first workgroup meeting, an Orange County Department of Health (Health Department) representative testified about the problems that may face first responders who take the smallpox vaccine. According to the statistics given by the Health Department in 2004, 3,942 people received the smallpox vaccination in Florida. In 2004, Florida ranked second among the nation in the total number of vaccinations given.

One problem faced by first responders vaccinated for smallpox is whether any adverse reaction they may have in response to the vaccination is compensable (i.e. in the course and scope of employment) and thus covered under workers' compensation. Representatives from the Health Department testified in 2004 that 14 of the 3,942 people vaccinated for smallpox in Florida have had adverse reactions to the vaccination. According to testimony received at the workgroup meetings, the law was not clear as to whether an adverse reaction to a smallpox vaccine is covered under workers' compensation. Section 440.09, F.S., provides that an employer must pay compensation or furnish under ch. 440, F.S., if the employee suffers an accidental compensable injury or death arising out of work performed in the scope and course of employment, but the law does not address smallpox vaccinations.

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[10] s. 440.093, F.S.
[11] Id.

In 2003, Congress created the Smallpox Vaccine Injury Compensation Program.[12] This program compensates law enforcement, firefighters, emergency medical personnel, and other public safety personnel for medical benefits, death benefits, and lost wages due to an adverse reaction to a smallpox vaccination. In order to be compensated under the program, the first responder must volunteer and be selected to serve as a member of a smallpox emergency response plan prior to an outbreak of smallpox. The program also provides medical, death, and lost-wage benefits to family members or others in contact with the vaccinated first responder who sustains a medical injury from exposure to the smallpox virus through physical contact with the vaccinated first responder. Any payments under the program are secondary to payments made or due from health insurance, workers' compensation, or any other entity. The program is administered by the U.S. Department of Health and Human Services and is subject to statutory filing deadlines.

The bill clarifies any uncertainty in the workers' compensation community regarding the compensability of an adverse reaction to a small pox vaccination by a first responder. The bill provides that any adverse medical condition to a first responder caused by a smallpox vaccination is a compensable workers' compensation injury.

C. SECTION DIRECTORY:

Section 1. Creates a new subsection in s. 440.091, F.S.; defines first responders; provides for the compensability of toxic substance exposure for first responders under certain circumstances proven by a preponderance of evidence; makes any medical complication incurred by a first responder as a result of a small pox vaccinations compensable; provides for the compensability of occupational disease cases by first responders under certain circumstances proven by a preponderance of evidence; provides for the continuation, after age 62, of permanent total supplement for first responders not in employment that participates in social security program; defines occupational disease.

Section 2. Expresses legislative intent that the bill fulfills an important state interest.

Section 3. Provides that the bill takes effect on October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill will impact counties and any entity that employs first responders. See the FISCAL COMMENTS section, below.

[12] Public Law 108-20, 117 Stat. 638 a/k/a The Smallpox Emergency Personnel Protection Act of 2003

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permanent total disability supplemental benefits for first responders that were employed by a state or local government unit that did not participate in the social security program would be extended beyond age 62, regardless of whether their public employer provided an alternative retirement program. Under current law, generally permanent total disability benefits cease at age 75 and supplemental permanent total disability benefits end at age 62.

By lowering certain compensability standards for first responders for occupational diseases and toxic exposure, it is expected that first responders would likely prevail more often in those types of claims against their employers.

Any additional costs of funding workers' compensation coverage for state and local governments could be ultimately passed through to taxpayers. One method of passing the expense on to taxpayers is by raising taxes.

D. FISCAL COMMENTS:

The Department of Financial Services (DFS) indicates the legislation has no direct/fiscal impact on the Division of Workers' Compensation. The DFS indicates the bill will have little or no fiscal impact on The Risk Management Trust Fund.

The Office of Insurance Regulation (OIR) has stated that the legislation will have no regulatory or fiscal impact for the OIR.

According to the Department of Corrections, it employs 50 employees meeting the definition of first responder under the bill. All these employees are employed in the department's Inspector General's office and conduct internal investigations. The department believes the fiscal impact on it by these employees being covered under the bill is negligible.

The Department of Juvenile Justice opined it did not have any employees falling under the definition of first responder; thus the bill has no fiscal impact on this department.

NCCI estimates that costs for first responder classes would increase 3.8% ($8.2 million) if this proposal were enacted in its current form. The increased costs result from providing permanent total supplemental benefits after age 62 for some first responders (3.6% increase). The impact of allowing workers' compensation for adverse medical reactions to small pox vaccinations and of defining "occupational disease" as the bill does is negligible.

Individual self-insureds, primarily cities and counties, do not report data to NCCI and are not included in NCCI's estimate. The Florida League of Cities provides a self-insurance fund that some cities and some smaller counties participate in for workers' compensation. Other counties, such as Dade, Broward, Leon, and Polk, self insure, but do not participate in a self insurance fund.[13] Many of the sheriff's offices participate in a self insurance fund for workers' compensation.[14] NCCI's estimated 3.6% cost increase does not include the cost increases self insurers insuring first responders would incur. As a result, additional costs are expected from individual self-insureds that employ first responders. This includes a number of major governmental entities, including sheriff's offices, across the state.[15]

According to the Department of Management Services, it is possible that in-line-of-duty disability retirement experience could worsen for the "first responders" group, thereby producing actuarial losses

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[13] Information received from a representative of the Florida Association of Counties.
[14] Id.
[15] National Council on Compensation Insurance, Inc., *ANALYSIS OF AMENDMENT TO FLORIDA HB 141 FOR FIRST RESPONDERS*, 12/5/05.

that would slowly emerge and be identified in future valuations and experience studies. If such costs occur, they would be funded through contribution rate increases as recommended in future valuations of the Florida Retirement System.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandate provision appears to apply because the bill requires counties or municipalities to expend funds; therefore, requiring a 2/3 vote of the membership of each house. The bill includes a statement of important state interest.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Insurance Committee heard the bill, adopted a strike-all amendment, and reported the bill favorably with a committee substitute. The strike-all amendment changed the bill as follows:

- Removed the bill's provisions relating to psychiatric benefits to first responders which, among other things, allowed first responders to receive psychiatric medical care without a physical touching and excluded first responders from the statutory limit relating to receipt of temporary indemnity and permanent impairment benefits.

- Removed the bill's provisions allowing hourly attorney's fees in some first responder cases.

The strike-all amendment maintained the following provisions in the bill:

- Definition of "first responder."

- Looser compensability standard of proof for first responders injured as a result of an occupational disease or exposure to a toxic substance.

- Definition of "occupational disease."

- Allowance for first responders to receive payment of PTD supplemental benefits after age 62 if the first responder's employer does not participate in Social Security.

- Allowance for first responders to receive workers' compensation benefits for an adverse reaction to a small pox vaccine.

The amendment also moved the statutory changes from chapter 112, F.S., to chapter 440, F.S., the workers' compensation chapter.

The staff analysis was updated to reflect the strike-all amendment.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to workers' compensation for first responders; amending s. 440.091, F.S.; providing a definition of the term "first responder"; providing a standard of proof for certain injuries and diseases in certain workers' compensation claims; providing that certain adverse results and complications are injuries by accident arising out of employment; providing for the continuation of permanent total supplemental benefits for certain first responders; providing a definition of the term "occupational disease"; providing legislative findings; providing an effective date.

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

Section 1. Subsection (4) is added to section 440.091, Florida Statutes, to read:

22 440.091 Law enforcement officer, firefighter, emergency
23 medical technician, or paramedic; when acting within the course
24 of employment.--
25 (4)(a) The term "first responder" as used in this
26 subsection means a law enforcement officer as defined in s.
27 943.10, a firefighter as defined in s. 633.30, or an emergency
28 medical technician or paramedic as defined in s. 401.23 employed
29 by state or local government. A volunteer firefighter engaged by
30 state or local government is also considered a first responder
31 for purposes of this subsection.
32 (b) For the purpose of determining benefits under this
33 chapter relating to employment-related accidents and injuries of
34 first responders, the following shall apply:
35 1. An injury or disease caused by the exposure to a toxic
36 substance is not an injury by accident arising out of employment
37 unless there is a preponderance of the evidence establishing
38 that exposure to the specific substance involved, at the levels
39 to which the first responder was exposed, can cause the injury
40 or disease sustained by the employee.
41 2. Any adverse medical condition caused by a smallpox
42 vaccination of a first responder is deemed to be an injury by
43 accident arising out of work performed in the course and scope
44 of employment.
45 3. In cases involving occupational disease, both causation
46 and sufficient exposure to a specific harmful substance shown to
47 be present in the workplace to support causation shall be proven
48 by a preponderance of the evidence.

49 (c) Permanent total supplemental benefits under s.
50 440.15(1)(f) received by a first responder whose employer does
51 not participate in the social security program shall not
52 terminate after the first responder attains the age of 62.
53 (d) For the purposes of this subsection, the term
54 "occupational disease" means only a disease that is due to
55 causes and conditions that are characteristic of and peculiar to
56 a particular trade, occupation, process, or employment and
57 excludes all ordinary diseases of life to which the general
58 public is exposed, unless the incidence of the disease is
59 substantially higher in the particular trade, occupation,
60 process, or employment than for the general public.
61 Section 2. The Legislature finds that this act fulfills an
62 important state interest.
63 Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 753 CS Homestead Tax Deferral
SPONSOR(S): Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council	8 Y, 0 N	Camechis	Hamby
3) Fiscal Council		Monroe KDSM	Kelly cl
4)			
5)			

SUMMARY ANALYSIS

Section 197.252, F.S. allows qualified persons to defer payment of property taxes on homestead property until ownership of the property has changed. The amount of taxes which can be deferred depends on the age and household income of the person deferring the taxes. Under current law:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 70 or older whose household income is $12,000 or under may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

Under this bill, a person 65 or older whose household income qualifies them for the additional homestead exemption under s. 196.075, F.S. may defer their entire tax bill. In 2006, the maximum qualified income under this statute is $23,463.

In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

The Revenue Estimating Conference has estimated that this bill will have a negative recurring impact of $1.1 million on local revenues.

This bill has an effective date of January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the house principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 197.252, F.S., allows people to defer payment of property taxes on homestead property until ownership of the property has changed. Under current law:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 70 or older whose household income is $12,000 or under may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

Under this program, payment of both ad valorem taxes and some non ad-valorem assessments may be deferred. Taxes cannot be deferred if the value of the primary mortgage is greater than 70 percent of the just value of the property or if all unsatisfied debt on the property, including deferred taxes, exceeds 85 percent of the just value of the homestead.

A tax certificate is issued to the county for any taxes deferred under this statute. The county then holds these certificates until such time as the taxes become due and payable. These taxes become due and payable if ownership or use of the homesteaded property changes or if all unsatisfied liens on the property grow to an amount which exceeds 85% of the property's just value.

During the time the county holds the certificates, interest is accrued at a rate of "0.5 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates; however, the interest rate may not exceed 9.5 percent."[1] In 2005 this interest rate was 5.59 percent.

Proposed Changes

Under this bill, the payment of the entire tax bill could be deferred by individuals who are 65 or older and have a household income that would qualify them for the additional homestead exemption for low income seniors, governed by s. 196.075, F.S., which reads:

> (2) . . . .any person . . . who has attained age 65, and whose household income does not exceed $20,000.

[1] s. 197.262(2), F.S.

(3) Beginning January 1, 2001, the $20,000 income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1, through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the state 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

In 2006, the maximum qualified income under this statute is $23,463.

Thus, if this bill passes, the amount of taxes which may be deferred by an individual would change so that:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 65 or older whose household income qualifies them for the additional homestead exemption under s. 196.075, F.S., may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

C. SECTION DIRECTORY:

Section 1. Amends s. 197.252, F.S., changing the eligibility criteria for participating in the tax deferral program.

Section 2. Provides that the bill shall take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

Revenues: The Revenue Estimating Conference has estimated that this bill will have a $1.1 million recurring impact on local revenues.

1. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will allow qualified low income seniors to defer the payment of their property taxes allowing them another option in managing their financial needs.

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision of the State Constitution is not applicable because: this bill does not require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 10, 2006, the Finance and Tax Committee adopted a strike everything amendment to the bill. The amendment reworded the bill to conform to the language of its Senate companion. In addition, the amendment lowered the maximum interest rate which can be charged on a tax certificate for deferred taxes from 9.5 percent to 7 percent.

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:
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3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the deferral of ad valorem property
7 taxes; amending s. 197.252, F.S.; decreasing the age and
8 increasing the income threshold required for eligibility
9 to defer ad valorem property taxes; decreasing the maximum
10 interest rate that may be charged on deferred ad valorem
11 taxes; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraph (b) of subsection (2) and subsection
16 (4) of section 197.252, Florida Statutes, are amended to read:
17 197.252 Homestead tax deferral.--
18 (2)
19 (b) <u>If</u> ~~In the event~~ the applicant is entitled to claim the
20 increased exemption by reason of age and residency as provided
21 in s. 196.031(3)(a), approval of such application shall defer
22 that portion of such ad valorem taxes plus non-ad valorem
23 assessments which exceeds 3 percent of the applicant's

24 household's income for the prior calendar year. If any such
25 applicant's household income for the prior calendar year is less
26 than $10,000, or is less than the amount of the household income
27 designated for the additional homestead exemption pursuant to s.
28 196.075 and the ~~$12,000 if such~~ applicant is 65 ~~70~~ years of age
29 or older, approval of the ~~such~~ application shall defer such ad
30 valorem taxes plus non-ad valorem assessments in their entirety.
31 (4) The amount of taxes, non-ad valorem assessments, and
32 interest deferred pursuant to this act shall accrue interest at
33 a rate equal to the semiannually compounded rate of one-half of
34 1 percent plus the average yield to maturity of the long-term
35 fixed-income portion of the Florida Retirement System
36 investments as of the end of the quarter preceding the date of
37 the sale of the deferred payment tax certificates; however, the
38 interest rate may not exceed 7 ~~9.5~~ percent.
39 Section 2. This act shall take effect July 1, 2006.

HJR 353 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 353 CS Increased Homestead Exemption
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** HB 7261

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	5 Y, 3 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council	8 Y, 0 N, w/CS	Camechis	Hamby
3) Fiscal Council		Monroe KDSM	Kelly Ck
4)			
5)			

SUMMARY ANALYSIS

This joint resolution proposes amendments to the Florida Constitution to increase the current homestead exemption from $25,000 to $50,000 phased in over five years. Thus, the homestead exemption is increased to $30,000 in 2007; $35,000 in 2008; $40,000 in 2009; $45,000 in 2010; and $50,000 in 2011. Thereafter, the homestead exemption increases by the percentage change in the Consumer Price Index. The proposed amendment also increases the discretionary homestead exemption for senior citizens from $25,000 to $50,000 effective in 2007.

The proposed amendment specifies that homestead exemption increases take effect January 1, 2007 if the amendment is adopted by the voters.

The Revenue Estimating Conference has not reviewed the provisions of this bill. However, the Revenue Estimating Conference did estimate that raising the homestead exemption to $50,000, without the phase in provisions and assuming millage rates remain the same, would have a maximum fiscal impact of negative $2.2 billion to local revenues in 2009-2010. The Revenue Estimating Conference has also considered the fiscal impact of doubling the discretionary homestead exemption available to low income seniors. If all counties were to fully implement the increased exemption and millage rates were to remain the same, this provision could have an impact of negative $36 million to local revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Lower Taxes – This joint resolution proposes an amendment to the State Constitution to increase the homestead exemption from $25,000 to $50,000 over a five year period, decreasing the amount of ad valorem taxes paid by owners of homesteads. The proposed amendment also increases the discretionary homestead exemption for senior citizens from $25,000 to $50,000.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Property Taxation in Florida

The ad valorem tax or "property tax" is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. The taxable value of real and tangible personal property is the fair market value of the property adjusted for any exclusions, differentials, or exemptions. Tax bills are mailed in November of each year based on the previous January 1st valuation and payment is due by the following March 31.

Ad valorem tax continues to be a major source of revenue for local governments in Florida. In FY 2002-03 (the last year for which certain fiscal information is available) property taxes constituted 31 percent of county governmental revenue ($6.3 billion)[1], and 17 percent of municipal governmental revenue ($2.5 billion), making it the largest single source of tax or general revenue for general purpose governments in Florida. In addition, the property tax is the primary local revenue source for school districts. In FY 2003-04, school districts levied $8.4 billion in property taxes for K-12 education.[2]

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.[3] However, the property tax is not an unlimited source of revenue. The Florida Constitution caps the millage rates assessed against the value of the property.[4] In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,[5] assessment limitations,[6] and exemptions,[7] including the homestead exemptions.

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[1] Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database at http://fcn.state.fl.us/lcir/cntyfiscal/corevprofsw.xls.

[2] *See* 2005 Florida Tax Handbook, p. 135.

[3] *See* Art. VII, s. 1, Fla. Const.

[4] *See* Art. VII, s. 9, Fla. Const. For counties, municipalities, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law. A mill is defined as 1/1000 of a dollar, or $1 per $1000 of taxable value.

[5] Article VII, s. 4 of the Florida Constitution, authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

[6] Article VII, s. 4(c) of the Florida Constitution, authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead

Homestead Exemption

The provision which is commonly referred to as the Homestead Exemption, is contained in Article VII, s. 6(a-d) of the Florida Constitution, which provides a $25,000 homestead exemption for all owners of homestead property provided that the tax roll in their county has been approved. The $25,000 amount was established in 1982. If the amount of the homestead exemption had been increased by the percentage change in the Consumer Price Index since 1982, the current value of the Homestead Exemption would be $50,596.

In addition, Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to $25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed $20,000, adjusted for inflation. This is typically referred to as the Increased Homestead Exemption for Low Income Seniors.

Finally, Article VII, s. 6(e) of the Florida Constitution authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad valorem tax levies. However, this provision has been minimally implemented.[8]

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.[9] The courts have further ruled that this immunity extends to property of school districts[10] and certain special districts.[11]

In tax year 2006, the combination of these various forms of property tax relief is estimated to effectively reduce the taxable value of real property in this state by 31.9 percent.[12] For the

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property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation. The statutes also provide for differential treatment of specific property, to include pollution control devises (s. 193.621, F.S.) and building renovations for the physically handicapped (s. 193.623, F.S.).

[7] Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;
- Portions of property used predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;
- Household goods and personal effects, not less than one thousand dollars;
- Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;
- Property used for community and economic development, by local option and as defined by general law;
- Certain renewable energy source devices and real property on which the device is installed and operated; and
- Historic properties, by local option and as defined by general law.

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

[8] This $25,000 exemption is implemented in ss. 196.1975(9)(a) and 196.1977, F.S., for certain units in non-profit homes for the aged and certain proprietary continuing care facilities.

[9] *See Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm'n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee,* 325 So. 2d 1 (Fla. 1975).

[10] *See Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

[11] *See Sarasota-Manatee Airport Auth. v. Mikos,* 605 So. 2d 132 (Fla. 2d DCA 1992). *Cf. Canaveral Port Auth. V. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

2006 tax year, it is estimated that at an aggregate average millage rate of 19.54, the tax revenue loss due to these forms of property tax relief will be $1.1 billion for agricultural and other valuation differentials; $6.7 billion for the "Save Our Homes" assessment limitation; and $2.2 billion for the $25,000 homestead exemption.[13]

Any additional reduction in the property tax base could result in a corresponding shift in property tax burden to other property tax owners.[14]

EFFECT OF PROPOSED CHANGES

The proposed amendment increases the current homestead exemption from $25,000 to $50,000 phased in over five years. Thus, the homestead exemption is increased to $30,000 in 2007; $35,000 in 2008; $40,000 in 2009; $45,000 in 2010; and $50,000 in 2011. Thereafter, the homestead exemption increases by the percentage change in the Consumer Price Index. The proposed amendment also increases the discretionary homestead exemption for senior citizens from $25,000 to $50,000 effective in 2007.

The proposed amendment creates new Section 26 of Article XII, State Constitution, which provides that the revisions take effect January 1, 2007 if the amendment is adopted by the voters.

C. SECTION DIRECTORY: Not Applicable

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures:

Non-Recurring	**FY 2006-07**
Department of State Publications Costs[15]	$50,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference has not reviewed the provisions of this bill. However, the Revenue Estimating Conference did estimate that raising the homestead exemption to $50,000, without the phase in provisions and assuming millage rates remain the same, would have a maximum fiscal impact of negative $2.2 billion to local revenues in 2009-2010. The Revenue Estimating Conference has also considered the fiscal impact of doubling the discretionary homestead exemption available to low income

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[12] 2006 estimates are $ 2,148.5 billion in just value, and $ 1,463.4 billion in taxable value. Revenue Estimating Conference, Ad Valorem Estimating Conference, March 6, 2006. See EDR website at http://edr.state.fl.us/conferences/advalorem/adval0306.pdf

[13] *See* 2005 Florida Tax Handbook, p. 137-8.

[14] Generally, local governments respond to reductions in the property tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

[15] *See* Art. XI, Sec. 5(d), Fla. Const.

seniors. If all counties were to fully implement the increased exemption and millage rates were to remain the same, this provision could have an impact of negative $36 million to local revenues.

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: This bill will reduce the property tax burden on owners of homestead property by increasing the amount of the homestead tax exemption; however, this reduction may result in a shift of tax burden from homestead property owners to other taxpayers.

D. FISCAL COMMENTS:

Article XI, s. 5(d) of the State Constitution requires the state to publish the proposed amendment along with notice of the date of the election at which it will be submitted before electors in one newspaper in each county in which a newspaper is published once in the tenth week and once in the sixth week immediately preceding the week the election is held. The Division of Elections estimates this cost to be approximately $50,000 to meet the requirements of this provision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision is not applicable to Joint Resolutions.

2. Other: Article XI, s. 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2006, the Committee on Finance and Tax adopted a strike-everything amendment to the bill. This analysis reflects that amendment. As originally drafted, this bill simply raised the homestead exemption from $25,000 to $50,000, without phasing in the exemption.

On April 11, 2006, the Local Government Council adopted a strike-all amendment to the joint resolution to delete all proposed revisions to the Save Our Homes constitutional provision, provide for a five-year phase in period for the increased homestead exemption rather than a ten-year phase in period, and to provide for an immediate increase in the discretionary homestead exemption for senior citizens from $25,000 to $50,000.

CHAMBER ACTION

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1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 House Joint Resolution
6 A joint resolution proposing an amendment to Section 6 of
7 Article VII and the creation of Section 26 of Article XII
8 of the State Constitution to provide for a phased increase
9 in the homestead exemption over 5 years from $25,000 to
10 $50,000 for all levies, increase the maximum additional
11 homestead exemption for low-income seniors from $25,000 to
12 $50,000, and schedule the amendment to take effect January
13 1, 2007, if adopted.
14
15 Be It Resolved by the Legislature of the State of Florida:
16
17 That the following amendment to Section 6 of Article VII
18 and the creation of Section 26 of Article XII of the State
19 Constitution are agreed to and shall be submitted to the
20 electors of this state for approval or rejection at the next
21 general election or at an earlier special election specifically
22 authorized by law for that purpose:
23 ARTICLE VII

24 FINANCE AND TAXATION
25 SECTION 6. Homestead exemptions.--
26 (a) Every person who has the legal or equitable title to
27 real estate and maintains thereon the permanent residence of the
28 owner, or another legally or naturally dependent upon the owner,
29 shall be exempt from taxation thereon, except assessments for
30 special benefits, up to the assessed valuation of five thousand
31 dollars, upon establishment of right thereto in the manner
32 prescribed by law. The real estate may be held by legal or
33 equitable title, by the entireties, jointly, in common, as a
34 condominium, or indirectly by stock ownership or membership
35 representing the owner's or member's proprietary interest in a
36 corporation owning a fee or a leasehold initially in excess of
37 ninety-eight years.
38 (b) Not more than one exemption shall be allowed any
39 individual or family unit or with respect to any residential
40 unit. No exemption shall exceed the value of the real estate
41 assessable to the owner or, in case of ownership through stock
42 or membership in a corporation, the value of the proportion
43 which the interest in the corporation bears to the assessed
44 value of the property.
45 (c)(1) By general law and subject to conditions specified
46 therein, the exemption shall be increased to a total of the
47 following amounts ~~twenty-five thousand dollars~~ of the assessed
48 value of the real estate for each school district levy: thirty
49 thousand dollars with respect to 2007 assessments; thirty-five
50 thousand dollars with respect to 2008 assessments; forty
51 thousand dollars with respect to 2009 assessments; forty-five

52 thousand dollars with respect to 2010 assessments; and fifty
53 thousand dollars with respect to 2011 assessments. In 2012 and
54 each year thereafter, the exemption shall increase annually by
55 the percentage change in the Consumer Price Index for all urban
56 consumers, U.S. City Average, all items 1967=100, or successor
57 reports for the preceding calendar year as initially reported by
58 the United States Department of Labor, Bureau of Labor
59 Statistics.
60 (2) By general law and subject to conditions specified
61 therein, the exemption for all other levies may be increased up
62 to an amount not exceeding ten thousand dollars of the assessed
63 value of the real estate if the owner has attained age sixty-
64 five or is totally and permanently disabled and if the owner is
65 not entitled to the exemption provided in subsection (d).
66 (d) By general law and subject to conditions specified
67 therein, the exemption shall be increased to a total of the
68 following amounts of assessed value of real estate for each levy
69 other than those of school districts: thirty ~~fifteen~~ thousand
70 dollars with respect to 2007 ~~1980~~ assessments; thirty-five
71 ~~twenty~~ thousand dollars with respect to 2008 ~~1981~~ assessments;
72 forty ~~twenty-five~~ thousand dollars with respect to 2009
73 assessments; forty-five thousand dollars with respect to 2010
74 assessments; and fifty thousand dollars with respect to 2011
75 assessments. In 2012 ~~for 1982~~ and each year thereafter, the
76 exemption shall increase annually by the percentage change in
77 the Consumer Price Index for all urban consumers, U.S. City
78 Average, all items 1967=100, or successor reports for the
79 preceding calendar year as initially reported by the United

80 States Department of Labor, Bureau of Labor Statistics. However,
81 such increase shall not apply with respect to any assessment
82 roll until such roll is first determined to be in compliance
83 with the provisions of section 4 by a state agency designated by
84 general law. This subsection shall stand repealed on the
85 effective date of any amendment to section 4 which provides for
86 the assessment of homestead property at a specified percentage
87 of its just value.
88 (e) By general law and subject to conditions specified
89 therein, the Legislature may provide to renters, who are
90 permanent residents, ad valorem tax relief on all ad valorem tax
91 levies. Such ad valorem tax relief shall be in the form and
92 amount established by general law.
93 (f) The legislature may, by general law, allow counties or
94 municipalities, for the purpose of their respective tax levies
95 and subject to the provisions of general law, to grant an
96 additional homestead tax exemption not exceeding fifty ~~twenty-~~
97 ~~five~~ thousand dollars to any person who has the legal or
98 equitable title to real estate and maintains thereon the
99 permanent residence of the owner and who has attained age sixty-
100 five and whose household income, as defined by general law, does
101 not exceed twenty thousand dollars. The general law must allow
102 counties and municipalities to grant this additional exemption,
103 within the limits prescribed in this subsection, by ordinance
104 adopted in the manner prescribed by general law, and must
105 provide for the periodic adjustment of the income limitation
106 prescribed in this subsection for changes in the cost of living.
107 ARTICLE XII

108 SCHEDULE

109 SECTION 26. Increased homestead exemption.--The amendment
110 to Section 6 of Article VII, increasing the amount of the
111 homestead exemption, shall take effect January 1, 2007.

112 BE IT FURTHER RESOLVED that the following statement be
113 placed on the ballot:

114 CONSTITUTIONAL AMENDMENT
115 ARTICLE VII, SECTION 6
116 ARTICLE XII, SECTION 26

117 INCREASE IN HOMESTEAD EXEMPTION.--Proposing amendment of
118 the State Constitution to provide for a phased increase in the
119 homestead exemption from $25,000 to $50,000 over 5 years for all
120 levies, school districts or otherwise; increase the maximum
121 additional homestead exemption for low-income seniors from
122 $25,000 to $50,000; and schedule the amendment to take effect
123 January 1, 2007, if adopted.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 CS Tax on Sales, Use, and Other Transactions
SPONSOR(S): Sansom and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 692

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 1 N, w/CS	Levin	Diez-Arguelles
2) Fiscal Council		Levin	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides that no sales tax will be collected: (1) on the sale of books, clothing, wallets, or bags including handbags, backpacks, fanny packs, and diaper bags, having a selling price of $50 or less; or, (2) on the sale of school supplies having a selling price of $10 or less during the nine-day period of July 23 through July 31 of 2006.

Specifically, the bill:

- defines "books" as a set of printed sheets bound together and published in a volume;
- excludes from the definition of "book" newspapers, magazines, or other periodicals,
- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, umbrellas, or handkerchiefs;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators;
- provides that the provisions of the Act do not apply within theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

The bill provides an appropriation to the Department of Revenue of $210,540 in FY 2006-07 to administer the bill.

The fiscal impact of the bill is expected to be approximately negative ($32.1 million) in state revenues and negative ($7.2 million) in total local revenues during FY 2006-07.

The estimated reduction in Local Option Sales tax by this bill is a negative ($3.1 million). The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

The bill is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes - The bill eliminates the sales tax on many back-to-school items during the period of the sales tax holiday, which will be the last nine days of July 2006.

B. EFFECT OF PROPOSED CHANGES:

Current Law:

Section 212.05, Florida Statutes, provides that a sales and use tax be imposed on the retail sale, storage, or use of tangible personal property. The sales tax rate is 6%. Chapter 212, Florida Statutes, also lists items and transactions that are exempt from sales and use tax. Under current law, the retail sale of clothing, wallets, bags, and school supplies is subject to sales tax.

History of Sales Tax Holidays:

Chapter 98-341, Laws of Florida, the Florida Family Tax Relief Act of 1998, provided that apparel, including footwear, with a taxable value of $50 or less, was exempt from the imposition of sales tax during the period from 12:01 a.m., August 15, 1998, through midnight, August 21, 1998. The Act defined "clothing" to mean any article of wearing apparel, including footwear, intended to be worn on or about the human body. For purposes of the Act, "clothing" did not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, or belt buckles.

Chapter 99-229, Laws of Florida, the Florida Residents' Tax Relief Act of 1999, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of $100 or less during the period from 12:01 a.m., July 31, 1999, through midnight, August 8, 1999. The tax-free week was earlier in 1999 than in 1998 to allow families shopping for school clothing an opportunity to take advantage of tax savings prior to the start of the school year. An appropriation of $200,000 was provided to the Department of Revenue to administer the Act in 1999.

Chapter 2000-175, Laws of Florida, the Florida Residents' Tax Relief Act of 2000, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of $100 or less during the period from 12:01 a.m., July 29, 2000, through midnight, August 6, 2000. An appropriation of $215,000 was provided to the Department of Revenue to administer the Act in 2000.

Chapter 2001-148, Laws of Florida, the Florida Residents' Tax Relief Act of 2001, created an exemption from sales tax during the period from 12:01 a.m., July 28, 2001, through midnight, August 5, 2001, for: 1) clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of $50 or less; and 2) school supplies having a taxable value of $10 or less per item. An appropriation of $200,000 was provided to the Department of Revenue to administer the Act in 2001.

Chapter 2004-73, Laws of Florida, created an exemption from sales tax for books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of $50 or less or upon school supplies having a selling price of $10 per item or less during the nine-day period of July 24 through August 1, 2004.

Chapter 2005-271, Laws of Florida, created an exemption from sales tax for books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of $50 or less or upon school supplies having a selling price of $10 per item or less during the nine-day period of July 23 through July 31, 2005.

Proposed Changes:

The bill provides that no sales tax will be collected upon books, clothing, wallets or bags, including handbags, backpacks, fanny packs, and diaper bags having a selling price of $50 or less per item, or upon school supplies having a selling price of $10 per item or less during the nine day period of July 23 – July 31, 2006:

- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, handkerchiefs, and umbrellas;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators;
- provides that the provisions of the Act do not apply theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

C. SECTION DIRECTORY:

Section 1. Creates a nine-day period of July 23 through July 31, 2006 during which clothing, wallets, bags, and school supplies are exempt from sales tax. The section defines the terms "books," "clothing" and "school supplies" and provides an exception for certain types of establishments. The section provides rulemaking authority to the Department of Revenue.

Section 2. Provides an appropriation of $210,540 to the Department of Revenue to administer the Act.

Section 3. Provides the Act is effective July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-2007
General Revenue	($32.0 m)
Solid Waste Management Trust Fund	($.1 m)
Total State Impact	($32.1 m)

2. Expenditures: The bill contains an appropriation of $210,540 from the General Revenue Fund to the Department of Revenue for the administration of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-2007
Revenue Sharing	($1.0m)
Local Gov't half-cent	($3.1m)
Local Option	($3.1m)
Total local impact	($7.2m)

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Retailers selling the items exempt from sales tax during the holiday may experience an increase in sales and sales volume as a result of the tax holiday.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The estimated reduction in the Local Option Sales Tax by this bill is $3.1 million. The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate. and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

2. Other: None

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt rules to implement the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Both the Department of Revenue and the retail industry have suggested that the tax holiday include two weekends in the nine days, which is usually the case.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 24, 2006, the Finance & Tax Committee adopted one amendment which changed the appropriation to the Department of Revenue to administer the bill from $206,000 to $210,540. The change in cost is the increase in first class postage from 37 cents to 39 cents.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to tax on sales, use, and other transactions; specifying a period during which the sale of books, clothing, and school supplies shall be exempt from such tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. (1) No tax levied under the provisions of chapter 212, Florida Statutes, shall be collected on the sale of:

(a)1. Books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $50 or less per item during the last 9 days of July 2006.

2. As used in this paragraph, the term:

24 a. "Book" means a set of printed sheets bound together and
25 published in a volume. For purposes of this paragraph, the term
26 "book" does not include newspapers, magazines, or other
27 periodicals.
28 b. "Clothing" means any article of wearing apparel,
29 including all footwear, except skis, swim fins, roller blades,
30 and skates, intended to be worn on or about the human body. For
31 purposes of this paragraph, the term "clothing" does not include
32 watches, watchbands, jewelry, umbrellas, or handkerchiefs.
33 (b)1. School supplies having a sales price of $10 or less
34 per item during the last 9 days of July 2006.
35 2. As used in this paragraph, the term "school supplies"
36 means pens, pencils, erasers, crayons, notebooks, notebook
37 filler paper, legal pads, composition books, poster paper,
38 scissors, cellophane tape, glue or paste, rulers, computer
39 disks, protractors, compasses, and calculators.
40 (2) This section does not apply to sales within a theme
41 park or entertainment complex as defined in s. 509.013(9),
42 Florida Statutes, within a public lodging establishment as
43 defined in s. 509.013(4), Florida Statutes, or within an airport
44 as defined in s. 330.27(2), Florida Statutes.
45 (3) Notwithstanding chapter 120, Florida Statutes, the
46 Department of Revenue may adopt rules to carry out this section.
47 Section 2. The sum of $210,540 is appropriated from the
48 General Revenue Fund to the Department of Revenue for purposes
49 of administering section 1.
50 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 69 CS Exemptions from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Meadows and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Noriega	Diez-Arguelles
2) Economic Development, Trade & Banking Committee	10 Y, 0 N	Olmedillo	Carlson
3) Fiscal Council		Noriega TN	Kelly CK
4)			
5)			

SUMMARY ANALYSIS

The bill broadens an existing sales tax exemption for industrial machinery and equipment purchased for use in an expanding facility engaged in spaceport activities or for use in an expanding manufacturing facility. The bill eliminates a requirement that the business pay the first $50,000 in sales taxes per calendar year on these types of purchases before the exemption applies. The effect of the bill is to provide a full, rather than partial, sales tax exemption for industrial machinery and equipment purchases when the business can demonstrate that the items will be used to increase productive output at the facility by at least 10 percent.

The bill also broadens an existing sales tax exemption for machinery and equipment purchased for use by new or expanding solid minerals, mining, or processing operations. Under current law, this exemption can only be taken as a credit against severance taxes due and the taxpayer must demonstrate the creation of a certain number of jobs. The bill removes these two requirements, placing these types of businesses in the same position as other new and expanding manufacturers.

In addition, this bill broadens an existing sales tax exemption for machinery and equipment purchased by an expanding business pursuant to federal procurement regulations by eliminating a requirement that the business pay the first $100,000 in sales tax per calendar year on these types of purchases before the exemption applies.

Finally, the bill provides Legislative findings and purpose about the importance of a competitive manufacturing business climate in Florida, including: the development of free-trade agreements with the Americas; the potential to add thousands of well-paying jobs in the state; to secure Florida's place in emerging markets in the world marketplace; and that with the potential for increasing exports, an investment in manufacturing today will mean significant long-term positive economic benefits to the state tomorrow.

The Revenue Estimating Conference has estimated that this bill will have a negative fiscal impact of $19.7 million to state government and $4.4 million to local governments in FY 2006-07, and of $21.4 million to state government and $4.7 million to local governments in FY 2007-08.

The bill has an effective date of July 1, 2006.

The bill provides an appropriation of $210,069 from the General Revenue Fund and four positions are authorized to the Department of Revenue.

This bill appears to be a mandate that requires a two-thirds vote of the membership of each house to pass.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill eliminates the sales tax paid on the purchase of machinery and equipment by expanding businesses.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of taxes on sales, use, and other transactions. This chapter also contains provisions for sales and use tax exemptions and credits applicable to certain items and under certain circumstances.

Industrial machinery and equipment purchased for exclusive use by a *new* business in spaceport activities or for use in a *new* business that manufactures, processes, compounds, or produces for sale items of tangible property at a fixed location are exempt from the tax imposed by ch. 212, F.S.[1] To avail itself of the exemption, a business must demonstrate to the Department of Revenue (DOR) that the machinery and equipment are used in this state. Additionally, a new business must purchase the machinery or equipment before the date the business initially begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

A similar, but partial, sales tax exemption is provided for industrial machinery and equipment used exclusively by an *expanding* facility that is engaged in spaceport activities or used in an *expanding* manufacturing facility that manufactures, processes, compounds, or produces for sale items of tangible personal property at a fixed location in this state. In these cases, however, the exemption applies to tax amounts in excess of $50,000 per calendar year on machinery and equipment purchases. Also, industrial machinery and equipment purchased by an expanding business pursuant to federal procurement regulations is exempt from sales tax in excess of $100,000 per calendar year.[2] In order for the exemption to apply to these expanding businesses, the businesses must demonstrate that the machinery and equipment are used to increase productive output by at least 10 percent.[3]

Machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations are entitled to the new or expanded business exemptions only by way of a credit against phosphate taxes paid.[4] In addition, in order to qualify for the exemption, a new mining business must create at least 100 new jobs in Florida; an expanding mining business with less than 2,500 jobs must increase the number of Florida jobs by at least 5 percent; and an expanding mining business with more than 2,500 jobs must increase the number of Florida jobs by at least 3 percent.[5]

When the industrial machinery and equipment are purchased for use in an expanding printing manufacturing facility, the $50,000 threshold does not apply, and the taxpayer does not have to pay any sales tax amounts related to the purchases.[6]

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[1] Section 212.08(5)(b)1., F.S. The term "spaceport activities" refers to activities directed or sponsored by the Florida Space Authority on spaceport territory through its power and duties under the Florida Space Authority Act (s. 212.02(22), F.S.).
[2] Section 212.08(5)(d), F.S.
[3] Section 212.08(5)(b)2.a., F.S.
[4] Section 212.08(5)(b)5., F.S.
[5] Section 212.0805, F.S.
[6] Section 212.08(5)(b)2.b., F.S.

To receive these exemptions, qualifying businesses must apply to DOR for temporary tax exemption permits. A business must maintain all books and records to support the exemption. DOR, upon an audit which determines that the business does not meet the criteria for the exemption, shall immediately collect from the business the amount of taxes exempted plus interest and any penalty.[7]

The term "industrial machinery and equipment" refers to "tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities."[8]

Proposed Changes

This bill provides that this act may be cited as the "Florida Manufacturing Global Competitiveness Act." The bill revises the existing sales and use tax exemption for industrial machinery and equipment purchased for exclusive use in an expanding facility that is engaged in spaceport activities or for use in an expanding manufacturing facility, by removing a limitation in the current law that the exemption applies solely to tax amounts above $50,000 per calendar year. The bill also removes the $100,000 threshold applicable to purchases of machinery and equipment pursuant to federal procurement regulations. The bill retains the requirement that the taxpayer demonstrate that the machinery and equipment will be used to increase productive output by at least 10 percent at the facility.

The bill removes the requirement that businesses involved in mining operations can only take the exemption as a credit against phosphate taxes due and repeals the requirement for job creation applicable to mining operations.

By eliminating the $50,000 threshold on the spaceport and the general manufacturing exemption, the bill has the effect of making a separately stated and specific exemption for printing manufacturing facilities redundant, as these printing facilities would now be captured within the general manufacturing exemption. Therefore, the bill deletes from current law the separately-stated and specific exemption for printing manufacturing facilities codified in s. 212.08(5)(b)2.b., F.S.

This bill also provides legislative findings and purpose about the importance of a competitive manufacturing business climate in Florida.

The bill has an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Provides that this act may be cited as the "Florida Manufacturing Global Competitiveness Act."

Section 2. Provides legislative findings and purpose.

Section 3. Amends s. 212.08, F.S., relating to sales tax exemptions for machinery and equipment.

Section 4. Repeals s. 212.0805, F.S., relating to the number of jobs that have to be created by a new or expanding mining operation in order to be entitled to a sales tax exemption.

Section 5. Appropriates $210,069 from the General Revenue Fund, and authorizes four positions to the Department of Revenue to implement the provisions of the act during FY 2006-07.

Section 6. Provides an effective date of July 1, 2006.

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[7] Section 212.08(5)(b)3.a.-c., F.S.
[8] Section 212.08(5)(b)6.a., F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	(19.7m)	(21.3m)
State Trust	(Insignificant)	(0.1m)
Total	(19.7m)	(21.4m)

2. Expenditures:

The bill provides an appropriation of $210,069 from the General Revenue Fund and four positions are authorized to DOR. Of the funds provided, $191,825 are recurring and $18,244 are nonrecurring.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	(0.6m)	(0.7m)
Local Gov't. Half Cent	(1.9m)	(2.0m)
Local Option	(1.9m)	(2.0m)
Total Local Impact	(4.4m)	(4.7m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses engaged in certain activities that purchase industrial machinery and equipment to expand productive output by 10 percent will not be subject to any sales tax on the purchase of such equipment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill will reduce the authority of counties to raise revenues in the aggregate through local option sales taxes by $1.9 million, as estimated by the Revenue Estimating Conference. As such, the mandates provision appears to apply to this bill and it does not seem to qualify for an exemption. Therefore, the bill should have a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR recommends technical amendments that revise the definition of "productive output," and that add definitions for "new business," and "expanding business" or "expanding facility."

In addition, DOR recommends an increase in the appropriation required to fund its four authorized positions. The recurring costs for these positions are now estimated to be $203,574, and the nonrecurring costs are now estimated to be $19,372. This reflects a total increase of $12,877 over the appropriation listed in the bill.

DOR also recommends changing the effective date to January 1, 2007, which will allow DOR sufficient time to properly inform all affected taxpayers about the changes in the exemptions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Finance and Tax Committee adopted an amendment to the bill. The amendment added that this act may be cited as the "Florida Manufacturing Global Competitiveness Act." In addition, the amendment provided legislative findings and purpose, which address the importance of a competitive manufacturing business climate in Florida.

This analysis reflects the changes contained in the amendment adopted by the Finance and Tax Committee.

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to exemptions from the tax on sales, use,
7 and other transactions; providing a short title; providing
8 legislative findings and purpose; amending s. 212.08,
9 F.S.; deleting an annual limitation on an exemption from
10 the sales tax for certain machinery and equipment used to
11 increase productive output; deleting an exemption for
12 machinery and equipment used to expand certain printing
13 manufacturing facilities or plant units; deleting a
14 limitation on application of the exemption for machinery
15 and equipment purchased for use in phosphate or other
16 solid minerals severance, mining, or processing operations
17 by way of a prospective credit; deleting an annual
18 limitation on an exemption from the sales tax for certain
19 machinery and equipment purchased under a federal
20 procurement contract; repealing s. 212.0805, F.S.,
21 relating to qualifications for the exemption and credit
22 for machinery and equipment purchased by an expanding
23 business for use in phosphate or other solid minerals

24 severance, mining, or processing operations; providing an
25 appropriation; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Short title.--This act may be cited as the
30 "Florida Manufacturing Global Competitiveness Act."
31 Section 2. Legislative findings and purpose.--The
32 Legislature finds that a competitive manufacturing business
33 climate is important given that the manufacturing sector
34 contributes significantly to the economy of this state, helping
35 the state to weather natural and manmade disasters; that the
36 development of free trade agreements with the Americas will
37 allow the state to be the gateway to increased international
38 trade that will expand the opportunities for manufacturing
39 exports, potentially add thousands of well-paying jobs in the
40 state, and secure this state's place in emerging markets in the
41 world marketplace; and that with the potential for increasing
42 exports, an investment in manufacturing today will mean
43 significant long-term positive economic benefits to the state
44 tomorrow.
45 Section 3. Paragraphs (b) and (d) of subsection (5) of
46 section 212.08, Florida Statutes, are amended to read:
47 212.08 Sales, rental, use, consumption, distribution, and
48 storage tax; specified exemptions.--The sale at retail, the
49 rental, the use, the consumption, the distribution, and the
50 storage to be used or consumed in this state of the following

51 are hereby specifically exempt from the tax imposed by this
52 chapter.
53 (5) EXEMPTIONS; ACCOUNT OF USE.--
54 (b) Machinery and equipment used to increase productive
55 output.--
56 1. Industrial machinery and equipment purchased for
57 exclusive use by a new business in spaceport activities as
58 defined by s. 212.02 or for use in new businesses which
59 manufacture, process, compound, or produce for sale items of
60 tangible personal property at fixed locations are exempt from
61 the tax imposed by this chapter upon an affirmative showing by
62 the taxpayer to the satisfaction of the department that such
63 items are used in a new business in this state. Such purchases
64 must be made prior to the date the business first begins its
65 productive operations, and delivery of the purchased item must
66 be made within 12 months of that date.
67 2.~~a.~~ Industrial machinery and equipment purchased for
68 exclusive use by an expanding facility which is engaged in
69 spaceport activities as defined by s. 212.02 or for use in
70 expanding manufacturing facilities or plant units which
71 manufacture, process, compound, or produce for sale items of
72 tangible personal property at fixed locations in this state are
73 exempt from any amount of tax imposed by this chapter ~~in excess~~
74 ~~of $50,000 per calendar year~~ upon an affirmative showing by the
75 taxpayer to the satisfaction of the department that such items
76 are used to increase the productive output of such expanded
77 facility or business by not less than 10 percent.

78 ~~b. Notwithstanding any other provision of this section,~~
79 ~~industrial machinery and equipment purchased for use in~~
80 ~~expanding printing manufacturing facilities or plant units that~~
81 ~~manufacture, process, compound, or produce for sale items of~~
82 ~~tangible personal property at fixed locations in this state are~~
83 ~~exempt from any amount of tax imposed by this chapter upon an~~
84 ~~affirmative showing by the taxpayer to the satisfaction of the~~
85 ~~department that such items are used to increase the productive~~
86 ~~output of such an expanded business by not less than 10 percent.~~
87 3.a. To receive an exemption provided by subparagraph 1.
88 or subparagraph 2., a qualifying business entity shall apply to
89 the department for a temporary tax exemption permit. The
90 application shall state that a new business exemption or
91 expanded business exemption is being sought. Upon a tentative
92 affirmative determination by the department pursuant to
93 subparagraph 1. or subparagraph 2., the department shall issue
94 such permit.
95 b. The applicant shall be required to maintain all
96 necessary books and records to support the exemption. Upon
97 completion of purchases of qualified machinery and equipment
98 pursuant to subparagraph 1. or subparagraph 2., the temporary
99 tax permit shall be delivered to the department or returned to
100 the department by certified or registered mail.
101 c. If, in a subsequent audit conducted by the department,
102 it is determined that the machinery and equipment purchased as
103 exempt under subparagraph 1. or subparagraph 2. did not meet the
104 criteria mandated by this paragraph or if commencement of
105 production did not occur, the amount of taxes exempted at the

106 time of purchase shall immediately be due and payable to the
107 department by the business entity, together with the appropriate
108 interest and penalty, computed from the date of purchase, in the
109 manner prescribed by this chapter.
110 d. In the event a qualifying business entity fails to
111 apply for a temporary exemption permit or if the tentative
112 determination by the department required to obtain a temporary
113 exemption permit is negative, a qualifying business entity shall
114 receive the exemption provided in subparagraph 1. or
115 subparagraph 2. through a refund of previously paid taxes. No
116 refund may be made for such taxes unless the criteria mandated
117 by subparagraph 1. or subparagraph 2. have been met and
118 commencement of production has occurred.
119 4. The department shall adopt rules governing applications
120 for, issuance of, and the form of temporary tax exemption
121 permits; provisions for recapture of taxes; and the manner and
122 form of refund applications and may establish guidelines as to
123 the requisites for an affirmative showing of increased
124 productive output, commencement of production, and qualification
125 for exemption.
126 5. The exemptions provided in subparagraphs 1. and 2. do
127 not apply to machinery or equipment purchased or used by
128 electric utility companies, communications companies, oil or gas
129 exploration or production operations, publishing firms that do
130 not export at least 50 percent of their finished product out of
131 the state, any firm subject to regulation by the Division of
132 Hotels and Restaurants of the Department of Business and
133 Professional Regulation, or any firm which does not manufacture,

134 process, compound, or produce for sale items of tangible
135 personal property or which does not use such machinery and
136 equipment in spaceport activities as required by this paragraph.
137 The exemptions provided in subparagraphs 1. and 2. shall apply
138 to machinery and equipment purchased for use in phosphate or
139 other solid minerals severance, mining, or processing operations
140 ~~only by way of a prospective credit against taxes due under~~
141 ~~chapter 211 for taxes paid under this chapter on such machinery~~
142 ~~and equipment~~.
143 6. For the purposes of the exemptions provided in
144 subparagraphs 1. and 2., these terms have the following
145 meanings:
146 a. "Industrial machinery and equipment" means tangible
147 personal property or other property that has a depreciable life
148 of 3 years or more and that is used as an integral part in the
149 manufacturing, processing, compounding, or production of
150 tangible personal property for sale or is exclusively used in
151 spaceport activities. A building and its structural components
152 are not industrial machinery and equipment unless the building
153 or structural component is so closely related to the industrial
154 machinery and equipment that it houses or supports that the
155 building or structural component can be expected to be replaced
156 when the machinery and equipment are replaced. Heating and air-
157 conditioning systems are not industrial machinery and equipment
158 unless the sole justification for their installation is to meet
159 the requirements of the production process, even though the
160 system may provide incidental comfort to employees or serve, to
161 an insubstantial degree, nonproduction activities. The term

162 includes parts and accessories only to the extent that the
163 exemption thereof is consistent with the provisions of this
164 paragraph.
165 b. "Productive output" means the number of units actually
166 produced by a single plant or operation in a single continuous
167 12-month period, irrespective of sales. Increases in productive
168 output shall be measured by the output for 12 continuous months
169 immediately following the completion of installation of such
170 machinery or equipment over the output for the 12 continuous
171 months immediately preceding such installation. However, if a
172 different 12-month continuous period of time would more
173 accurately reflect the increase in productive output of
174 machinery and equipment purchased to facilitate an expansion,
175 the increase in productive output may be measured during that
176 12-month continuous period of time if such time period is
177 mutually agreed upon by the Department of Revenue and the
178 expanding business prior to the commencement of production;
179 provided, however, in no case may such time period begin later
180 than 2 years following the completion of installation of the new
181 machinery and equipment. The units used to measure productive
182 output shall be physically comparable between the two periods,
183 irrespective of sales.
184 (d) Machinery and equipment used under federal procurement
185 contract.--
186 1. Industrial machinery and equipment purchased by an
187 expanding business which manufactures tangible personal property
188 pursuant to federal procurement regulations at fixed locations
189 in this state are ~~partially~~ exempt from the tax imposed in this

190 chapter ~~on that portion of the tax which is in excess of~~
191 ~~$100,000 per calendar year~~ upon an affirmative showing by the
192 taxpayer to the satisfaction of the department that such items
193 are used to increase the implicit productive output of the
194 expanded business by not less than 10 percent. The percentage of
195 increase is measured as deflated implicit productive output for
196 the calendar year during which the installation of the machinery
197 or equipment is completed or during which commencement of
198 production utilizing such items is begun divided by the implicit
199 productive output for the preceding calendar year. In no case
200 may the commencement of production begin later than 2 years
201 following completion of installation of the machinery or
202 equipment.
203 2. The amount of the exemption allowed shall equal the
204 taxes otherwise imposed by this chapter ~~in excess of $100,000~~
205 ~~per calendar year~~ on qualifying industrial machinery or
206 equipment reduced by the percentage of gross receipts from cost-
207 reimbursement type contracts attributable to the plant or
208 operation to total gross receipts so attributable, accrued for
209 the year of completion or commencement.
210 3. The exemption provided by this paragraph shall inure to
211 the taxpayer only through refund of previously paid taxes. Such
212 refund shall be made within 30 days of formal approval by the
213 department of the taxpayer's application, which application may
214 be made on an annual basis following installation of the
215 machinery or equipment.
216 4. For the purposes of this paragraph, the term:

217 a. "Cost-reimbursement type contracts" has the same
218 meaning as in 32 C.F.R. s. 3-405.
219 b. "Deflated implicit productive output" means the product
220 of implicit productive output times the quotient of the national
221 defense implicit price deflator for the preceding calendar year
222 divided by the deflator for the year of completion or
223 commencement.
224 c. "Eligible costs" means the total direct and indirect
225 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
226 general and administrative costs, selling expenses, and profit,
227 defined by the uniform cost-accounting standards adopted by the
228 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
229 2168.
230 d. "Implicit productive output" means the annual eligible
231 costs attributable to all contracts or subcontracts subject to
232 federal procurement regulations of the single plant or operation
233 at which the machinery or equipment is used.
234 e. "Industrial machinery and equipment" means tangible
235 personal property or other property that has a depreciable life
236 of 3 years or more, that qualifies as an eligible cost under
237 federal procurement regulations, and that is used as an integral
238 part of the process of production of tangible personal property.
239 A building and its structural components are not industrial
240 machinery and equipment unless the building or structural
241 component is so closely related to the industrial machinery and
242 equipment that it houses or supports that the building or
243 structural component can be expected to be replaced when the
244 machinery and equipment are replaced. Heating and air-

245 conditioning systems are not industrial machinery and equipment
246 unless the sole justification for their installation is to meet
247 the requirements of the production process, even though the
248 system may provide incidental comfort to employees or serve, to
249 an insubstantial degree, nonproduction activities. The term
250 includes parts and accessories only to the extent that the
251 exemption of such parts and accessories is consistent with the
252 provisions of this paragraph.
253 f. "National defense implicit price deflator" means the
254 national defense implicit price deflator for the gross national
255 product as determined by the Bureau of Economic Analysis of the
256 United States Department of Commerce.
257 5. The exclusions provided in subparagraph (b)5. apply to
258 this exemption. This exemption applies only to machinery or
259 equipment purchased pursuant to production contracts with the
260 United States Department of Defense and Armed Forces, the
261 National Aeronautics and Space Administration, and other federal
262 agencies for which the contracts are classified for national
263 security reasons. In no event shall the provisions of this
264 paragraph apply to any expanding business the increase in
265 productive output of which could be measured under the
266 provisions of sub-subparagraph (b)6.b. as physically comparable
267 between the two periods.
268 Section 4. Section 212.0805, Florida Statutes, is
269 repealed.
270 Section 5. For the 2006-2007 fiscal year, the sum of
271 $210,069 is appropriated from the General Revenue Fund and four
272 positions are authorized to the Department of Revenue for the

273 purpose of implementing the provisions of this act. Of the funds
274 provided, $191,825 are recurring and $18,244 are nonrecurring
275 funds.
276 Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 237 CS Continued Employment Requirements/Law Enforcement Personnel
SPONSOR(S): Berfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	4 Y, 0 N, w/CS	Mitchell	Williamson
2) Insurance Committee	17 Y, 0 N	Callaway	Cooper
3) Fiscal Council		Dobbs	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

HB 237 requires law enforcement officers, as well as correctional officers and correctional probation officers who are not currently subject to this requirement, to pass the physical examination that is required prior to employment or appointment in order to be eligible for the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

HB 237 also provides specific authority for employing agencies to set tobacco-use standards for law enforcement officers, correctional officers, and correctional probation officers.

The bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – This bill changes the entitlement that law enforcement officers, correctional officers, and correctional probation officers have to the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

B. EFFECT OF PROPOSED CHANGES:

Disability Presumptions

Section 112.18, Florida Statutes, provides that "any condition or impairment of health" caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to be accidental and to have been suffered in the line of duty for firefighters,[1] law enforcement officers,[2] correctional officers,[3] or correctional probation officers.[4] This presumption may be rebutted by "competent evidence."[5]

Correctional officers and correctional probation officers are entitled to this presumption without a physical examination.[6] Firefighters and law enforcement officers, however, must successfully pass a physical examination "upon entering into such service" as a firefighter or law enforcement officer.[7]

The timing of the "upon entering into such service" examination requirement generally is interpreted in one of two ways: (1) the *first* point in time when a person first begins to work as a firefighter or law enforcement officer; or (2) the point in time when a person begins to work for a particular agency or employer as a firefighter or law enforcement officer.[8]

The potential conflict between the two interpretations becomes particularly evident in light of section 943.13(6), Florida Statutes, which requires officers to pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner. Although this section is silent as to the timing of the examination, the Criminal Justice Standards and Training Commission is authorized to establish the "specifications" for the examination, which it has done through rule 11B-27.002(1)(d), *Florida Administrative Code*, requiring the completion of a physician's assessment with each new employment or appointment of an officer. This rule also prohibits an employing agency from using a physician's assessment that was prepared for another employing agency.

HB 237 resolves the potential conflict in the timing of the examination for purposes of the presumption in section 112.18, Florida Statutes, by adding an eligibility requirement to the examination required by section 943.13(6), Florida Statutes. To be eligible for the presumption, the bill requires law

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[1] The firefighter must be a Florida state, municipal, county, port authority, special tax district, or fire control district firefighter.
[2] Fla. Stat. § 943.10(1) (2005).
[3] Fla. Stat. § 943.10(2) (2005).
[4] Fla. Stat. § 943.10(3) (2005).
[5] Fla. Stat. § 112.18(1) (2005).
[6] *State v. Reese*, 911 So.2d 1291 (1st DCA 2005) (holding that the plain language of the statutes does not require completion of a pre-employment physical as a condition precedent to the entitlement to the statutory presumption as is the case with firefighters and law enforcement officers).
[7] Fla. Stat. § 112.18(1) (2005).
[8] There appears to be only one case which has interpreted this examination requirement, *Cumbie v. City of Milton*, 496 So.2d 923 (1st DCA 1986). In *Cumbie*, a firefighter who did not undergo a physical examination "upon entering his employment" was not entitled to the statutory presumption in section 112.18, Florida Statutes. Yet, interpreting the phrase "upon entering into such service" as "upon entering his employment" does not resolve the two conflicting timing interpretations since both points of time were the same in *Cumbie*.

enforcement officers, correctional officers, and correctional probation officers[9] to successfully pass this required employment/appointment examination with no evidence of tuberculosis, heart disease, or hypertension upon entering into service with the employing agency[10]. This change is particularly significant for correctional officers and correctional probation officers, who are not currently required to have physical examinations in order to receive the presumption in section 112.18, Florida Statutes. The bill also prohibits the use of a physical examination from a former employing agency for purposes of claiming the presumption.

Application of the Revised Eligibility Requirements

Although the bill is silent as to whether the changes that effect the operation of section 112.18, Florida Statutes, apply retroactively or prospectively, these changes are classified as either "procedural" or "substantive." Procedural amendments apply retroactively since there is no vested right in any given procedure.[11] For example, adding officers to the list of employees entitled to the statutory presumption was a procedural enactment.[12] Thus, to the extent that this change can be characterized as a "burden of proof enactment," it is a procedural change and will apply retroactively unless otherwise limited. Yet, to the extent this change affects duties and rights or impacts benefits that may be received or the entitlement to services, it may be substantive and only apply prospectively.

Tobacco Use Standards

Section 943.137, Florida Statutes, allows employing agencies to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed certain minimum requirements. According to the Florida Department of Law Enforcement, employing agencies can establish tobacco-use policies under the authority of this section.[13] This bill, however, specifically provides the authority to set tobacco-use standards under this section.

C. SECTION DIRECTORY:

Section 1: Adds paragraph (b) to subsection (6) of section 943.13, Florida Statutes, to revise the operation of the presumption in section 112.18, Florida Statutes.

Section 2: Amends subsection (1) of section 943.137, Florida Statutes, authorizing the establishment of tobacco use standards.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[9] Fla. Stat. § 943.10(1), (2), & (3) (2005).
[10] Fla. Stat. § 943.10(4) (2005).
[11] *Litvin v. St. Lucie County Sheriff's Dep't*, 599 So.2d 1353 (Fla. 1st DCA), rev. denied, 613 So.2d 6 (Fla.1992), cert. denied, 508 U.S. 913, 113 S.Ct. 2350, 124 L.Ed.2d 258 (1993).
[12] *State v. Reese*, 911 So.2d 1291 (1st DCA 2005)
[13] Fla. Dep't of Law Enforcement., HB 237 (2006) Staff Analysis (Oct. 27, 2005) (on file with dep't).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Changing Section 112.18, Florida Statutes, Instead

The effect of the change to section 943.13(6)(b) is to change the operation of the presumption provided in section 112.18, Florida Statutes. As such, the sponsor may wish to consider making these changes directly in section 112.18, Florida Statutes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Governmental Operations committee adopted a strike-everything amendment which revises and places the two provisions of the bill in separate sections:

- The amendment provides that the physical examination required for employment or appointment as a law enforcement officer, correctional officer, or correctional probation officer must be successfully passed in order to be eligible for the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

- The amendment also provides specific authority for employing agencies to set tobacco-use standards.

The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to employment requirements for law enforcement personnel; amending s. 943.13, F.S.; revising the presumption of disability for certain law enforcement, correctional, and correctional probation officers; amending s. 943.137, F.S.; authorizing establishment of tobacco-use standards; providing an effective date.

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

Section 1. Subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.--On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time,

24 or auxiliary correctional officer by a private entity under
25 contract to the Department of Corrections, to a county
26 commission, or to the Department of Management Services shall:
27 (6)(a) Have passed a physical examination by a licensed
28 physician, physician assistant, or certified advanced registered
29 nurse practitioner, based on specifications established by the
30 commission.
31 (b) In order to be eligible for the presumption set forth
32 in s. 112.18 while employed as a law enforcement officer,
33 correctional officer, or correctional probation officer with an
34 employing agency, have successfully passed the physical
35 examination required by paragraph (a) upon entering into service
36 as a law enforcement officer, correctional officer, or
37 correctional probation officer with the employing agency, which
38 examination must have failed to reveal any evidence of
39 tuberculosis, heart disease, or hypertension. In no event may a
40 law enforcement officer, correctional officer, or correctional
41 probation officer use a physical examination from a former
42 employing agency for purposes of claiming the presumption set
43 forth in s. 112.18 against the current employing agency.
44 Section 2. Subsection (1) of section 943.137, Florida
45 Statutes, is amended to read:
46 943.137 Establishment of qualifications and standards
47 above the minimum.--
48 (1) Nothing herein may be construed to preclude an
49 employing agency from establishing qualifications and standards
50 for employment, appointment, training, or promotion of officers

51 that exceed the minimum requirements set by ss. 943.13 and
52 943.17, including establishing tobacco-use standards.
53 Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 241 CS Florida KidCare Program
SPONSOR(S): Vana and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	8 Y, 0 N, w/CS	Brown-Barrios	Brown-Barrios
2) Health Care Appropriations Committee	15 Y, 0 N	Speir	Massengale
3) Fiscal Council		Speir	Kelly
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The Florida KidCare Program was created in 1998 to provide health benefits to uninsured children through the State Children's Health Insurance Program (SCHIP) or Medicaid. KidCare has four program components: Medicaid, Medikids, Florida Healthy Kids, and the Children's Medical Services (CMS) Network. Participation by children in these components is contingent on age, family income, and special health care needs.

House Bill 241 CS amends section 409.814, Florida Statutes, to allow a child ineligible to participate in the Medikids or Florida Healthy Kids components to participate if the family pays the full premium without any premium assistance. These children are known as "full-pays."

The bill requires the Agency for Health Care Administration to begin enrollment of full-pays by July 1, 2006.

The bill has no fiscal impact on state or local government.

If enacted, the bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families—The bill creates an opportunity for certain families to secure health insurance coverage for their children.

B. EFFECT OF PROPOSED CHANGES:

The Florida KidCare Program was created in 1998 to provide health benefits to uninsured children through the State Children's Health Insurance Program or Medicaid. KidCare has four program components: Medicaid, Medikids, Florida Healthy Kids, and the Children's Medical Services (CMS) Network. Participation by children in these components is contingent on age, family income, and special health care needs.

In order to be eligible for the subsidized portion of KidCare, a child must be a United States citizen or a qualified alien, under age 19, and have a family income that is equal to or less than 200% of the federal poverty level. Further the child cannot be:

1. Eligible for coverage under a state health benefit plan on the basis of a family member's employment with a public agency in the state.
2. Eligible for a family member's group health benefit plan or under other employer health insurance coverage, provided that the cost of the child's participation is not greater than 5 percent of the family's income.
3. An inmate of a public institution or a patient in an institution for mental diseases, or
4. A child who has had his or her coverage in an employer-sponsored health benefit plan voluntarily canceled in the last 6 months.

Section 409.814 (5), F.S., allows children that are not eligible to participate in KidCare to participate in a component, except Medicaid, if their family pays the full cost of the premium, including administrative costs. These children are known as "full-pays" and the statute limits them to no more than 10 percent of the total enrollment in each component.

This bill amends s. 409.814 (5) to state that full pays may participate in Medikids or the Florida Healthy Kids program. This eliminates the possibility for children to participate in the CMS network as a full-pay, although there has never been a full-pay in the CMS network because of the enormous premium that a family would have to pay.

The Florida Healthy Kids program, which serves children ages 5 -18, is the only component that has enrolled full-pays. The Agency for Health Care Administration administers the Medikids component that serves children ages 1 – 4, and they have chosen not to enroll any children as full-pays.

This has led to a situation where children from the same family are treated differently. The family can purchase health insurance for their child who is old enough for the Florida Healthy Kids program but not for their child that is in the Medikids age group. This bill requires AHCA to begin enrolling full-pays by July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends subsection (5) of section 409.814, F.S.

Section 2. Requires the Agency for Health Care Administration to begin enrolling full-pays by July 1, 2006.

Section 3. Establishes an effective date for the act of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers, including health maintenance organizations, which arrange most of the health services for children enrolled in Medikids, should realize an increase in revenue as a result of increased enrollment by families that are willing to pay the full premium.

Children with families above 200 percent of the FPL or who are not otherwise eligible for premium assistance must pay the full premium, including administrative costs, without any premium assistance to participate in Medikids or Healthy Kids.

D. FISCAL COMMENTS:

AHCA would need to obtain actuarial services to calculate an appropriate Medikids premium for the full-pay option that would support the cost of services, reinsurance, and other administrative costs.

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:

Sufficient rulemaking authority exists to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is an apparent conflict between the requirement to enroll children in the full-pay option by July 1, 2006, and the effective date of the bill, which also is July 1, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care General Committee adopted one amendment to the bill. The amendment:

- Amends s. 409.814, F.S., to allow a family with a child who is not eligible for the Medikids or Healthy Kids program because the family income is above 200 percent of the Federal Poverty Level (FPL) or because the child is not eligible for other reasons delineated in statute to participate in these programs, if the family pays the full premium without any premium assistance.
- Requires AHCA to begin enrollment of children from families with income above 200 percent of the FPL or children not eligible for premium assistance in Medikids by July 1, 2006.

As amended, the bill was reported favorably as a committee substitute.

This analysis reflects the bill as amended.

CHAMBER ACTION

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1 The Health Care General Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Florida KidCare program; amending
7 s. 409.814, F.S.; providing for certain children who are
8 ineligible to participate in the Florida KidCare program
9 to be eligible for the Medikids program or the Florida
10 Healthy Kids program; requiring that the Agency for Health
11 Care Administration begin enrollment under the revised
12 program criteria by a specified date; providing an
13 effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsection (5) of section 409.814, Florida
18 Statutes, is amended to read:
19 409.814 Eligibility.--A child who has not reached 19 years
20 of age whose family income is equal to or below 200 percent of
21 the federal poverty level is eligible for the Florida KidCare
22 program as provided in this section. For enrollment in the
23 Children's Medical Services Network, a complete application

24 includes the medical or behavioral health screening. If,
25 subsequently, an individual is determined to be ineligible for
26 coverage, he or she must immediately be disenrolled from the
27 respective Florida KidCare program component.
28 (5) A child whose family income is above 200 percent of
29 the federal poverty level or a child who is excluded under the
30 provisions of subsection (4) may participate in the Medikids
31 program as provided in s. 409.8132 or, if the child is
32 ineligible for Medikids by reason of age, in the Florida Healthy
33 Kids program ~~Florida KidCare program~~, ~~excluding the Medicaid~~
34 ~~program, but is~~ subject to the following provisions:
35 (a) The family is not eligible for premium assistance
36 payments and must pay the full cost of the premium, including
37 any administrative costs.
38 (b) The agency is authorized to place limits on enrollment
39 in Medikids by these children in order to avoid adverse
40 selection. The number of children participating in Medikids
41 whose family income exceeds 200 percent of the federal poverty
42 level must not exceed 10 percent of total enrollees in the
43 Medikids program.
44 (c) The board of directors of the Florida Healthy Kids
45 Corporation is authorized to place limits on enrollment of these
46 children in order to avoid adverse selection. In addition, the
47 board is authorized to offer a reduced benefit package to these
48 children in order to limit program costs for such families. The
49 number of children participating in the Florida Healthy Kids
50 program whose family income exceeds 200 percent of the federal

51 poverty level must not exceed 10 percent of total enrollees in
52 the Florida Healthy Kids program.
53 (d) Children described in this subsection are not counted
54 in the annual enrollment ceiling for the Florida KidCare
55 program.
56 Section 2. The Agency for Health Care Administration shall
57 begin enrollment under s. 409.814(5), Florida Statutes, as
58 amended by this act, by July 1, 2006.
59 Section 3. This act shall take effect July 1, 2006.

HB 381

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381 Firefighter Pensions
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 0 N	Mitchell	Williamson
2) Local Government Council	7 Y, 0 N	Nelson	Hamby
3) Fiscal Council		Dobbs DD	Kelly CK
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill expands the statutory definition of "special fire control district" to include community development districts that perform fire suppression and related services so that these entities may establish Chapter 175 pension plans for their firefighters and become eligible for state premium tax revenues to assist in the funding of such plans.

The bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families

This bill may facilitate the creation of a pension plan for firefighters employed by a community development district providing fire suppression services.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Development Districts

Chapter 190, F.S., the "Uniform Community Development District Act of 1980," sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.[1] There currently are 381 active CDDs in Florida.[2]

Among the general powers granted to a CDD include the authority to: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.[3]

CDDs also have special powers related to the following systems, facilities and basic infrastructures: water management, water supply, sewer, wastewater management, roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas and wildlife habitat.[4]

Additionally, CDDs can be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; and waste collection and disposal.[5]

The number of community development districts providing fire prevention and control ("Fire CDDs") in existence is not available from the Department of Management Services, the Special District Information Program of the Department of Community Affairs, or the State Fire Marshal and, thus, unknown. However, it is estimated that only a small number of these entities exist.[6] The pay and benefits of any firefighter working for a Fire CDD are determined by the Fire CDD.

Municipal and Special District Firefighter Pensions

Chapter 175, F.S., sets forth the minimum benefits and standards for municipal and special district firefighter pension plans. This chapter creates a purely voluntary program whereby these local

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[1] Section 190.002, F.S.
[2] Fla. Dep't of Comm'y Aff., Div. of Hous. and Comm'y Dev., Special Dist. Info. Program, *Create Your Own List of Special Districts* (search "community development" under "Functions to Include")(visited Mar. 14, 2005) <http://www.floridaspecialdistricts.org/ OfficialList/criteria.asp>.
[3] Section 190.011, F.S.
[4] Section 190.012(1), F.S.
[5] Section 190.012(2), F.S.
[6] Conversations and e-mails with attorneys representing CDDs (Jan. and Feb. 2005).

governments may receive state-collected taxes, imposed on property insurance premiums, with which to fund retirement programs for local firefighters.[7] There currently are 20 special fire control districts and 159 municipalities that have established Chapter 175 plans.[8] These plans had revenues of approximately $66,319,992 in 2004; $5,096,380 of those revenues were generated by special fire control districts.[9]

Section 175.032 (16), F.S., defines "special fire control district" to mean "a special district, as defined in s. 189.403(1), F.S., established for the purposes of extinguishing fires, protecting life, and protecting property within the incorporated or unincorporated portions of any county or combination of counties, or within any combination of incorporated and unincorporated portions of any county or combination of counties. The term does not include any dependent or independent special district, as defined in s. 189.403(2) and (3), respectively, the employees of which are members of the Florida Retirement System pursuant to s. 121.051(1) or (2)."

The following sources provide funding for the firefighters' pension trust fund:

- payment from the "premium tax"—the net proceeds of the 1.85-percent excise upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies covering real or personal property within the legal boundaries of the municipality/special fire control district;
- payment of a designated percentage deducted from the salary of each uniformed firefighter;
- payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;
- mandatory payment from the municipality/special fire control district of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of ch. 112, F.S.;
- all gifts, bequests and devises when donated;
- all increases in the fund by way of interest or dividends on bank deposits; and
- other sources or income authorized by law for the augmentation of such firefighters' pension trust fund.[10]

Chapter 175, F.S., provides requirements for the retirement,[11] disability,[12] death[13] and presumed injuries[14] of municipality/fire control special district firefighters under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter pension plan of a municipality/special fire control district.[15] Actuarial deficits are not, however, obligations of the State of Florida.[16]

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[7] See, The City of Orlando v. State of Florida Department of Insurance, 528 So. 2d 468 (Fla. 1st DCA 1988).
[8] Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).
[9] *Id.*
[10] Section 175.091, F.S.
[11] Section 175.162, F.S.
[12] Section 175.191, F.S.
[13] Section 175.201, F.S.
[14] Section 175.231, F.S. (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal).
[15] Section 175.341, F.S.
[16] Section 175.051, F.S..

Effect of Proposed Changes

This bill expands the Chapter 175 definition of "special fire control district" to include community development districts that perform fire suppression and related services. As a result, these entities may establish Chapter 175 pension plans for their firefighters and become eligible for state premium tax revenues to assist in the funding of such plans. Only those CDDs that have their own fire departments and equipment, as provided in s. 175.041, F.S., and actually employ their own firefighters will qualify.

CDDs may not exercise the special powers of "fire prevention and control" without the consent of the appropriate local government.[17] Therefore, it is assumed that there will not be a conflict between these entities and municipal or special fire control districts over premium tax revenues.[18]

C. SECTION DIRECTORY:

Section 1: Amends subsection (16) of s. 175.032, F.S., to amend the definition of "special fire control district."

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies are obligated to report and remit the excise tax on property insurance premiums pursuant to s. 175.101, F.S. These companies may be impacted by the addition of a new entity authorized to receive these taxes.

D. FISCAL COMMENTS:

None.

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[17] Section 190.012(2)(b), F.S.

[18] Department of Management Services, Substantive Bill Analysis for HB 381, dated November 25, 2005, on file with the Local Government Council.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Authority to Collect the Tax on Property Insurance Premiums

The Department of Management Services has suggested that ch. 190, F.S., which governs CDDs, may need to be amended to give CDDs the authority to levy the premium tax.[19] Although s. 175.101(1), F.S., provides that each special fire control district "may assess and impose" the premium tax, the sponsor may wish to consider the following amendment to s. 190.011, F.S.:

(17) To assess and impose the state excise tax authorized under s. 175.101, if exercising the powers permitted under s. 190.012(2)(b).

Different Types of Districts

CDDs and special fire control districts are different types of independent special districts which are governed by two different chapters of the Florida Statutes: chs.190 and 191, respectively. This bill, however, includes certain CDDs in the definition of special fire control district for purposes of ch. 175, F.S. Given the different legal and statutory status of these two types of districts, it would be better to define and provide for CDDs throughout the chapter. Yet, given the unknown and anticipated low number of Fire CDDs, such a substantial amendment to ch.175, F.S., may not be warranted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[19] Ibid.

1 A bill to be entitled
2 An act relating to firefighter pensions; amending s.
3 175.032, F.S.; revising the definition of the term
4 "special fire control district" to include certain
5 community development districts performing fire
6 suppression and related services; providing an effective
7 date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsection (16) of section 175.032, Florida
12 Statutes, is amended to read:
13 175.032 Definitions.--For any municipality, special fire
14 control district, chapter plan, local law municipality, local
15 law special fire control district, or local law plan under this
16 chapter, the following words and phrases have the following
17 meanings:
18 (16) "Special fire control district" means a special
19 district, as defined in s. 189.403(1), established for the
20 purposes of extinguishing fires, protecting life, and protecting
21 property within the incorporated or unincorporated portions of
22 any county or combination of counties, or within any combination
23 of incorporated and unincorporated portions of any county or
24 combination of counties. <u>The term includes community development</u>
25 <u>districts providing fire suppression and related services</u>
26 <u>pursuant to s. 190.012(2)(b).</u> The term does not include any
27 dependent or independent special district, as defined in s.
28 189.403(2) and (3), respectively, the employees of which are

29 members of the Florida Retirement System pursuant to s.
30 121.051(1) or (2).
31 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 421 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	5 Y, 0 N	Noriega	Diez-Arguelles
2) Economic Development, Trade & Banking Committee			
3) Fiscal Council		Noriega	Kelly
4)			
5)			

SUMMARY ANALYSIS

This bill extends the repeal date for some, and removes the repeal date for other, provisions of law relating to tax exemptions for convention halls, exhibition halls, auditoriums, stadiums, theatres, arenas, civic centers, performing arts centers, and publicly owned recreational facilities.

The Revenue Estimating Conference has estimated that in both FY 2006-07 and FY 2007-08, this bill will have a negative fiscal impact of $3.8 million to state government and a negative fiscal impact of $0.9 million to local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill retains certain tax exemptions for certain facilities which are set to expire on July 1, 2006.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 212.031 and 212.04, F.S., contain several sales tax exemptions for certain leases, services, admissions, and fees associated with events at certain facilities. The following sales tax exemptions are scheduled to be repealed on July 1, 2006, pursuant to chapter 2002-218, L.O.F.:

- Section 212.031(1)(a)12., F.S., which provides an exemption from any tax to be paid to a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility that is renting, leasing, subleasing, or licensing use of the facility to a concessionaire for the sale of souvenirs, novelties, or other event-related products. The exemption applies only to that portion of the tax based on a percentage of sales and not based on a fixed price;

- Section 212.031(3), F.S., which requires that the tax due on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility for an event not lasting longer than 7 days be collected at the time of the payment for the rental, lease or license. However, the tax is not due to the Department of Revenue until the first day of the month following the last day of the event for which the payment is held. The payment is considered delinquent on the 21st day of that month;

- Section 212.031(10), F.S., which provides a tax exemption for rental or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use real property. This exemption includes charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing;

- Section 212.04(1)(b), F.S., which provides that for purposes of calculating the admissions tax, the sale price for admission is the price remaining after deduction of federal taxes and state or locally imposed or authorized seat surcharges, taxes, or fees, if any, imposed upon the admissions, and that the actual sale price does not include separately stated ticket service charges that are imposed and added to a separately stated, established ticket price;

- Section 212.04(2)(a)2.b., F.S., which grants an exemption for admission charges to an event that is sponsored 100 percent by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility. In order to be eligible, the governmental entity, sports authority, or sports commission must be responsible for: 100 percent of the risk of success or failure of the event, 100 percent of the funds at risk for the event, and must not exclusively use student or faculty talent. The terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax

under s. 501(c) (3) of the Internal Revenue Code and that contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts; and

- Section 212.04(3), F.S., which provides that the tax on the admission to an event scheduled at a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility shall be collected at the time of payment for admission. However, the tax is not due to the Department of Revenue until the first day of the month following the actual date of the event, and that the payment will be considered delinquent on the 21st day of that month.

Proposed Changes

The bill extends the repeal date of the following exemptions until July 1, 2009:

- Section 212.031(1)(a)12., F.S., which provides an exemption for souvenir concessionaires on the portion of the rental, lease, or license payment which is based on a percentage of sales and not based on a fixed price;

- Section 212.031(10), F.S., which provides a tax exemption for rental or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use real property; and

- Section 212.04(2)(a)2.b., F.S., which grants an exemption from admissions to events solely dependent on the government entity, sports authority, or sports commission sponsoring the event.

The bill deletes the repeal date permanently for the following exemptions:

- Section 212.031(3), F.S., which requires that the tax due on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility for an event not lasting longer than 7 days be collected at the time of the payment for the rental, lease or license. However, the tax is not due to the Department of Revenue until the first day of the month following the last day of the event for which the payment is held. The payment is considered delinquent on the 21st day of that month;

- Section 212.04(1)(b), F.S., which provides an exemption from state or locally imposed or authorized seat surcharges, taxes, or fees from the admissions tax; and

- Section 212.04(3), F.S., which provides that the tax on the admission to an event scheduled at a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility shall be collected at the time of payment for admission. However, the tax is not due to the Department of Revenue until the first day of the month following the actual date of the event, and that the payment will be considered delinquent on the 21st day of that month.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.031(1)(a)12., F.S., extending the repeal of certain tax exemptions from any tax to be paid by certain facilities renting, leasing, subleasing, or licensing to a concessionaire using the facility to sell souvenirs, novelties, or other event-related

products; saving s. 212.031(3), F.S., which addresses when the taxes are due, from repeal.

Section 2. Provides an extension for the repeal of s. 212.031(10), F.S., which addresses an exemption from tax on separately stated charges.

Section 3. Amends s. 212.04(1)(b), F.S., saving from repeal an exemption from admissions; amends s. 212.04(2)(a)2.b., F.S., extending the repeal of an exemption from admissions; saving s. 212.04(3), F.S., which addresses when the taxes are due, from repeal.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	($3.8m)	($3.8m)
State Trust	(Indeterminate)	(Indeterminate)
Total	($3.8m)	($3.8m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	($0.1m)	($0.1m)
Local Gov't. Half Cent	($0.4m)	($0.4m)
Local Option	($0.4m)	($0.4m)
Total Local Impact	($0.9m)	($0.9m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The facilities that are eligible for the sales tax exemptions addressed by this bill will continue to benefit because they do not have to pay a sales tax on certain items.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant, and therefore an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; amending s. 212.031, F.S.; continuing an
4 exemption from the tax on rental or license fees which is
5 provided for certain property rented, leased, or licensed
6 by a convention or exhibition hall, auditorium, stadium,
7 theater, arena, civic center, performing arts center, or
8 publicly owned recreational facility for a specified
9 period; providing for future repeal; postponing the repeal
10 of and reviving and readopting s. 212.031(10), F.S.,
11 relating to an exemption provided for certain charges
12 imposed by a convention or exhibition hall, auditorium,
13 stadium, theater, arena, civic center, performing arts
14 center, or publicly owned recreational facility upon a
15 lessee or licensee; providing for future repeal; amending
16 s. 212.04, F.S., relating to the tax on admissions;
17 continuing in effect a provision that excludes certain
18 service charges from the sale price or actual value of an
19 admission; continuing an exemption from the tax which is
20 provided for admission charges to an event sponsored by a
21 governmental entity, sports authority, or sports
22 commission; providing for future repeal; continuing in
23 effect provisions governing the remitting of certain
24 admission taxes to the Department of Revenue; providing an
25 effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (a) of subsection (1) of section
30 212.031, Florida Statutes, as amended by section 3 of chapter
31 2000-345, as amended by section 55 of chapter 2002-218, and as
32 amended by section 2 of chapter 2000-182, section 1 of chapter
33 2000-183, section 53 of chapter 2000-260, and section 27 of
34 chapter 2001-140, Laws of Florida, and subsection (3) of said
35 section, as amended by section 3 of chapter 2000-345, as amended
36 by section 55 of chapter 2002-218, Laws of Florida, are amended
37 to read:
38 212.031 Tax on rental or license fee for use of real
39 property.--
40 (1)(a) It is declared to be the legislative intent that
41 every person is exercising a taxable privilege who engages in
42 the business of renting, leasing, letting, or granting a license
43 for the use of any real property unless such property is:
44 1. Assessed as agricultural property under s. 193.461.
45 2. Used exclusively as dwelling units.
46 3. Property subject to tax on parking, docking, or storage
47 spaces under s. 212.03(6).
48 4. Recreational property or the common elements of a
49 condominium when subject to a lease between the developer or
50 owner thereof and the condominium association in its own right
51 or as agent for the owners of individual condominium units or
52 the owners of individual condominium units. However, only the
53 lease payments on such property shall be exempt from the tax
54 imposed by this chapter, and any other use made by the owner or
55 the condominium association shall be fully taxable under this
56 chapter.

57 5. A public or private street or right-of-way and poles,
58 conduits, fixtures, and similar improvements located on such
59 streets or rights-of-way, occupied or used by a utility or
60 provider of communications services, as defined by s. 202.11,
61 for utility or communications or television purposes. For
62 purposes of this subparagraph, the term "utility" means any
63 person providing utility services as defined in s. 203.012. This
64 exception also applies to property, wherever located, on which
65 the following are placed: towers, antennas, cables, accessory
66 structures, or equipment, not including switching equipment,
67 used in the provision of mobile communications services as
68 defined in s. 202.11. For purposes of this chapter, towers used
69 in the provision of mobile communications services, as defined
70 in s. 202.11, are considered to be fixtures.
71 6. A public street or road which is used for
72 transportation purposes.
73 7. Property used at an airport exclusively for the purpose
74 of aircraft landing or aircraft taxiing or property used by an
75 airline for the purpose of loading or unloading passengers or
76 property onto or from aircraft or for fueling aircraft.
77 8.a. Property used at a port authority, as defined in s.
78 315.02(2), exclusively for the purpose of oceangoing vessels or
79 tugs docking, or such vessels mooring on property used by a port
80 authority for the purpose of loading or unloading passengers or
81 cargo onto or from such a vessel, or property used at a port
82 authority for fueling such vessels, or to the extent that the
83 amount paid for the use of any property at the port is based on
84 the charge for the amount of tonnage actually imported or

85 exported through the port by a tenant.
86 b. The amount charged for the use of any property at the
87 port in excess of the amount charged for tonnage actually
88 imported or exported shall remain subject to tax except as
89 provided in sub-subparagraph a.
90 9. Property used as an integral part of the performance of
91 qualified production services. As used in this subparagraph,
92 the term "qualified production services" means any activity or
93 service performed directly in connection with the production of
94 a qualified motion picture, as defined in s. 212.06(1)(b), and
95 includes:
96 a. Photography, sound and recording, casting, location
97 managing and scouting, shooting, creation of special and optical
98 effects, animation, adaptation (language, media, electronic, or
99 otherwise), technological modifications, computer graphics, set
100 and stage support (such as electricians, lighting designers and
101 operators, greensmen, prop managers and assistants, and grips),
102 wardrobe (design, preparation, and management), hair and makeup
103 (design, production, and application), performing (such as
104 acting, dancing, and playing), designing and executing stunts,
105 coaching, consulting, writing, scoring, composing,
106 choreographing, script supervising, directing, producing,
107 transmitting dailies, dubbing, mixing, editing, cutting,
108 looping, printing, processing, duplicating, storing, and
109 distributing;
110 b. The design, planning, engineering, construction,
111 alteration, repair, and maintenance of real or personal property
112 including stages, sets, props, models, paintings, and facilities

113 principally required for the performance of those services
114 listed in sub-subparagraph a.; and
115 c. Property management services directly related to
116 property used in connection with the services described in sub-
117 subparagraphs a. and b.
118
119 This exemption will inure to the taxpayer upon presentation of
120 the certificate of exemption issued to the taxpayer under the
121 provisions of s. 288.1258.
122 10. Leased, subleased, licensed, or rented to a person
123 providing food and drink concessionaire services within the
124 premises of a convention hall, exhibition hall, auditorium,
125 stadium, theater, arena, civic center, performing arts center,
126 publicly owned recreational facility, or any business operated
127 under a permit issued pursuant to chapter 550. A person
128 providing retail concessionaire services involving the sale of
129 food and drink or other tangible personal property within the
130 premises of an airport shall be subject to tax on the rental of
131 real property used for that purpose, but shall not be subject to
132 the tax on any license to use the property. For purposes of
133 this subparagraph, the term "sale" shall not include the leasing
134 of tangible personal property.
135 11. Property occupied pursuant to an instrument calling
136 for payments which the department has declared, in a Technical
137 Assistance Advisement issued on or before March 15, 1993, to be
138 nontaxable pursuant to rule 12A-1.070(19)(c), Florida
139 Administrative Code; provided that this subparagraph shall only
140 apply to property occupied by the same person before and after

141 the execution of the subject instrument and only to those
142 payments made pursuant to such instrument, exclusive of renewals
143 and extensions thereof occurring after March 15, 1993.
144 12. Rented, leased, subleased, or licensed to a
145 concessionaire by a convention hall, exhibition hall,
146 auditorium, stadium, theater, arena, civic center, performing
147 arts center, or publicly owned recreational facility, during an
148 event at the facility, to be used by the concessionaire to sell
149 souvenirs, novelties, or other event-related products. This
150 subparagraph applies only to that portion of the rental, lease,
151 or license payment which is based on a percentage of sales and
152 not based on a fixed price. This subparagraph is repealed July
153 1, 2009.
154 13.~~12.~~ Property used or occupied predominantly for space
155 flight business purposes. As used in this subparagraph, "space
156 flight business" means the manufacturing, processing, or
157 assembly of a space facility, space propulsion system, space
158 vehicle, satellite, or station of any kind possessing the
159 capacity for space flight, as defined by s. 212.02(23), or
160 components thereof, and also means the following activities
161 supporting space flight: vehicle launch activities, flight
162 operations, ground control or ground support, and all
163 administrative activities directly related thereto. Property
164 shall be deemed to be used or occupied predominantly for space
165 flight business purposes if more than 50 percent of the
166 property, or improvements thereon, is used for one or more space
167 flight business purposes. Possession by a landlord, lessor, or
168 licensor of a signed written statement from the tenant, lessee,

169 or licensee claiming the exemption shall relieve the landlord,
170 lessor, or licensor from the responsibility of collecting the
171 tax, and the department shall look solely to the tenant, lessee,
172 or licensee for recovery of such tax if it determines that the
173 exemption was not applicable.
174 (3) The tax imposed by this section shall be in addition
175 to the total amount of the rental or license fee, shall be
176 charged by the lessor or person receiving the rent or payment in
177 and by a rental or license fee arrangement with the lessee or
178 person paying the rental or license fee, and shall be due and
179 payable at the time of the receipt of such rental or license fee
180 payment by the lessor or other person who receives the rental or
181 payment. Notwithstanding any other provision of this chapter,
182 the tax imposed by this section on the rental, lease, or license
183 for the use of a convention hall, exhibition hall, auditorium,
184 stadium, theater, arena, civic center, performing arts center,
185 or publicly owned recreational facility to hold an event of not
186 more than 7 consecutive days' duration shall be collected at the
187 time of the payment for that rental, lease, or license but is
188 not due and payable to the department until the first day of the
189 month following the last day that the event for which the
190 payment is made is actually held, and becomes delinquent on the
191 21st day of that month. The owner, lessor, or person receiving
192 the rent or license fee shall remit the tax to the department at
193 the times and in the manner hereinafter provided for dealers to
194 remit taxes under this chapter. The same duties imposed by this
195 chapter upon dealers in tangible personal property respecting
196 the collection and remission of the tax; the making of returns;

197 the keeping of books, records, and accounts; and the compliance
198 with the rules and regulations of the department in the
199 administration of this chapter shall apply to and be binding
200 upon all persons who manage any leases or operate real property,
201 hotels, apartment houses, roominghouses, or tourist and trailer
202 camps and all persons who collect or receive rents or license
203 fees taxable under this chapter on behalf of owners or lessors.
204 Section 2. Notwithstanding the provisions of section 3 of
205 chapter 2000-345, Laws of Florida, as amended by section 55 of
206 chapter 2002-218, Laws of Florida, subsection (10) of s.
207 212.031, Florida Statutes, shall not stand repealed on July 1,
208 2006, as scheduled by such laws, but that subsection is revived
209 and readopted. Subsection (10) of s. 212.031, Florida Statutes,
210 is repealed July 1, 2009.
211 Section 3. Paragraph (b) of subsection (1) and subsection
212 (3) of section 212.04, Florida Statutes, as amended by section 4
213 of chapter 2000-345, as amended by section 55 of chapter 2002-
214 218, Laws of Florida, and paragraph (a) of subsection (2) of
215 said section, as amended by section 4 of chapter 2000-345, as
216 amended by section 55 of chapter 2002-218, as amended by section
217 916 of chapter 2002-387, and as amended by section 24 of chapter
218 2000-158, and section 11 of chapter 2000-210, Laws of Florida,
219 are amended to read:
220 212.04 Admissions tax; rate, procedure, enforcement.--
221 (1)
222 (b) For the exercise of such privilege, a tax is levied at
223 the rate of 6 percent of sales price, or the actual value
224 received from such admissions, which 6 percent shall be added to

225 and collected with all such admissions from the purchaser
226 thereof, and such tax shall be paid for the exercise of the
227 privilege as defined in the preceding paragraph. Each ticket
228 must show on its face the actual sales price of the admission,
229 or each dealer selling the admission must prominently display at
230 the box office or other place where the admission charge is made
231 a notice disclosing the price of the admission, and the tax
232 shall be computed and collected on the basis of the actual price
233 of the admission charged by the dealer. The sale price or actual
234 value of admission shall, for the purpose of this chapter, be
235 that price remaining after deduction of federal taxes and state
236 or locally imposed or authorized seat surcharges, taxes, or
237 fees, if any, imposed upon such admission. The sale price or
238 actual value does not include separately stated ticket service
239 charges that are imposed by a facility ticket office or a
240 ticketing service and added to a separately stated, established
241 ticket price.~~, and~~ The rate of tax on each admission shall be
242 according to the brackets established by s. 212.12(9).
243 (2)(a)1. No tax shall be levied on admissions to athletic
244 or other events sponsored by elementary schools, junior high
245 schools, middle schools, high schools, community colleges,
246 public or private colleges and universities, deaf and blind
247 schools, facilities of the youth services programs of the
248 Department of Children and Family Services, and state
249 correctional institutions when only student, faculty, or inmate
250 talent is used. However, this exemption shall not apply to
251 admission to athletic events sponsored by a state university,
252 and the proceeds of the tax collected on such admissions shall

253 be retained and used by each institution to support women's
254 athletics as provided in s. 1006.71(2)(c).
255 2.a. No tax shall be levied on dues, membership fees, and
256 admission charges imposed by not-for-profit sponsoring
257 organizations. To receive this exemption, the sponsoring
258 organization must qualify as a not-for-profit entity under the
259 provisions of s. 501(c)(3) of the Internal Revenue Code of 1954,
260 as amended.
261 b. No tax shall be levied on admission charges to an event
262 sponsored by a governmental entity, sports authority, or sports
263 commission when held in a convention hall, exhibition hall,
264 auditorium, stadium, theater, arena, civic center, performing
265 arts center, or publicly owned recreational facility and when
266 100 percent of the risk of success or failure lies with the
267 sponsor of the event and 100 percent of the funds at risk for
268 the event belong to the sponsor, and student or faculty talent
269 is not exclusively used. As used in this sub-subparagraph, the
270 terms "sports authority" and "sports commission" mean a
271 nonprofit organization that is exempt from federal income tax
272 under s. 501(c)(3) of the Internal Revenue Code and that
273 contracts with a county or municipal government for the purpose
274 of promoting and attracting sports-tourism events to the
275 community with which it contracts. This sub-subparagraph is
276 repealed July 1, 2009.
277 3. No tax shall be levied on an admission paid by a
278 student, or on the student's behalf, to any required place of
279 sport or recreation if the student's participation in the sport
280 or recreational activity is required as a part of a program or

281 activity sponsored by, and under the jurisdiction of, the
282 student's educational institution, provided his or her
283 attendance is as a participant and not as a spectator.
284 4. No tax shall be levied on admissions to the National
285 Football League championship game, on admissions to any
286 semifinal game or championship game of a national collegiate
287 tournament, or on admissions to a Major League Baseball all-star
288 game.
289 5. A participation fee or sponsorship fee imposed by a
290 governmental entity as described in s. 212.08(6) for an athletic
291 or recreational program is exempt when the governmental entity
292 by itself, or in conjunction with an organization exempt under
293 s. 501(c)(3) of the Internal Revenue Code of 1954, as amended,
294 sponsors, administers, plans, supervises, directs, and controls
295 the athletic or recreational program.
296 6. Also exempt from the tax imposed by this section to the
297 extent provided in this subparagraph are admissions to live
298 theater, live opera, or live ballet productions in this state
299 which are sponsored by an organization that has received a
300 determination from the Internal Revenue Service that the
301 organization is exempt from federal income tax under s.
302 501(c)(3) of the Internal Revenue Code of 1954, as amended, if
303 the organization actively participates in planning and
304 conducting the event, is responsible for the safety and success
305 of the event, is organized for the purpose of sponsoring live
306 theater, live opera, or live ballet productions in this state,
307 has more than 10,000 subscribing members and has among the
308 stated purposes in its charter the promotion of arts education

309 in the communities which it serves, and will receive at least 20
310 percent of the net profits, if any, of the events which the
311 organization sponsors and will bear the risk of at least 20
312 percent of the losses, if any, from the events which it sponsors
313 if the organization employs other persons as agents to provide
314 services in connection with a sponsored event. Prior to March 1
315 of each year, such organization may apply to the department for
316 a certificate of exemption for admissions to such events
317 sponsored in this state by the organization during the
318 immediately following state fiscal year. The application shall
319 state the total dollar amount of admissions receipts collected
320 by the organization or its agents from such events in this state
321 sponsored by the organization or its agents in the year
322 immediately preceding the year in which the organization applies
323 for the exemption. Such organization shall receive the exemption
324 only to the extent of $1.5 million multiplied by the ratio that
325 such receipts bear to the total of such receipts of all
326 organizations applying for the exemption in such year; however,
327 in no event shall such exemption granted to any organization
328 exceed 6 percent of such admissions receipts collected by the
329 organization or its agents in the year immediately preceding the
330 year in which the organization applies for the exemption. Each
331 organization receiving the exemption shall report each month to
332 the department the total admissions receipts collected from such
333 events sponsored by the organization during the preceding month
334 and shall remit to the department an amount equal to 6 percent
335 of such receipts reduced by any amount remaining under the
336 exemption. Tickets for such events sold by such organizations

337 shall not reflect the tax otherwise imposed under this section.
338 7. Also exempt from the tax imposed by this section are
339 entry fees for participation in freshwater fishing tournaments.
340 8. Also exempt from the tax imposed by this section are
341 participation or entry fees charged to participants in a game,
342 race, or other sport or recreational event if spectators are
343 charged a taxable admission to such event.
344 9. No tax shall be levied on admissions to any postseason
345 collegiate football game sanctioned by the National Collegiate
346 Athletic Association.
347 (3) Such taxes shall be paid and remitted at the same time
348 and in the same manner as provided for remitting taxes on sales
349 of tangible personal property, as hereinafter provided.
350 Notwithstanding any other provision of this chapter, the tax on
351 admission to an event at a convention hall, exhibition hall,
352 auditorium, stadium, theater, arena, civic center, performing
353 arts center, or publicly owned recreational facility shall be
354 collected at the time of payment for the admission but is not
355 due to the department until the first day of the month following
356 the actual date of the event for which the admission is sold and
357 becomes delinquent on the 21st day of that month.
358 Section 4. This act shall take effect July 1, 2006.

HB 597

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 597 CS Contracting for Efficiency or Conservation Measures by State Agencies
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	4 Y, 0 N, w/CS	Brown	Williamson
2) Water & Natural Resources Committee	9 Y, 0 N	Winker	Lotspeich
3) Fiscal Council		Dixon	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act, and adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies. The bill expands the express list of conservation measures that may be contemplated.

The bill may have a positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,[1] later amended to become the Guaranteed Energy Performance Savings Contracting Act.[2] The program permits agencies, defined as "the state, a municipality, or a political subdivision",[3] to enter into a guaranteed energy performance savings contract, under specified circumstances.[4]

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

An "energy conservation measure" is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs.[5] Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings.[6] The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering, or surveying and mapping services.

A guaranteed energy performance contracting contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified provider provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provisions for an allocation of any excess savings among the parties.
- The qualified provider must provide an annual reconciliation of the cost savings and if there is a shortfall, the provider must be liable.

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[1] Ch. 94-112, L.O.F., codified at s. 489.145, F.S.
[2] Ch. 2001-81, L.O.F.
[3] Section 489.145(3)(a), F.S.
[4] See Section 489.145(4), F.S.
[5] Section 489.145(3)(b), F.S.
[6] Section 489.145(4), F.S.

- A statement that the contract does not constitute a debt, liability, or obligation of the state.

The Department of Management Services may, within reasonable resources, provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities to promote such contracting. The Office of the Chief Financial Officer may develop model contracts and related documents for use by state agencies and require them to submit contracts to the Office for its approval.

Water and Wastewater Conservation and Efficiency

Both the state Department of Environmental Protection (DEP), each of the state's water management districts, and the federal Environmental Protection Agency (EPA) has each established programs for the efficient use of and conservation of water and wastewater. According to the EPA, conserving water means saving costs for electric power, gas, chemicals, and wastewater disposal. Efficient water use can have major environmental, public health, and economic benefits by helping to improve water quality, maintain aquatic ecosystems, and protecting drinking water sources. According to the EPA, the efficient use of water, through behavioral, operational, or equipment changes, if practiced broadly, can help mitigate the effects of drought.

According to the DEP, protecting the amount and quality of our water resources and implementing efficient wastewater management practices is critical to maintaining sufficient and potable water for domestic, industrial, agricultural, and governmental use. Improperly disposing of wastewater can damage drinking water supply, wildlife, and other important environmental resources.

Effect of Proposed Changes

The bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The bill adds the following energy conservation measures:

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.
- Cool roof coating.

The bill requires the contractor to include in the report a summary of the costs associated with "operational improvements" if such improvements are the basis for the proposed cost savings.

The bill removes the word "energy" from the section heading of s. 489.145, F.S., and changes the short title to the "Guaranteed Performance Savings Contracting Act," in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. "Water and wastewater" are added to "energy" as the objects of the contracting process, and "efficiency" is added to "conservation" for the types of measures contemplated.

The bill conforms the terminology in s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) with the substantive statute by adding "water and wastewater efficiency" to the section.

C. SECTION DIRECTORY:

Section 1 amends s. 489.145, F.S., adding "water and wastewater efficiency" to the scope of the re-titled "Guaranteed Performance Savings Contracting Act;" and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

Section 2 amends s. 287.064, F.S., adding "water and wastewater efficiency" to the statute addressing consolidated financing of deferred payment purchases.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor's initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute. The bill should have the effect of creating an incentive for agencies to procure guaranteed performance savings contracts and for contractors to maximize the potential savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 8, 2006, the House Governmental Operations Committee adopted an amendment which adds "cool roof coating" to the express list of conservation measures contained in s. 489.145(3)(b), F.S.

The bill was reported favorably with committee substitute.

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to contracting for efficiency or
7 conservation measures by state agencies; amending s.
8 489.145, F.S.; including water and wastewater efficiency
9 and conservation in the measures encouraged by the
10 Legislature; revising definitions; providing for inclusion
11 of water and wastewater efficiency and conservation
12 measures in guaranteed performance savings contracts
13 entered into by a state agency, municipality, or political
14 subdivision; amending s. 287.064, F.S., relating to
15 consolidated financing of deferred-payment purchases, to
16 conform; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 489.145, Florida Statutes, is amended
21 to read:
22 489.145 Guaranteed ~~energy~~ performance savings
23 contracting.--

24 (1) SHORT TITLE.--This section may be cited as the
25 "Guaranteed ~~Energy~~ Performance Savings Contracting Act."
26 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
27 investment in energy, water, and wastewater efficiency or
28 conservation measures in agency facilities can reduce the amount
29 of energy and water consumed and wastewater to be treated and
30 produce immediate and long-term savings. It is the policy of
31 this state to encourage each agency ~~agencies~~ to invest in
32 energy, water, and wastewater efficiency or conservation
33 measures that provide such reductions ~~reduce energy consumption~~,
34 produce a cost savings for the agency, and, for energy measures,
35 improve the quality of indoor air in public facilities and to
36 operate, maintain, and, when economically feasible, build or
37 renovate existing agency facilities in such a manner as to
38 minimize energy and water consumption or wastewater production
39 and maximize energy, water, and wastewater savings. It is
40 further the policy of this state to encourage agencies to
41 reinvest any ~~energy~~ savings resulting from energy, water, and
42 wastewater efficiency or conservation measures in additional
43 energy, water, and wastewater efficiency or conservation
44 measures ~~efforts~~.
45 (3) DEFINITIONS.--As used in this section, the term:
46 (a) "Agency" means the state, a municipality, or a
47 political subdivision.
48 (b) "Energy, water, and wastewater efficiency or
49 conservation measure" means a training program, facility
50 alteration, or equipment purchase to be used in new facilities
51 or in retrofitting or adding to existing facilities or

52 infrastructure ~~new construction, including an addition to an~~
53 ~~existing facility,~~ which reduces energy, water, wastewater, or
54 operating costs and includes, but is not limited to:
55 1. Insulation of the facility structure and systems within
56 the facility.
57 2. Storm windows and doors, caulking or weatherstripping,
58 multiglazed windows and doors, heat-absorbing, or heat-
59 reflective, glazed and coated window and door systems,
60 additional glazing, reductions in glass area, and other window
61 and door system modifications that reduce energy consumption.
62 3. Automatic energy control systems.
63 4. Heating, ventilating, or air-conditioning system
64 modifications or replacements.
65 5. Replacement or modifications of lighting fixtures to
66 increase the energy efficiency of the lighting system, which, at
67 a minimum, must conform to the applicable state or local
68 building code.
69 6. Energy recovery systems.
70 7. Cogeneration systems that produce steam or forms of
71 energy such as heat, as well as electricity, for use primarily
72 within a facility or complex of facilities.
73 8. Energy conservation measures that provide long-term
74 operating cost reductions or significantly reduce Btu consumed.
75 9. Renewable energy systems, such as solar, biomass, or
76 wind systems.
77 10. Devices that reduce water consumption or wastewater
78 ~~sewer~~ charges.

79 11. Equipment upgrades that improve the accuracy of
80 billable revenue generating systems.
81 12. Automated electronic or remotely controlled systems or
82 measures that reduce direct personnel costs.
83 13. Such other energy, water, or wastewater efficiency or
84 conservation measures as may provide measurable operating cost
85 reductions or billable revenue increases.
86 14.~~11.~~ Energy storage systems, such as fuel cells and
87 thermal storage.
88 15.~~12.~~ Energy generating technologies, such as
89 microturbines.
90 16. Cool roof coating.
91 17.~~13.~~ Any other repair, replacement, or upgrade of
92 existing equipment.
93 (c) "Energy, water, and wastewater cost savings" means a
94 measured reduction in the cost of fuel, energy or water
95 consumption, or wastewater production, and stipulated
96 improvement in the operation and maintenance created from the
97 implementation of one or more energy, water, and wastewater
98 efficiency or conservation measures when compared with an
99 established baseline for the previous cost of fuel, energy, or
100 water consumption, or wastewater production, and stipulated
101 operation and maintenance.
102 (d) "Guaranteed ~~energy~~ performance savings contract" means
103 a contract for the evaluation, recommendation, and
104 implementation of energy, water, and wastewater efficiency or
105 conservation measures, which, at a minimum, shall include:

106 1. The design and installation of equipment to implement
107 one or more of such measures and, if applicable, operation and
108 maintenance of such measures.
109 2. The amount of any actual annual savings that meet or
110 exceed total annual contract payments made by the agency for the
111 contract.
112 3. The finance charges incurred by the agency over the
113 life of the contract.
114 (e) "Guaranteed ~~energy~~ performance savings contractor"
115 means a person or business that is licensed under chapter 471,
116 chapter 481, or this chapter, and is experienced in the
117 analysis, design, implementation, or installation of energy,
118 water, or wastewater efficiency or conservation measures through
119 ~~energy~~ performance contracts.
120 (4) PROCEDURES.--
121 (a) An agency may enter into a guaranteed ~~energy~~
122 performance savings contract with a guaranteed ~~energy~~
123 performance savings contractor to significantly reduce energy,
124 water, or wastewater or operating costs of an agency facility
125 through one or more energy, water, and wastewater efficiency or
126 conservation measures.
127 (b) Before design and installation of energy, water, and
128 wastewater efficiency and conservation measures, the agency must
129 obtain from a guaranteed ~~energy~~ performance savings contractor a
130 report that summarizes the costs associated with the ~~energy~~
131 ~~conservation~~ measures and provides an estimate of the amount of
132 the associated ~~energy~~ cost savings or operational improvements.
133 The agency and the guaranteed ~~energy~~ performance savings

134 contractor may enter into a separate agreement to pay for costs
135 associated with the preparation and delivery of the report;
136 however, payment to the contractor shall be contingent upon the
137 report's projection of ~~energy~~ cost savings being equal to or
138 greater than the total projected costs of the design and
139 installation of the report's ~~energy~~ conservation or efficiency
140 measures.
141 (c) The agency may enter into a guaranteed ~~energy~~
142 performance savings contract with a guaranteed ~~energy~~
143 performance savings contractor if the agency finds that the
144 amount the agency would spend on the ~~energy~~ conservation or
145 efficiency measures will not likely exceed the amount of the
146 associated ~~energy~~ cost savings for up to 20 years from the date
147 of installation, based on the life cycle cost calculations
148 provided in s. 255.255, if the recommendations in the report
149 were followed and if the qualified provider or providers give a
150 written guarantee that such ~~the energy~~ cost savings will meet or
151 exceed the costs of the system. The contract may provide for
152 installment payments for a period not to exceed 20 years.
153 (d) A guaranteed ~~energy~~ performance savings contractor
154 must be selected in compliance with s. 287.055; except that if
155 fewer than three firms are qualified to perform the required
156 services, the requirement for agency selection of three firms,
157 as provided in s. 287.055(4)(b), and the bid requirements of s.
158 287.057 do not apply.
159 (e) Before entering into a guaranteed ~~energy~~ performance
160 savings contract, an agency must provide published notice of the
161 meeting in which it proposes to award the contract, the names of

162 the parties to the proposed contract, and the contract's
163 purpose.
164 (f) A guaranteed ~~energy~~ performance savings contract may
165 provide for financing, including tax exempt financing, by a
166 third party. The contract for third party financing may be
167 separate from the ~~energy~~ performance savings contract. A
168 separate contract for third party financing must include a
169 provision that the third party financier must not be granted
170 rights or privileges that exceed the rights and privileges
171 available to the guaranteed ~~energy~~ performance savings
172 contractor.
173 (g) In determining the amount the agency will finance to
174 acquire the efficiency or ~~energy~~ conservation measures, the
175 agency may reduce such amount by the application of any grant
176 moneys, rebates, or capital funding available to the agency for
177 the purpose of buying down the cost of the guaranteed ~~energy~~
178 performance savings contract. However, in calculating the life
179 cycle cost as required in paragraph (c), the agency shall not
180 apply any grants, rebates, or capital funding.
181 (5) CONTRACT PROVISIONS.--
182 (a) A guaranteed ~~energy~~ performance savings contract must
183 include a written guarantee that may include, but is not limited
184 to the form of, a letter of credit, insurance policy, or
185 corporate guarantee by the guaranteed ~~energy~~ performance savings
186 contractor that annual associated ~~energy~~ cost savings will meet
187 or exceed the amortized cost of the efficiency and ~~energy~~
188 conservation measures.

189 (b) The guaranteed ~~energy~~ performance savings contract
190 must provide that all payments, except obligations on
191 termination of the contract before its expiration, may be made
192 over time, but not to exceed 20 years from the date of complete
193 installation and acceptance by the agency, and that the annual
194 savings are guaranteed to the extent necessary to make annual
195 payments to satisfy the guaranteed ~~energy~~ performance savings
196 contract.
197 (c) The guaranteed ~~energy~~ performance savings contract
198 must require that the guaranteed ~~energy~~ performance savings
199 contractor to whom the contract is awarded provide a 100-percent
200 public construction bond to the agency for its faithful
201 performance, as required by s. 255.05.
202 (d) The guaranteed ~~energy~~ performance savings contract may
203 contain a provision allocating to the parties to the contract
204 any annual associated ~~energy~~ cost savings that exceed the amount
205 of the associated ~~energy~~ cost savings guaranteed in the
206 contract.
207 (e) The guaranteed ~~energy~~ performance savings contract
208 shall require the guaranteed ~~energy~~ performance savings
209 contractor to provide to the agency an annual reconciliation of
210 the guaranteed associated ~~energy~~ cost savings. If the
211 reconciliation reveals a shortfall in such annual ~~energy~~ cost
212 savings, the guaranteed ~~energy~~ performance savings contractor is
213 liable for such shortfall. If the reconciliation reveals an
214 excess in such annual ~~energy~~ cost savings, the excess savings
215 may be allocated under paragraph (d) but may not be used to

216 cover potential ~~energy~~ cost savings shortages in subsequent
217 contract years.
218 (f) The guaranteed ~~energy~~ performance savings contract
219 must provide for payments of not less than one-twentieth of the
220 price to be paid within 2 years from the date of the complete
221 installation and acceptance by the agency, and the remaining
222 costs to be paid at least quarterly, not to exceed a 20-year
223 term, based on life cycle cost calculations.
224 (g) The guaranteed ~~energy~~ performance savings contract may
225 extend beyond the fiscal year in which it becomes effective;
226 however, the term of any contract expires at the end of each
227 fiscal year and may be automatically renewed annually for up to
228 20 years, subject to the agency making sufficient annual
229 appropriations based upon continued realized energy, water, or
230 wastewater savings.
231 (h) The guaranteed ~~energy~~ performance savings contract
232 must stipulate that it does not constitute a debt, liability, or
233 obligation of the state.
234 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
235 Department of Management Services, with the assistance of the
236 Office of the Chief Financial Officer, may, within available
237 resources, provide technical assistance to state agencies
238 contracting for energy, water, and wastewater efficiency or
239 conservation measures and engage in other activities considered
240 appropriate by the department for promoting and facilitating
241 guaranteed ~~energy~~ performance contracting by state agencies. The
242 Office of the Chief Financial Officer, with the assistance of
243 the Department of Management Services, may, within available

244 resources, develop model contractual and related documents for
245 use by state agencies. Prior to entering into a guaranteed
246 ~~energy~~ performance savings contract, any contract or lease for
247 third-party financing, or any combination of such contracts, a
248 state agency shall submit such proposed contract or lease to the
249 Office of the Chief Financial Officer for review and approval.
250 Section 2. Subsection (10) of section 287.064, Florida
251 Statutes, is amended to read:
252 287.064 Consolidated financing of deferred-payment
253 purchases.--
254 (10) Costs incurred pursuant to a guaranteed ~~energy~~
255 performance savings contract, including the cost of energy,
256 water, and wastewater efficiency and conservation measures, each
257 as defined in s. 489.145, may be financed pursuant to a master
258 equipment financing agreement; however, the costs of training,
259 operation, and maintenance may not be financed. The period of
260 time for repayment of the funds drawn pursuant to the master
261 equipment financing agreement under this subsection may exceed 5
262 years but may not exceed 10 years.
263 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	7 Y, 1 N	Nelson	Hamby
3) Fiscal Council		Dobbs	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The CS for HB 897 expands the Special Risk Class of the Florida Retirement System by including any person employed as a pilot or an aerial applicator by an authorized state agency or municipality, county or special district. These pilots or aerial applicators must be licensed by the Federal Aviation Administration and licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services. These pilots or aerial applicators also must have as their primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

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

The bill is estimated to have an annual fiscal impact of approximately $225,823 on local employers. The bill appears to have no fiscal impact on state expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government

This bill expands the Special Risk Class to include certain pilots and aerial applicators who fly aircraft and apply pesticides to control mosquitoes or other arthropods.

Empower families

Certain pilots or aerial applicators employed by governmental agencies could realize increased retirement benefits as a result of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Mosquito Control in Florida

Chapter 388, F.S., provides for the creation and operation of mosquito control districts. Cities, towns and counties, or any portion thereof, are authorized to create special taxing districts for the control of arthropods,[1] to include mosquitoes.[2] The authority provided in s. 125.01, F.S., which sets forth the statutory powers of counties, is the preferred method for creating these mosquito control districts; yet, districts which were established under the former petition process may continue to operate.[3] Some mosquito control districts have been established by special act of the Legislature.[4]

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

- 35 districts are operated by boards of county commissioners;
- seven districts are dependent districts of a county; and
- 15 districts are independent special districts.[5]

All of the employees of the mosquito control districts which are operated by a county or under a county participate in the Florida Retirement System. Thirteen of the independent special districts participate in the Florida Retirement System.[6]

Twenty-one of these mosquito control districts utilize aircraft for mosquito control—although four of the counties contract for these pilot services.[7] The Department of Management Services estimates that there are 35 pilots employed in full-time positions by the various mosquito control districts.[8]

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[1] Section 388.011, F.S. (defining "arthropod" as those insects of public health or nuisance importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies and house flies).
[2] Section 388.021(1), F.S.
[3] Section 388.021(2), F.S.
[4] See, *e.g.*, ch. 99-449, L.O.F. (Anastasia Mosquito Control District; St. Johns Co.).
[5] Florida Department of Agriculture and Consumer Services, Division. of Agriculture Environmental Services, Bureau of Entomology and Pest Control, *Mosquito Control Directory*, available at http://www.flaes.org/aes-ent/mosquito/mosqcontroldirectory.html (last visited Mar. 29, 2006); Department of Management Services., HB 897 (2006) Substantive Bill Analysis (Mar. 14, 2006) (on file with Department) at p. 7) [hereinafter "DMS Analysis"].
[6] DMS Analysis at p. 7.
[7] *Id.*
[8] *Id.* at p. 8.

The Florida Retirement System

Chapter 121, F.S., the "Florida Retirement System Act," governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[9]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[10] The FRS also has participating employees in the 151 cities and 186 independent special districts who have elected to join the system.[11]

The FRS offers a defined benefit plan that provides retirement, disability and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.[12] Members of the FRS belong to one of five membership classes:

Regular Class[13]	570,888 members	88.00%
Special Risk Class[14]	68,466 members	10.59%
Special Risk Administrative Support Class[15]	80 members	0.01%
Senior Management Service Class[16]	6,823 members	1.10%
Elected Officers Class[17]	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in ch. 121, F.S.[18]

The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.[19] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[20] Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.[21] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[22]

The only employees originally in the Special Risk Class were law enforcement officers, correctional officers and firefighters.[23] Starting in 1999, however, the Legislature began to expand the membership of this class:

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[9] Section 121.025, F.S.
[10] Florida Department of Management Services, *Florida Division of Retirement. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[11] *Id.*
[12] *Id.*
[13] Section 121.021(12), F.S.
[14] Section 121.0515, F.S.
[15] Section 121.0515(7), F.S.
[16] Section 121.055, F.S.
[17] Section 121.052, F.S.
[18] See, *e.g.*, Section. 121.055(3)(a)1., F.S.
[19] *Id.*
[20] Section 121.021(29), F.S. (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).
[21] Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[22] Section 121.71(3), F.S. (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[23] Ch. 78-308, L.O.F.; codified as s.121.0515, F.S.

1999	Emergency Medical Technicians and Paramedics[24]
2000	Community-Based Correctional Probation Officers[25]
2000	24 types of employees of correctional or forensic facilities or institutions[26]
2001	Youth Custody Officers[27]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[28]

This bill continues the expansion of the Special Risk Class by including in the definition of "special risk member" and the criteria for special risk membership any person who is employed as a pilot or aerial applicator by an authorized state agency or municipality, county or special district,[29] and who has the following qualifications:

- licensed as a pilot by the Federal Aviation Administration;
- licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services; and
- has as his or her primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

Constitutional Requirements for Retirement or Pension System Increases

Section 14 of Art. X of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.[30] Because employers will pay an additional contribution rate of 10.70 percent of salary for these mosquito control pilots, the bill appears to satisfy this constitutional requirement.[31]

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[24] Ch. 99-392, L.O.F., s. 23.
[25] Ch. 2000-169, L.O.F., s. 29.
[26] *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).
[27] Ch. 2001-125, L.O.F., s. 43.
[28] Ch. 2005-167, L.O.F., s. 1; codified as s.121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). *See, also* International Association for Identification at http://www.theiai.org/ (last visited Mar. 27, 2006).
[29] HB 897 CS (2005) (authorized under ch. 388, F.S., or by special act).
[30] Part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.
[31] DMS Analysis at pp. 9-10.

C. SECTION DIRECTORY:

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

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

Section 3: Declares a statement of important state interest.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

> Based on current salary information available for mosquito control pilots who are members of the Florida Retirement System, it appears that the annual salary for such pilots ranges from about $36,900 to around $85,000 (averaging about $60,300). While the actual cost to Florida public employers is unknown, if in fact there were just 35 such pilots working fulltime who earn an average annual salary of $60,300, the statewide cost to affected employers in increased retirement contributions for FY 2005/06 would be $225,823.[32]

[32] *Id.* at p. 8.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is expected to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of s. 18 of Art. VII of the State Constitution.[33]

2. Other:

Section 14, Art. X of the State Constitution

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

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Continued Expansion of the Special Risk Class

This bill proposes an additional expansion of the Special Risk Class. The Legislature ultimately must determine whether these pilots or aerial applicators perform work that is consistent with the intent of this class.[35] The Legislature also must be aware, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.[36]

- *Encouraging Other Groups:* Other pilots, for example, may seek to become part of the Special Risk Class "based solely on their jobs as aviators, rather than on their performing work that is

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[33] Section 18 of Art. VII of the State 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.

[34] *Id.* at pp. 9-10.

[35] Section 121.0515(1), F.S. (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).

[36] *Id.*

physically demanding or arduous, or work that requires extraordinary agility and mental acuity, such that after age 55 (or 25 years of service) the member may no longer be able to perform the required work without risking the health and safety of the member, the public, or the member's co-workers."[37]

- *Creating Inequities:* There are similarly situated employees who are not eligible for the Special Risk Class: a person who mixes and dispenses the pesticides while flying with the pilot, or drivers and pesticide applicators who dispense pesticides from ground transport vehicles.[38]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with a committee substitute. The amendment provided further definition and criteria for the mosquito control pilots who are included in the Special Risk Class.

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[37] *Id.*
[38] *Id.*

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending ss. 121.021 and 121.0515, F.S.; providing membership in the Special Risk Class for persons employed as pilots or aerial applicators authorized to provide mosquito control services; providing a definition; providing a declaration of important state interest; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (15) of section 121.021, Florida Statutes, to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(15)

(f) Effective October 1, 2006, the term "special risk member" includes any member who is employed as a pilot or an aerial applicator by a municipality, county, special district,

24 or state agency that is authorized to provide mosquito control
25 services under chapter 388 or by special act and who meets the
26 criteria set forth in s. 121.0515(2)(i).
27 Section 2. Subsection (2) of section 121.0515, Florida
28 Statutes, is amended to read:
29 121.0515 Special risk membership.--
30 (2) CRITERIA.--A member, to be designated as a special
31 risk member, must meet the following criteria:
32 (a) The member must be employed as a law enforcement
33 officer and be certified, or required to be certified, in
34 compliance with s. 943.1395; however, sheriffs and elected
35 police chiefs shall be excluded from meeting the certification
36 requirements of this paragraph. In addition, the member's duties
37 and responsibilities must include the pursuit, apprehension, and
38 arrest of law violators or suspected law violators; or the
39 member must be an active member of a bomb disposal unit whose
40 primary responsibility is the location, handling, and disposal
41 of explosive devices; or the member must be the supervisor or
42 command officer of a member or members who have such
43 responsibilities; provided, however, administrative support
44 personnel, including, but not limited to, those whose primary
45 duties and responsibilities are in accounting, purchasing,
46 legal, and personnel, shall not be included;
47 (b) The member must be employed as a firefighter and be
48 certified, or required to be certified, in compliance with s.
49 633.35 and be employed solely within the fire department of a
50 local government employer or an agency of state government with
51 firefighting responsibilities. In addition, the member's duties

52 and responsibilities must include on-the-scene fighting of
53 fires, fire prevention, or firefighter training; direct
54 supervision of firefighting units, fire prevention, or
55 firefighter training; or aerial firefighting surveillance
56 performed by fixed-wing aircraft pilots employed by the Division
57 of Forestry of the Department of Agriculture and Consumer
58 Services; or the member must be the supervisor or command
59 officer of a member or members who have such responsibilities;
60 provided, however, administrative support personnel, including,
61 but not limited to, those whose primary duties and
62 responsibilities are in accounting, purchasing, legal, and
63 personnel, shall not be included and further provided that all
64 periods of creditable service in fire prevention or firefighter
65 training, or as the supervisor or command officer of a member or
66 members who have such responsibilities, and for which the
67 employer paid the special risk contribution rate, shall be
68 included;
69 (c) The member must be employed as a correctional officer
70 and be certified, or required to be certified, in compliance
71 with s. 943.1395. In addition, the member's primary duties and
72 responsibilities must be the custody, and physical restraint
73 when necessary, of prisoners or inmates within a prison, jail,
74 or other criminal detention facility, or while on work detail
75 outside the facility, or while being transported; or the member
76 must be the supervisor or command officer of a member or members
77 who have such responsibilities; provided, however,
78 administrative support personnel, including, but not limited to,
79 those whose primary duties and responsibilities are in

80 accounting, purchasing, legal, and personnel, shall not be
81 included; however, wardens and assistant wardens, as defined by
82 rule, shall participate in the Special Risk Class;
83 (d) The member must be employed by a licensed Advance Life
84 Support (ALS) or Basic Life Support (BLS) employer as an
85 emergency medical technician or a paramedic and be certified in
86 compliance with s. 401.27. In addition, the member's primary
87 duties and responsibilities must include on-the-scene emergency
88 medical care or direct supervision of emergency medical
89 technicians or paramedics, or the member must be the supervisor
90 or command officer of one or more members who have such
91 responsibility. However, administrative support personnel,
92 including, but not limited to, those whose primary
93 responsibilities are in accounting, purchasing, legal, and
94 personnel, shall not be included;
95 (e) The member must be employed as a community-based
96 correctional probation officer and be certified, or required to
97 be certified, in compliance with s. 943.1395. In addition, the
98 member's primary duties and responsibilities must be the
99 supervised custody, surveillance, control, investigation, and
100 counseling of assigned inmates, probationers, parolees, or
101 community controllees within the community; or the member must
102 be the supervisor of a member or members who have such
103 responsibilities. Administrative support personnel, including,
104 but not limited to, those whose primary duties and
105 responsibilities are in accounting, purchasing, legal services,
106 and personnel management, shall not be included; however,

107 probation and parole circuit and deputy circuit administrators
108 shall participate in the Special Risk Class;
109 (f) The member must be employed in one of the following
110 classes and must spend at least 75 percent of his or her time
111 performing duties which involve contact with patients or inmates
112 in a correctional or forensic facility or institution:
113 1. Dietitian (class codes 5203 and 5204);
114 2. Public health nutrition consultant (class code 5224);
115 3. Psychological specialist (class codes 5230 and 5231);
116 4. Psychologist (class code 5234);
117 5. Senior psychologist (class codes 5237 and 5238);
118 6. Regional mental health consultant (class code 5240);
119 7. Psychological Services Director--DCF (class code 5242);
120 8. Pharmacist (class codes 5245 and 5246);
121 9. Senior pharmacist (class codes 5248 and 5249);
122 10. Dentist (class code 5266);
123 11. Senior dentist (class code 5269);
124 12. Registered nurse (class codes 5290 and 5291);
125 13. Senior registered nurse (class codes 5292 and 5293);
126 14. Registered nurse specialist (class codes 5294 and
127 5295);
128 15. Clinical associate (class codes 5298 and 5299);
129 16. Advanced registered nurse practitioner (class codes
130 5297 and 5300);
131 17. Advanced registered nurse practitioner specialist
132 (class codes 5304 and 5305);
133 18. Registered nurse supervisor (class codes 5306 and
134 5307);

135 19. Senior registered nurse supervisor (class codes 5308
136 and 5309);
137 20. Registered nursing consultant (class codes 5312 and
138 5313);
139 21. Quality management program supervisor (class code
140 5314);
141 22. Executive nursing director (class codes 5320 and
142 5321);
143 23. Speech and hearing therapist (class code 5406); or
144 24. Pharmacy manager (class code 5251);
145 (g) The member must be employed as a youth custody officer
146 and be certified, or required to be certified, in compliance
147 with s. 943.1395. In addition, the member's primary duties and
148 responsibilities must be the supervised custody, surveillance,
149 control, investigation, apprehension, arrest, and counseling of
150 assigned juveniles within the community; ~~or~~
151 (h) The member must be employed by a law enforcement
152 agency or medical examiner's office in a forensic discipline
153 recognized by the International Association for Identification
154 and must qualify for active membership in the International
155 Association for Identification. The member's primary duties and
156 responsibilities must include the collection, examination,
157 preservation, documentation, preparation, or analysis of
158 physical evidence or testimony, or both, or the member must be
159 the direct supervisor, quality management supervisor, or command
160 officer of one or more individuals with such responsibility.
161 Administrative support personnel, including, but not limited to,
162 those whose primary responsibilities are clerical or in

163 accounting, purchasing, legal, and personnel, shall not be
164 included; or~~.~~
165 (i) The member must be employed as a pilot or an aerial
166 applicator by a municipality, county, special district, or state
167 agency that is authorized to provide mosquito control services
168 under chapter 388 or by special act, must be licensed as a pilot
169 by the Federal Aviation Administration, and must satisfy any
170 licensure or certification requirements established by the
171 Department of Agriculture and Consumer Services pursuant to s.
172 388.361(4). In addition, the member's primary duties and
173 responsibilities must include piloting or copiloting, often at
174 low altitudes, a rotary-wing or fixed-wing aircraft for chemical
175 application of pesticides for controlling mosquitoes or other
176 arthropods.
177 Section 3. The Legislature finds that a proper and
178 legitimate state purpose is served when employees and retirees
179 of the state and its political subdivisions, and the dependents,
180 survivors, and beneficiaries of such employees and retirees, are
181 extended the basic protections afforded by governmental
182 retirement systems. These persons must be provided benefits that
183 are fair and adequate and that are managed, administered, and
184 funded in a sound actuarial manner, as required by Section 14,
185 Article X of the State Constitution and part VII of chapter 112,
186 Florida Statutes. Therefore, the Legislature hereby determines
187 and declares that this act fulfills an important state interest.
188 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 CS Property Tax Administration
SPONSOR(S): Seiler
TIED BILLS: **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
2) Finance & Tax Committee	6 Y, 0 N	Monroe	Diez-Arguelles
3) Fiscal Council		Monroe KDSM	Kelly cb
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) conducts an in-depth review of every property appraiser's assessment rolls at least every two years. DOR then creates a report on each assessment roll. Included in the report is DOR's confidence level in the property appraiser's rolls based on DOR's use of various statistical and analytical measures, which are also included in the report. DOR then forwards this report to the "Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee", and the property appraiser. Once DOR presents the property appraiser with its report, the report becomes a public record.

This bill changes the committees in the Legislature that DOR would submit its report to, "the committees of the Senate and the House of Representatives with oversight responsibilities for taxation." The bill also requires DOR to notify the chairperson of the appropriate county commission, or the corresponding official under a consolidated charter, that its report is available at their request. When a written request from the chairperson, or corresponding official, is received by DOR, DOR must provide them a copy within 90 days.

This bill would take effect July 1, 2006.

The bill will have no impact on state or local revenues, and an insignificant operational impact on the Department of Revenue.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the duties of the Department of Revenue by requiring them to notify county chairpersons of the availability of a report, and forward a copy of its report upon request.

B. EFFECT OF PROPOSED CHANGES:

Current Situation in Assessment Rolls:

Property appraisers[1] are required to assess all property in their county and prepare assessment rolls for all real property and tangible personal property.[2] An assessment roll is a record of all taxable property within the tax district which is completed, verified, and reported to the Department of Revenue (DOR) by the property appraiser. DOR has supervisory authority over property appraisers under chapter 195, F.S. DOR prescribes forms, rules and regulations for assessing and collecting taxes, establishment of standards of value, manual of instructions, classification of property, budgetary processes, and review of assessment rolls.

Each assessment roll is submitted to DOR for review. The purpose of the review is to determine that the rolls meet the appropriate requirements of law relating to form and just value.[3] DOR is required to conduct an in-depth review of the assessment rolls for each county no less than once every two years. At a minimum, DOR is to review the level of assessment for the county in relation to just value of each of the various classifications of property found in s. 195.0969(3)(a), F.S. The in-depth review may include a review of the proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

Within 120 days after receiving a county's assessment roll, or within 10 days after approving it, whichever is later, DOR is to finalize its review and forward its findings to the "Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee", and the appropriate property appraiser. DOR is to include in its findings a statement of the confidence interval[4] for the median, other measures studied, and the roll as a whole, and related statistical and analytical information.[5] DOR's report becomes a public record, subject to chapter 119, F.S., once it is released to the property appraiser.[6]

Effect of Bill:

This bill changes the committees in the Legislature DOR is to submit its findings to. Rather than submitting its findings to the specific committees within the Senate and House, DOR is to submit them to the committees of the Senate and House with oversight responsibilities for taxation. This change will allow the statute to remain accurate when the committees that handle taxation issues change.

The bill also requires DOR to notify the chairperson of the county commission, or the corresponding official, that its report is available upon request. If the chairperson of the county commission, or the

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[1] Property Appraisers are independently elected, constitutional officers. Art. VII, section 1(d), Florida Constitution.
[2] Sections 192.011 and 193.114, F.S.
[3] Section 193.1142(1), F.S.
[4] The confidence interval is a statistical measure of the reliability of DOR's sample. E-mail from David Beggs of DOR (March 8, 2006).
[5] Section 195.096(2)(f), F.S.
[6] Section 195.096(2)(e), F.S.

corresponding official, submits a written request for the report, DOR must forward a copy within 90 days. The copy is required to include the confidence interval for the median and such other measures for each classification or subclassification studied and for the roll as a whole, and all statistical and analytical details.

C. SECTION DIRECTORY:

Section 1: Amends paragraph (f) of subsection (2) of s. 195.096, F.S., to change committees to which reports are forwarded and require notification and forwarding by the Department of Revenue.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Although the impact is expected to be insignificant, the exact operational impact on the Department of Revenue is yet to be determined.[7]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

[7] Department of Revenue: Bill Analysis (HB 979).

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Proponents (on original bill):

The Broward County Property Appraiser (Lori N. Parrish) is a proponent of the bill. She supports the bill as a current property appraiser and former County Commissioner and School Board Member. During her years of service, she was unaware, as she asserts many are, that these reports existed. When she became the property appraiser and learned of the reports, she found out that few in the office knew of these reports and there were no records of the reports in the office. Upon obtaining copies of the reports from the Department of Revenue, it was discovered that Broward County had been out of compliance for a number of years. She asserts that had these reports been made known to the public, the property appraiser would have been forced to fix the problem or face the threat of not being reelected. The problem, she asserts, is not the availability of the report, but rather knowing it even exists. She hopes that the public scrutiny and examination will improve public performance, ensuring every Florida resident pays their fair share, not only in Broward County, but in all counties within Florida.[8]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one amendment on March 8, 2006. As originally drafted, the bill required the property appraiser to automatically forward a copy of the report to the county commission within 90 days. The amendment provides that DOR will notify the county commission that the report is available. Upon request, DOR will forward the report to the chairperson of the county or the corresponding official within 90 days. The bill, as amended, was reported favorably with committee substitute.

[8] E-mail from Lori N. Parrish, May 20, 2006.

CHAMBER ACTION

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1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to property tax administration; amending
7 s. 195.096, F.S.; requiring the Department of Revenue to
8 notify certain local government officers of the
9 availability on request of department findings regarding
10 department review of the county tax assessment roll;
11 requiring the department to provide a copy of such
12 findings to a requesting party within a time certain;
13 providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraph (f) of subsection (2) of section
18 195.096, Florida Statutes, is amended to read:
19 195.096 Review of assessment rolls.--
20 (2) The department shall conduct, no less frequently than
21 once every 2 years, an in-depth review of the assessment rolls
22 of each county. The department need not individually study every
23 use-class of property set forth in s. 195.073, but shall at a

24 minimum study the level of assessment in relation to just value
25 of each classification specified in subsection (3). Such in-
26 depth review may include proceedings of the value adjustment
27 board and the audit or review of procedures used by the counties
28 to appraise property.
29 (f) Within 120 days following the receipt of a county
30 assessment roll by the executive director of the department
31 pursuant to s. 193.1142(1), or within 10 days after approval of
32 the assessment roll, whichever is later, the department shall
33 complete the review for that county and forward its findings,
34 including a statement of the confidence interval for the median
35 and such other measures as may be appropriate for each
36 classification or subclassification studied and for the roll as
37 a whole, employing a 95-percent level of confidence, and related
38 statistical and analytical details to the committees of the
39 Senate and the House of Representatives with oversight
40 responsibilities for taxation ~~Finance, Taxation, and Claims~~
41 ~~Committee; the House Finance and Taxation Committee;~~ and to the
42 appropriate property appraiser. Upon releasing its findings, the
43 department shall notify the chairperson of the appropriate
44 county commission or the corresponding official under a
45 consolidated charter that the department's findings are
46 available upon request. Within 90 days after receiving a written
47 request from the chairperson of the appropriate county
48 commission or the corresponding official under a consolidated
49 charter, the department shall provide a copy of its findings to
50 the requesting party, including the confidence interval for the
51 median and such other measures for each classification or

52 subclassification studied and for the roll as a whole and
53 related statistical and analytical details.
54 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 987 CS Tax on Sales, Use, and Other Transactions
SPONSOR(S): Gottlieb
TIED BILLS: **IDEN./SIM. BILLS:** SB 1590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Education Appropriations Committee	16 Y, 0 N, w/CS	Eggers	Hamon
2) Fiscal Council		Eggers ME	Kelly CL
3)			
4)			
5)			

SUMMARY ANALYSIS

Effective January 1, 2007, sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund. The election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer making the election files a delinquent return, underpays the tax, or files an incomplete return, the amount transferred into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all tax, interest, and penalty due.

The maximum amount of collection allowance is $30 per month for each sales dealer. To the degree that sales tax dealers donate their collection allowance to the Educational Enhancement Trust Fund, such trust fund will realize an increase in revenues to the benefit of public education. The increase to the trust fund can not be determined.

The bill appropriates $112,920 from the General Revenue Fund to the Department of Revenue for the purpose of administering the program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility—The bill authorizes sales tax dealers entitled to a collection allowance to forgo the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 212, F.S., levies a 6 percent sales and use tax on most sales of tangible personal property and a limited number of services. Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" by chapter 212, F.S. and on communications services by chapter 202, F.S. Section 212.0305, F.S., authorizes the levy of the local option Convention Development Tax at the rate of 3 percent in Miami-Dade County, and at the rate of 2 percent in Duval County and Volusia County.

Section 212.12, F.S., provides sales and use tax dealers a collection allowance of 2.5 percent of the amount of the tax due for the purpose of compensating dealers for the keeping of prescribed records, filing timely returns, and proper accounting and remitting of taxes. No collection allowance is allowed on tax collected and remitted in excess of $1,200 per month, resulting in a maximum collection allowance of $30 per month for the majority of dealers. The dealer's collection allowance does not apply to the rental car surcharge[1], the waste tire fee[2], the lead-acid battery fee[3], or the motor vehicle warranty fee[4].

Article X, Sec. 15, of the State Constitution, provides for a state operated lottery. Chapter 24, F.S., provides the statutory authority for the state lottery. Section 24.121(2), F.S., provides that variable percentages of the gross revenue, as determined by the Department of the Lottery, from the sale of on-line and instant lottery tickets and other earned revenue shall be deposited into the Educational Enhancement Trust Fund to be administered by the Department of Education. Funds from the Educational Enhancement Trust Fund shall be used to the benefit of public education as provided for in s. 24.121, F.S.

Effect of Proposed Changes

The bill amends s. 212.12(1), F.S., creating paragraph (c), providing that sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be transferred into the Educational Enhancement Trust Fund. The election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer making the election files a delinquent return, underpays the tax, or files an incomplete return, the amount deposited into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all tax, interest, and penalty due. The Department of Education shall distribute the remaining amount from the trust fund to the school districts that have adopted resolutions stating that those funds will be used to ensure that up-to-date technology is purchased for the classrooms in the district and that

[1] Section 212.0606, F.S.
[2] Section 403.718, F.S.
[3] Section 403.7185, F.S.
[4] Section 681.117, F.S.

teachers are trained in the use of that technology. Revenues collected in districts that do not adopt such a resolution shall be equally distributed to districts that have adopted such resolutions.

The bill provides that the election to forego the collection allowance applies to all taxes, surtaxes, and any local option taxes administered under chapter 212, F.S., and remitted directly to the Department of Revenue. This election does not apply to any locally imposed and self-administered convention development tax[5], tourist development tax[6], or tourist impact tax[7] administered under chapter 212, F.S.

The bill provides that notwithstanding the provisions of chapter 120, F. S., to the contrary, the Department of Revenue may adopt rules to carry out the amendments made by this act to s. 212.12, F.S.

The bill appropriates the sum of $112,920 from the General Revenue Fund to the Department of Revenue for the purpose of administrating the amendments to s. 212.12, F.S., made by this act. The bill authorizes the Department of Revenue to retain all of the dealer collection allowance revenues directed to be transferred into the Educational Enhancement Trust Fund until the $112,920 General Revenue appropriation is recovered.

The bill requires that revenues from the dealer collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund and that the Department of Revenue shall provide to the Department of Education quarterly information about such revenues by county to which the collection allowance was attributed.

The bill provides that this act shall take effect January 1, 2007.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.12(1), F.S., creating paragraph (c), providing that sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be transferred into the Educational Enhancement Trust Fund.

Section 2. Provides that notwithstanding the provisions of chapter 120, F. S., to the contrary, the Department of Revenue may adopt rules to carry out the amendments made by this act to s. 212.12, F.S.

Section 3. Appropriates the sum of $112,920 from the General Revenue Fund to the Department of Revenue for the purpose of administrating the amendments to s. 212.12, F.S., made by this act.

Section 4. Requires that revenues from the dealer collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund.

Section 5. Provides that this act shall take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[5] Section 212.0305, F.S.
[6] Section 125.0104, F.S.
[7] Section 125.0108, F.S.

Sales and use tax dealers may elect to donate their collection allowance to the Educational Enhancement Trust Fund. By doing this, such dealers will forgo a maximum dealer collection allowance of $30 a month, which is deducted from the total of all taxes collected and remitted on Forms DR-15 and DR-15EZ, Sales and Use Tax Returns.

To the degree that sales tax dealers donate their collection allowance to the Educational Enhancement Trust Fund, such trust fund will realize an increase in revenues to the benefit of public education. The increase to the trust fund can not be determined.

2. Expenditures:

In order to administer the bill properly, the Department of Revenue (DOR) would be required to modify its sales and use tax returns forms (DR-15 and DR-15EZ in both hardcopy and electronic formats) to include a check box option directing the DOR to transfer the collection allowance into the Educational Enhancement Trust Fund. This will require computer programming of SAP to identify the amounts to be transferred to the trust fund and a Tax Information Publication (TIP) would need to be sent to all sales and use tax dealers to allow them sufficient time to make internal systems changes. The DOR estimates the cost of implementing this bill to be $112,920. The bill appropriates $112,920 to the DOR to administer the program. The bill specifies that the DOR shall retain all of the dealer collection allowances transferred in the Educational Enhancement Trust Fund until the $112,920 is recovered.

B. FISCAL IMPACT ON LOCAL GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "FISCAL IMPACT ON STATE GOVERNMENT."

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is granted rule making authority to carry out the amendment to section 212.12, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Education Appropriations Committee adopted an amendment revising the General Revenue Fund appropriation to the Department of Revenue from $36,465 to $112,920 to administer the program. The amendment clarified that collection allowances are deposited into the General Revenue Fund and subsequently transferred to the Educational Enhancement Trust Fund.

CHAMBER ACTION

The Education Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.12, F.S.; authorizing a dealer to elect to forego the collection allowance and direct that collection allowance revenues be transferred to the Educational Enhancement Trust Fund for distribution to school districts as specified; providing exceptions; providing for rulemaking by the Department of Revenue; providing an appropriation; providing for costs recovery; requiring the Department of Revenue to report collection information to the Department of Education; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (1) of section 212.12, Florida Statutes, to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with

24 delinquents; brackets applicable to taxable transactions;
25 records required.--
26 (1) Notwithstanding any other provision of law and for the
27 purpose of compensating persons granting licenses for and the
28 lessors of real and personal property taxed hereunder, for the
29 purpose of compensating dealers in tangible personal property,
30 for the purpose of compensating dealers providing communication
31 services and taxable services, for the purpose of compensating
32 owners of places where admissions are collected, and for the
33 purpose of compensating remitters of any taxes or fees reported
34 on the same documents utilized for the sales and use tax, as
35 compensation for the keeping of prescribed records, filing
36 timely tax returns, and the proper accounting and remitting of
37 taxes by them, such seller, person, lessor, dealer, owner, and
38 remitter (except dealers who make mail order sales) shall be
39 allowed 2.5 percent of the amount of the tax due and accounted
40 for and remitted to the department, in the form of a deduction
41 in submitting his or her report and paying the amount due by him
42 or her; the department shall allow such deduction of 2.5 percent
43 of the amount of the tax to the person paying the same for
44 remitting the tax and making of tax returns in the manner herein
45 provided, for paying the amount due to be paid by him or her,
46 and as further compensation to dealers in tangible personal
47 property for the keeping of prescribed records and for
48 collection of taxes and remitting the same. However, if the
49 amount of the tax due and remitted to the department for the
50 reporting period exceeds $1,200, no allowance shall be allowed
51 for all amounts in excess of $1,200. The executive director of

52 the department is authorized to negotiate a collection
53 allowance, pursuant to rules promulgated by the department, with
54 a dealer who makes mail order sales. The rules of the department
55 shall provide guidelines for establishing the collection
56 allowance based upon the dealer's estimated costs of collecting
57 the tax, the volume and value of the dealer's mail order sales
58 to purchasers in this state, and the administrative and legal
59 costs and likelihood of achieving collection of the tax absent
60 the cooperation of the dealer. However, in no event shall the
61 collection allowance negotiated by the executive director exceed
62 10 percent of the tax remitted for a reporting period.
63 (c)1. A dealer entitled to the collection allowance
64 provided in this section may elect to forego the collection
65 allowance and direct the department to transfer the amount of
66 the collection allowance into the Educational Enhancement Trust
67 Fund. Such an election must be made with the timely filing of a
68 return and may not be rescinded once made. If a dealer who makes
69 such an election files a delinquent return, underpays the tax,
70 or files an incomplete return, the amount transferred into the
71 Educational Enhancement Trust Fund shall be the amount of the
72 collection allowance remaining after resolution of liability for
73 all of the tax, interest, and penalty due on that return or
74 underpayment of tax. The Department of Education shall
75 distribute the remaining amount from the trust fund to the
76 school districts that have adopted a resolution stating that
77 those funds will be used to ensure that up-to-date technology is
78 purchased for the classrooms in the district and that teachers
79 are trained in the use of that technology. Revenues collected in

80 districts that do not adopt such a resolution shall be equally
81 distributed to districts that have adopted such resolutions.
82 2. This paragraph applies to all taxes, surtaxes, and any
83 local option taxes administered under this chapter and remitted
84 directly to the department. This paragraph does not apply to any
85 locally imposed and self-administered convention development
86 tax, tourist development tax, or tourist impact tax administered
87 under this chapter.
88 Section 2. Notwithstanding the provisions of chapter 120,
89 Florida Statutes, the Department of Revenue may adopt rules to
90 carry out the amendment made by this act to s. 212.12, Florida
91 Statutes.
92 Section 3. The sum of $112,920 is appropriated from the
93 General Revenue Fund to the Department of Revenue for the
94 purpose of administering the amendment to s. 212.12, Florida
95 Statutes, made by this act. The Department of Revenue shall
96 retain all of the revenues from dealer collection allowances
97 which are deposited into the Educational Enhancement Trust Fund
98 until the $112,920 appropriated from the General Revenue Fund
99 has been recovered.
100 Section 4. Revenues from the dealer collection allowances
101 shall be transferred quarterly from the General Revenue Fund to
102 the Educational Enhancement Trust Fund. The Department of
103 Revenue shall provide to the Department of Education quarterly
104 information about such revenues by county to which the
105 collection allowance was attributed.
106 Section 5. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	8 Y, 0 N	DiVagno	Hamby
3) Fiscal Council		Dobbs	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

This bill amends the Marvin B. Clayton Firefighters Pension Trust Fund Act and the Marvin B. Clayton Police Officers Pension Trust Fund Act:

- Allows the terms of office for members of the boards of trustees to be increased, from two years to four years, by municipal ordinance, special act of the Legislature, or resolution;
- Adds specific fiduciary standards for executing the general powers and duties of the board of trustees;
- Increases the percentage of plan assets that the boards of trustees may invest in foreign securities to the same level as the State Board of Administration; and
- Permits boards of trustees to designate two individuals, other than the chair and the secretary, to sign drafts on accounts and subjects these individuals to the same fiduciary standards as required for the board of trustees.

The bill also expands the definition of firefighter to include supervisory and command personnel in the Marvin B. Clayton Firefighters Pension Trust Fund Act.

This bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2006, unless otherwise expressly provided for in the act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill permits increased terms of office, increases authorized investments in foreign securities, and authorizes additional signatories for the boards of trustees of the pension trust funds.

B. EFFECT OF PROPOSED CHANGES:

Background on Municipal and Special District Firefighter Pensions

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

Background on Municipal Police Officer Pensions

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

Similarities between the Acts

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

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

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

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

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

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

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

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

Changes to Board of Trustee Terms

Currently each member of the board of trustee serves two years and may succeed themselves. This bill provides the option to change the period of the terms to four years by a municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district.

Express Fiduciary Responsibilities

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

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

Changes to the Authorized Investments

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

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

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

3. Bonds issued by the State of Israel.

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

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

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

This bill increases the percentage of plan assets that the boards of trustees may invest in foreign securities to the same level as the State Board of Administration.[20]

Changes to Draft Authority

Currently, in order to issue drafts upon the pension trust funds, the drafts must be consecutively numbered, signed by the chair and secretary, and state the purpose for the drafts. This bill will allow two individuals who are subject to the same fiduciary standards as required for the boards of trustees and who are designated by the board to sign drafts.

Changes Affecting Only the Firefighter PTFA

Section 175.032, Florida Statutes, provides the definitions for the Firefighters PTFA, including a definition for "firefighter." This bill expands the definition of firefighter to include all certified supervisory and command personnel whose duties include the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include

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[17] Fla. Stat. §§112.656 (fiduciaries and retirement systems), 112.611 (requiring compliance with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974), 112.311 to 112.3187 (Code of Ethics), and 518.11 (prudent investor rule) (2005).
[18] Fla. Stat. §§ 175.071 and 185.06 (2005).
[19] *Id.* (The corporation must be listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service. These investments may not exceed more than five percent of the assets of the board of trustees in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.).
[20] Fla. Stat. § 215.47(5) (2005) (currently sets this level at 20 percent); *but see* HB 7155 (2005) (which increases this percentage to 25 percent). The bill has a contingent effective date to permit the percentage to be set at 25 percent should HB 7155 become law. HB 1251 CS (2005), § 9.

part-time firefighters or auxiliary firefighters. This is similar to a provision in the Police Officers PTFA in section 185.02(11), Florida Statutes.

C. SECTION DIRECTORY:

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

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

Section 3: Amends section 175.071, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 25 percent, and drafting authority.

Section 4: Amends section 175.071, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 20 percent, and drafting authority.

Section 5: Amends section 185.05, Florida Statutes, to provide the option to change the terms of office for the boards of trustees.

Section 6: Amends section 185.06, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 25 percent, and drafting authority.

Section 7: Amends section 185.06, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 20 percent, and drafting authority.

Section 8: Sets forth a severability clause.

Section 9: Provides an effective date of July 1, 2006 for sections 1, 2, 5, and 8; provides a contingent effective date of July 1, 2006, for either sections 3 and 6 or 4 and 7.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Two Designated Signatories for Drafts

The Division of Retirement within the Department of Management Services, which is responsible for the daily oversight and monitoring for actuarial soundness, made the following comments on the provision allowing the board to designate two individuals to sign disbursements from the trust fund:

> The proposal appears to erode the responsibility and direction of the board of trustees. No criteria are established for the selection of these two individuals and no fiduciary designation is required. While it is not clear why this amendment is needed, if it is maintained in the proposal, it is suggested that additional language be added to require the designated individuals to be considered 'fiduciaries' to the plan.[21]

While the committee substitute does subject these two designated individuals to the same fiduciary standard as required for the board of trustees, the other comments still appear to raise valid issues which the sponsor of the bill may wish to address.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted a "strike-everything" amendment and reported the bill favorably with committee substitute:

- Increases, from two years to four years, the terms of office for members of the boards of trustees if provided by municipal ordinance, special act of the Legislature, or resolution of the special fire control district;

[21] Florida Department of Management Services, HB 1251 (2006) Substantive Bill Analysis (March 24, 2006) (on file with department).

- Expands the specific fiduciary standards for executing the general powers and duties of the board of trustees;

- Removes the provisions that would have mirrored the investment authority of the State Board of Administration and instead only increases from 10 percent to 20 or 25 percent, depending on other legislation being considered by the Legislature, the amount of plan assets which boards of trustees may invest in foreign securities;

- Continues to allow boards of trustees to designate two individuals, other than the chair and the secretary, to sign drafts on accounts, but subjects them to the same fiduciary standards as the boards of trustees; and

- Removes provisions that would have allowed boards of trustees to establish a maximum entrance age.

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to firefighter and municipal police
7 pensions; amending s. 175.032, F.S.; revising the
8 definition of "firefighter"; amending s. 175.061, F.S.;
9 providing for the terms of service for the board of
10 trustees of the firefighters' pension trust fund to be
11 revised under certain circumstances; amending s. 175.071,
12 F.S.; requiring the board of trustees to perform its
13 powers subject to certain fiduciary standards and ethics
14 provisions; revising the percentage of assets of the
15 firefighters' pension trust fund that the board of
16 trustees may invest in foreign securities; authorizing two
17 individuals subject to certain fiduciary standards and
18 designated by the board to sign drafts issued upon the
19 firefighters' pension trust fund; amending s. 185.05,
20 F.S.; providing for the terms of service for the board of
21 trustees of the municipal police officers' retirement
22 trust fund to be revised under certain circumstances;
23 amending s. 185.06, F.S.; requiring the board of trustees

24 to perform its powers subject to certain fiduciary
25 standards and ethics provisions; revising the percentage
26 of assets of the municipal police officers' retirement
27 trust fund that the board of trustees may invest in
28 foreign securities; authorizing two individuals subject to
29 certain fiduciary standards and designated by the board to
30 sign drafts issued upon the municipal police officers'
31 retirement trust fund; providing for severability;
32 providing contingent effective dates.
33
34 Be It Enacted by the Legislature of the State of Florida:
35
36 Section 1. Paragraph (a) of subsection (8) of section
37 175.032, Florida Statutes, is amended to read:
38 175.032 Definitions.--For any municipality, special fire
39 control district, chapter plan, local law municipality, local
40 law special fire control district, or local law plan under this
41 chapter, the following words and phrases have the following
42 meanings:
43 (8)(a) "Firefighter" means any person employed solely by a
44 constituted fire department of any municipality or special fire
45 control district who is certified as a firefighter as a
46 condition of employment in accordance with the provisions of s.
47 633.35 and whose duty it is to extinguish fires, to protect
48 life, or to protect property. <u>"Firefighter" includes all</u>
49 <u>certified supervisory and command personnel whose duties</u>
50 <u>include, in whole or in part, the supervision, training,</u>
51 <u>guidance, and management responsibilities of full-time</u>

52 firefighters, part-time firefighters, or auxiliary firefighters,
53 but does not include part-time firefighters or auxiliary
54 firefighters. However, for purposes of this chapter only,
55 "firefighter" also includes public safety officers who are
56 responsible for performing both police and fire services, who
57 are certified as police officers or firefighters, and who are
58 certified by their employers to the Chief Financial Officer as
59 participating in this chapter prior to October 1, 1979.
60 Effective October 1, 1979, public safety officers who have not
61 been certified as participating in this chapter shall be
62 considered police officers for retirement purposes and shall be
63 eligible to participate in chapter 185. Any plan may provide
64 that the fire chief shall have an option to participate, or not,
65 in that plan.
66 Section 2. Paragraph (a) of subsection (1) of section
67 175.061, Florida Statutes, is amended to read:
68 175.061 Board of trustees; members; terms of office;
69 meetings; legal entity; costs; attorney's fees.--For any
70 municipality, special fire control district, chapter plan, local
71 law municipality, local law special fire control district, or
72 local law plan under this chapter:
73 (1) In each municipality and in each special fire control
74 district there is hereby created a board of trustees of the
75 firefighters' pension trust fund, which shall be solely
76 responsible for administering the trust fund. Effective October
77 1, 1986, and thereafter:
78 (a) The membership of the board of trustees for a chapter
79 plan shall consist of five members, two of whom, unless

80 otherwise prohibited by law, shall be legal residents of the
81 municipality or special fire control district, who shall be
82 appointed by the governing body of the municipality or special
83 fire control district, and two of whom shall be full-time
84 firefighters as defined in s. 175.032 who shall be elected by a
85 majority of the active firefighters who are members of such
86 plan. With respect to any chapter plan or local law plan that,
87 on January 1, 1997, allowed retired firefighters to vote in such
88 elections, retirees may continue to vote in such elections. The
89 fifth member shall be chosen by a majority of the previous four
90 members as provided for herein, and such person's name shall be
91 submitted to the governing body of the municipality or special
92 fire control district. Upon receipt of the fifth person's name,
93 the governing body of the municipality or special fire control
94 district shall, as a ministerial duty, appoint such person to
95 the board of trustees as its fifth member. The fifth member
96 shall have the same rights as each of the other four members
97 appointed or elected as herein provided, shall serve as trustee
98 for a period of 2 years, and may succeed himself or herself in
99 office. Each resident member shall serve as trustee for a period
100 of 2 years, unless sooner replaced by the governing body at
101 whose pleasure he or she shall serve, and may succeed himself or
102 herself as a trustee. Each firefighter member shall serve as
103 trustee for a period of 2 years, unless he or she sooner leaves
104 the employment of the municipality or special fire control
105 district as a firefighter, whereupon a successor shall be chosen
106 in the same manner as an original appointment. Each firefighter
107 may succeed himself or herself in office. Effective July 1,

108 2006, the terms of office of the appointed and elected members
109 of the board may be amended by municipal ordinance, special act
110 of the Legislature, or resolution adopted by the governing body
111 of the special fire control district, to extend the terms of
112 office from 2 years to 4 years. The length of the terms of
113 office shall be the same for all board members.
114 Section 3. Effective July 1, 2006, if House Bill 7155 or
115 similar legislation is adopted in the same legislative session
116 or an extension thereof and becomes law, subsection (1) of
117 section 175.071, Florida Statutes, is amended to read:
118 175.071 General powers and duties of board of
119 trustees.--For any municipality, special fire control district,
120 chapter plan, local law municipality, local law special fire
121 control district, or local law plan under this chapter:
122 (1) The board of trustees, subject to the fiduciary
123 standards in ss. 112.656, 112.661, and 518.11 and the Code of
124 Ethics in ss. 112.311-112.3187, may:
125 (a) Invest and reinvest the assets of the firefighters'
126 pension trust fund in annuity and life insurance contracts of
127 life insurance companies in amounts sufficient to provide, in
128 whole or in part, the benefits to which all of the participants
129 in the firefighters' pension trust fund shall be entitled under
130 the provisions of this chapter and pay the initial and
131 subsequent premiums thereon.
132 (b) Invest and reinvest the assets of the firefighters'
133 pension trust fund in:
134 1. Time or savings accounts of a national bank, a state
135 bank insured by the Bank Insurance Fund, or a savings, building,

136 and loan association insured by the Savings Association
137 Insurance Fund which is administered by the Federal Deposit
138 Insurance Corporation or a state or federal chartered credit
139 union whose share accounts are insured by the National Credit
140 Union Share Insurance Fund.
141 2. Obligations of the United States or obligations
142 guaranteed as to principal and interest by the government of the
143 United States.
144 3. Bonds issued by the State of Israel.
145 4. Bonds, stocks, or other evidences of indebtedness
146 issued or guaranteed by a corporation organized under the laws
147 of the United States, any state or organized territory of the
148 United States, or the District of Columbia, provided:
149 a. The corporation is listed on any one or more of the
150 recognized national stock exchanges or on the National Market
151 System of the NASDAQ Stock Market and, in the case of bonds
152 only, holds a rating in one of the three highest classifications
153 by a major rating service; and
154 b. The board of trustees shall not invest more than 5
155 percent of its assets in the common stock or capital stock of
156 any one issuing company, nor shall the aggregate investment in
157 any one issuing company exceed 5 percent of the outstanding
158 capital stock of that company or the aggregate of its
159 investments under this subparagraph at cost exceed 50 percent of
160 the assets of the fund.
161
162 This paragraph shall apply to all boards of trustees and
163 participants. However, in the event that a municipality or

164 special fire control district has a duly enacted pension plan
165 pursuant to, and in compliance with, s. 175.351, and the
166 trustees thereof desire to vary the investment procedures
167 herein, the trustees of such plan shall request a variance of
168 the investment procedures as outlined herein only through a
169 municipal ordinance, special act of the Legislature, or
170 resolution by the governing body of the special fire control
171 district; where a special act, or a municipality by ordinance
172 adopted prior to July 1, 1998, permits a greater than 50-percent
173 equity investment, such municipality shall not be required to
174 comply with the aggregate equity investment provisions of this
175 paragraph. Notwithstanding any other provision of law to the
176 contrary, nothing in this section may be construed to take away
177 any preexisting legal authority to make equity investments that
178 exceed the requirements of this paragraph. The board of trustees
179 may invest up to 25 ~~10~~ percent of plan assets in foreign
180 securities.
181 (c) Issue drafts upon the firefighters' pension trust fund
182 pursuant to this act and rules and regulations prescribed by the
183 board of trustees. All such drafts shall be consecutively
184 numbered, be signed by the chair and secretary or two
185 individuals designated by the board who are subject to the same
186 fiduciary standards as required for the board of trustees under
187 this subsection, and state upon their faces the purpose for
188 which the drafts are drawn. The treasurer or depository of each
189 municipality or special fire control district shall retain such
190 drafts when paid, as permanent vouchers for disbursements made,
191 and no money shall be otherwise drawn from the fund.

192 (d) Convert into cash any securities of the fund.
193 (e) Keep a complete record of all receipts and
194 disbursements and of the board's acts and proceedings.
195 Section 4. Effective July 1, 2006, if House Bill 7155 or
196 similar legislation is not adopted in the same legislative
197 session or an extension thereof, subsection (1) of section
198 175.071, Florida Statutes, is amended to read:
199 175.071 General powers and duties of board of
200 trustees.--For any municipality, special fire control district,
201 chapter plan, local law municipality, local law special fire
202 control district, or local law plan under this chapter:
203 (1) The board of trustees, subject to the fiduciary
204 standards in ss. 112.656, 112.661, and 518.11 and the Code of
205 Ethics in ss. 112.311-112.3187, may:
206 (a) Invest and reinvest the assets of the firefighters'
207 pension trust fund in annuity and life insurance contracts of
208 life insurance companies in amounts sufficient to provide, in
209 whole or in part, the benefits to which all of the participants
210 in the firefighters' pension trust fund shall be entitled under
211 the provisions of this chapter and pay the initial and
212 subsequent premiums thereon.
213 (b) Invest and reinvest the assets of the firefighters'
214 pension trust fund in:
215 1. Time or savings accounts of a national bank, a state
216 bank insured by the Bank Insurance Fund, or a savings, building,
217 and loan association insured by the Savings Association
218 Insurance Fund which is administered by the Federal Deposit
219 Insurance Corporation or a state or federal chartered credit

220 union whose share accounts are insured by the National Credit
221 Union Share Insurance Fund.
222 2. Obligations of the United States or obligations
223 guaranteed as to principal and interest by the government of the
224 United States.
225 3. Bonds issued by the State of Israel.
226 4. Bonds, stocks, or other evidences of indebtedness
227 issued or guaranteed by a corporation organized under the laws
228 of the United States, any state or organized territory of the
229 United States, or the District of Columbia, provided:
230 a. The corporation is listed on any one or more of the
231 recognized national stock exchanges or on the National Market
232 System of the NASDAQ Stock Market and, in the case of bonds
233 only, holds a rating in one of the three highest classifications
234 by a major rating service; and
235 b. The board of trustees shall not invest more than 5
236 percent of its assets in the common stock or capital stock of
237 any one issuing company, nor shall the aggregate investment in
238 any one issuing company exceed 5 percent of the outstanding
239 capital stock of that company or the aggregate of its
240 investments under this subparagraph at cost exceed 50 percent of
241 the assets of the fund.
242
243 This paragraph shall apply to all boards of trustees and
244 participants. However, in the event that a municipality or
245 special fire control district has a duly enacted pension plan
246 pursuant to, and in compliance with, s. 175.351, and the
247 trustees thereof desire to vary the investment procedures

248 herein, the trustees of such plan shall request a variance of
249 the investment procedures as outlined herein only through a
250 municipal ordinance, special act of the Legislature, or
251 resolution by the governing body of the special fire control
252 district; where a special act, or a municipality by ordinance
253 adopted prior to July 1, 1998, permits a greater than 50-percent
254 equity investment, such municipality shall not be required to
255 comply with the aggregate equity investment provisions of this
256 paragraph. Notwithstanding any other provision of law to the
257 contrary, nothing in this section may be construed to take away
258 any preexisting legal authority to make equity investments that
259 exceed the requirements of this paragraph. The board of trustees
260 may invest up to 20 ~~10~~ percent of plan assets in foreign
261 securities.
262 (c) Issue drafts upon the firefighters' pension trust fund
263 pursuant to this act and rules and regulations prescribed by the
264 board of trustees. All such drafts shall be consecutively
265 numbered, be signed by the chair and secretary or two
266 individuals designated by the board who are subject to the same
267 fiduciary standards as required for the board of trustees under
268 this subsection, and state upon their faces the purpose for
269 which the drafts are drawn. The treasurer or depository of each
270 municipality or special fire control district shall retain such
271 drafts when paid, as permanent vouchers for disbursements made,
272 and no money shall be otherwise drawn from the fund.
273 (d) Convert into cash any securities of the fund.
274 (e) Keep a complete record of all receipts and
275 disbursements and of the board's acts and proceedings.

276 Section 5. Paragraph (a) of subsection (1) of section
277 185.05, Florida Statutes, is amended to read:
278 185.05 Board of trustees; members; terms of office;
279 meetings; legal entity; costs; attorney's fees.--For any
280 municipality, chapter plan, local law municipality, or local law
281 plan under this chapter:
282 (1) In each municipality described in s. 185.03 there is
283 hereby created a board of trustees of the municipal police
284 officers' retirement trust fund, which shall be solely
285 responsible for administering the trust fund. Effective October
286 1, 1986, and thereafter:
287 (a) The membership of the board of trustees for chapter
288 plans shall consist of five members, two of whom, unless
289 otherwise prohibited by law, shall be legal residents of the
290 municipality, who shall be appointed by the legislative body of
291 the municipality, and two of whom shall be police officers as
292 defined in s. 185.02 who shall be elected by a majority of the
293 active police officers who are members of such plan. With
294 respect to any chapter plan or local law plan that, on January
295 1, 1997, allowed retired police officers to vote in such
296 elections, retirees may continue to vote in such elections. The
297 fifth member shall be chosen by a majority of the previous four
298 members, and such person's name shall be submitted to the
299 legislative body of the municipality. Upon receipt of the fifth
300 person's name, the legislative body of the municipality shall,
301 as a ministerial duty, appoint such person to the board of
302 trustees as its fifth member. The fifth member shall have the
303 same rights as each of the other four members appointed or

304 elected as herein provided, shall serve as trustee for a period
305 of 2 years, and may succeed himself or herself in office. Each
306 resident member shall serve as trustee for a period of 2 years,
307 unless sooner replaced by the legislative body at whose pleasure
308 the member shall serve, and may succeed himself or herself as a
309 trustee. Each police officer member shall serve as trustee for a
310 period of 2 years, unless he or she sooner leaves the employment
311 of the municipality as a police officer, whereupon the
312 legislative body of the municipality shall choose a successor in
313 the same manner as an original appointment. Each police officer
314 may succeed himself or herself in office. Effective July 1,
315 2006, the terms of office of the appointed and elected members
316 of the board may be amended by municipal ordinance or special
317 act of the Legislature to extend the terms of office from 2
318 years to 4 years. The length of the terms of office shall be the
319 same for all board members.
320 Section 6. Effective July 1, 2006, if House Bill 7155 or
321 similar legislation is adopted in the same legislative session
322 or an extension thereof and becomes law, subsection (1) of
323 section 185.06, Florida Statutes, is amended to read:
324 185.06 General powers and duties of board of
325 trustees.--For any municipality, chapter plan, local law
326 municipality, or local law plan under this chapter:
327 (1) The board of trustees, subject to the fiduciary
328 standards in ss. 112.656, 112.661, and 518.11 and the Code of
329 Ethics in ss. 112.311-112.3187, may:
330 (a) Invest and reinvest the assets of the retirement trust
331 fund in annuity and life insurance contracts of life insurance

332 companies in amounts sufficient to provide, in whole or in part,
333 the benefits to which all of the participants in the municipal
334 police officers' retirement trust fund shall be entitled under
335 the provisions of this chapter, and pay the initial and
336 subsequent premiums thereon.
337 (b) Invest and reinvest the assets of the retirement trust
338 fund in:
339 1. Time or savings accounts of a national bank, a state
340 bank insured by the Bank Insurance Fund, or a savings and loan
341 association insured by the Savings Association Insurance Fund
342 which is administered by the Federal Deposit Insurance
343 Corporation or a state or federal chartered credit union whose
344 share accounts are insured by the National Credit Union Share
345 Insurance Fund.
346 2. Obligations of the United States or obligations
347 guaranteed as to principal and interest by the United States.
348 3. Bonds issued by the State of Israel.
349 4. Bonds, stocks, or other evidences of indebtedness
350 issued or guaranteed by a corporation organized under the laws
351 of the United States, any state or organized territory of the
352 United States, or the District of Columbia, provided:
353 a. The corporation is listed on any one or more of the
354 recognized national stock exchanges or on the National Market
355 System of the NASDAQ Stock Market and, in the case of bonds
356 only, holds a rating in one of the three highest classifications
357 by a major rating service; and
358 b. The board of trustees shall not invest more than 5
359 percent of its assets in the common stock or capital stock of

360 any one issuing company, nor shall the aggregate investment in
361 any one issuing company exceed 5 percent of the outstanding
362 capital stock of the company or the aggregate of its investments
363 under this subparagraph at cost exceed 50 percent of the fund's
364 assets.
365
366 This paragraph shall apply to all boards of trustees and
367 participants. However, in the event that a municipality has a
368 duly enacted pension plan pursuant to, and in compliance with,
369 s. 185.35 and the trustees thereof desire to vary the investment
370 procedures herein, the trustees of such plan shall request a
371 variance of the investment procedures as outlined herein only
372 through a municipal ordinance or special act of the Legislature;
373 where a special act, or a municipality by ordinance adopted
374 prior to July 1, 1998, permits a greater than 50-percent equity
375 investment, such municipality shall not be required to comply
376 with the aggregate equity investment provisions of this
377 paragraph. Notwithstanding any other provision of law to the
378 contrary, nothing in this section may be construed to take away
379 any preexisting legal authority to make equity investments that
380 exceed the requirements of this paragraph. The board of trustees
381 may invest up to 25 ~~10~~ percent of plan assets in foreign
382 securities.
383 (c) Issue drafts upon the municipal police officers'
384 retirement trust fund pursuant to this act and rules and
385 regulations prescribed by the board of trustees. All such drafts
386 shall be consecutively numbered, be signed by the chair and
387 secretary or two individuals designated by the board who are

388 subject to the same fiduciary standards as required for the
389 board of trustees under this subsection, and state upon their
390 faces the purposes for which the drafts are drawn. The city
391 treasurer or other depository shall retain such drafts when
392 paid, as permanent vouchers for disbursements made, and no money
393 shall otherwise be drawn from the fund.
394 (d) Finally decide all claims to relief under the board's
395 rules and regulations and pursuant to the provisions of this
396 act.
397 (e) Convert into cash any securities of the fund.
398 (f) Keep a complete record of all receipts and
399 disbursements and of the board's acts and proceedings.
400 Section 7. Effective July 1, 2006, if House Bill 7155 or
401 similar legislation is not adopted in the same legislative
402 session or an extension thereof, subsection (1) of section
403 185.06, Florida Statutes, is amended to read:
404 185.06 General powers and duties of board of
405 trustees.--For any municipality, chapter plan, local law
406 municipality, or local law plan under this chapter:
407 (1) The board of trustees, subject to the fiduciary
408 standards in ss. 112.656, 112.661, and 518.11 and the Code of
409 Ethics in ss. 112.311-112.3187, may:
410 (a) Invest and reinvest the assets of the retirement trust
411 fund in annuity and life insurance contracts of life insurance
412 companies in amounts sufficient to provide, in whole or in part,
413 the benefits to which all of the participants in the municipal
414 police officers' retirement trust fund shall be entitled under

415 the provisions of this chapter, and pay the initial and
416 subsequent premiums thereon.
417 (b) Invest and reinvest the assets of the retirement trust
418 fund in:
419 1. Time or savings accounts of a national bank, a state
420 bank insured by the Bank Insurance Fund, or a savings and loan
421 association insured by the Savings Association Insurance Fund
422 which is administered by the Federal Deposit Insurance
423 Corporation or a state or federal chartered credit union whose
424 share accounts are insured by the National Credit Union Share
425 Insurance Fund.
426 2. Obligations of the United States or obligations
427 guaranteed as to principal and interest by the United States.
428 3. Bonds issued by the State of Israel.
429 4. Bonds, stocks, or other evidences of indebtedness
430 issued or guaranteed by a corporation organized under the laws
431 of the United States, any state or organized territory of the
432 United States, or the District of Columbia, provided:
433 a. The corporation is listed on any one or more of the
434 recognized national stock exchanges or on the National Market
435 System of the NASDAQ Stock Market and, in the case of bonds
436 only, holds a rating in one of the three highest classifications
437 by a major rating service; and
438 b. The board of trustees shall not invest more than 5
439 percent of its assets in the common stock or capital stock of
440 any one issuing company, nor shall the aggregate investment in
441 any one issuing company exceed 5 percent of the outstanding
442 capital stock of the company or the aggregate of its investments

443 under this subparagraph at cost exceed 50 percent of the fund's
444 assets.
445
446 This paragraph shall apply to all boards of trustees and
447 participants. However, in the event that a municipality has a
448 duly enacted pension plan pursuant to, and in compliance with,
449 s. 185.35 and the trustees thereof desire to vary the investment
450 procedures herein, the trustees of such plan shall request a
451 variance of the investment procedures as outlined herein only
452 through a municipal ordinance or special act of the Legislature;
453 where a special act, or a municipality by ordinance adopted
454 prior to July 1, 1998, permits a greater than 50-percent equity
455 investment, such municipality shall not be required to comply
456 with the aggregate equity investment provisions of this
457 paragraph. Notwithstanding any other provision of law to the
458 contrary, nothing in this section may be construed to take away
459 any preexisting legal authority to make equity investments that
460 exceed the requirements of this paragraph. The board of trustees
461 may invest up to 20 ~~10~~ percent of plan assets in foreign
462 securities.
463 (c) Issue drafts upon the municipal police officers'
464 retirement trust fund pursuant to this act and rules and
465 regulations prescribed by the board of trustees. All such drafts
466 shall be consecutively numbered, be signed by the chair and
467 secretary or two individuals designated by the board who are
468 subject to the same fiduciary standards as required for the
469 board of trustees under this subsection, and state upon their
470 faces the purposes for which the drafts are drawn. The city

471 treasurer or other depository shall retain such drafts when
472 paid, as permanent vouchers for disbursements made, and no money
473 shall otherwise be drawn from the fund.
474 (d) Finally decide all claims to relief under the board's
475 rules and regulations and pursuant to the provisions of this
476 act.
477 (e) Convert into cash any securities of the fund.
478 (f) Keep a complete record of all receipts and
479 disbursements and of the board's acts and proceedings.
480 Section 8. <u>If any provision of this act or its application</u>
481 <u>to any person or circumstance is held invalid, the invalidity</u>
482 <u>does not affect other provisions or applications of the act</u>
483 <u>which can be given effect without the invalid provision or</u>
484 <u>application, and to this end the provisions of this act are</u>
485 <u>severable.</u>
486 Section 9. Except as otherwise expressly provided in this
487 act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1269 CS Local Occupational License Taxes
SPONSOR(S): Cusack
TIED BILLS: **IDEN./SIM. BILLS:** SB 2218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 0 N, w/CS	Rice	Diez-Arguelles
2) Local Government Council	7 Y, 0 N, w/CS	Camechis	Hamby
3) Fiscal Council		Rice ACR	Kelly cle
4)			
5)			

SUMMARY ANALYSIS

Under current law, a county or municipality may, by resolution or ordinance, impose an occupational license tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.

This bill changes the name of the "Local Occupational License Tax Act" to the "Local Business Tax Act" and conforms the name change throughout ch. 205, F.S. In addition, the bill amends ch. 205, F.S., to provide that persons who pay occupational business taxes receive a "receipt" for payment rather than a "certificate".

The bill does not authorize any new taxes or fees, or increase existing taxes or fees and therefore does not have a fiscal impact on the state.

This bill takes effect January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the house principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 205, F.S., is the Local Occupational License Act. In 1972 the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments have since been authorized to levy occupational license taxes according to the provisions of the Local Occupational License Act.

Under current law, a county or municipality may, by resolution or ordinance, impose an occupational license tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.

Licenses are sold by the tax collector beginning on August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year.

The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of ch. 205, F.S.

Licensure Requirements

Section 205.194, F.S., prohibits local governments from issuing occupational licenses for professions regulated by the Department of Business and Professional Regulation (DBPR) without verifying that the person has satisfied DBPR requirements. Applicants are required to submit proof of registration, certification, or licensure issued by DBPR upon initial licensure in the jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their occupational license due to suspension, revocation, or inactivation of licensure, certification, or registration. DBPR currently regulates the following:

- certified public accountants and accounting businesses,
- alarm system contractors,
- asbestos consultants and contractors,
- athlete agents,
- auctioneers and their businesses,
- barbers and barber shops,
- building code administrators and inspectors,
- constructing contractors and constructing contracting businesses,
- community association managers,
- cosmetologists and cosmetology salons,
- electrical contractors,
- employee leasing,
- farm labor,
- geologists and geologist businesses,
- landscape architects and landscape architect businesses,
- pilots (harbor),
- surveyors and mappers and surveyor and mapper businesses,

- talent agencies, and
- veterinarians and veterinary establishments.

Section 205.023, F.S., prohibits the issuance of an occupational license to an applicant that does not provide proof of any applicable fictitious name registrations with the Division of Corporations in the Department of State.

Sections 205.1965, 205.1969, 205.1971, and 205.1973, F.S., require additional verification from pest control businesses, health studios and ballroom dance studios, businesses engaged in the selling of travel, and telemarketing businesses. These businesses must provide verification of licensure, registration, or exemption by the Department of Agriculture and Consumer Services before a local government may issue a local occupational license.

Section 205.196, F.S., requires pharmacies to produce a current permit from the Board of Pharmacy before a local government may issue a local occupational license.

Section 205.1965, F.S., requires that assisted living facilities must provide verification of licensure from the Agency for Health Care Administration before a local government may issue a local occupational license.

Other

Currently 368 of the 404 municipalities and 52 of the 67 counties in Florida have some sort of local occupational license tax in place.[1]

Although the local occupational license tax is meant to be purely revenue producing in nature, it has unintentionally become a measure of profession and business qualification to engage in a specified activity. This bill intends to rename the act to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.

Proposed Changes

This bill changes the name of the Act from the "Local Occupational License Tax Act" to the "Local Business Tax Act", and conforms the name change throughout.

The bill also defines "receipt" to mean the document that is issued by the local governing authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of the Local Business Tax Act.

The bill amends ch. 205, F.S., to provide that persons who pay occupational business taxes receive a "receipt" for payment rather than a "certificate".

C. SECTION DIRECTORY:

Section 1: Amends s. 205.013, F.S., to reflect that the "Local Occupational License Tax Act" is renamed as the "Local Business Tax Act".
Section 2: Amends s. 205.022, F.S., to revise and add definitions; and conform name changes.
Section 3: Amends s. 205.023, F.S., to conform name changes.
Section 4: Amends s. 205.0315, F.S., to conform name changes.
Section 5: Amends s. 205.032, F.S., to conform name changes.
Section 6: Amends s. 205.033, F.S., to conform name changes.
Section 7: Amends s. 205.042, F.S., to conform name changes.
Section 8: Amends s. 205.043, F.S., to conform name changes.
Section 9: Amends s. 205.045, F.S., to conform name changes.

[1] Data provided by the Legislative Committee on Intergovernmental Relations

Section 10: Amends s. 205.053, F.S., to conform name changes.
Section 11: Amends s. 205.0532, F.S., to conform name changes.
Section 12: Amends s. 205.0535, F.S., to conform name changes.
Section 13: Amends s. 205.0536, F.S., to conform name changes.
Section 14: Amends s. 205.0537, F.S., to conform name changes.
Section 15: Amends s. 205.054, F.S., to conform name changes.
Section 16: Amends s. 205.063, F.S., to conform name changes.
Section 17: Amends s. 205.064, F.S., to conform name changes.
Section 18: Amends s. 205.065, F.S., to conform name changes.
Section 19: Amends s. 205.162, F.S., to conform name changes.
Section 20: Amends s. 205.171, F.S., to conform name changes.
Section 21: Amends s. 205.191, F.S., to conform name changes.
Section 22: Amends s. 205.192, F.S., to conform name changes.
Section 23: Amends s. 205.193, F.S., to conform name changes.
Section 24: Amends s. 205.194, F.S., to conform name changes.
Section 25: Amends s. 205.196, F.S., to conform name changes.
Section 26: Amends s. 205.1965, F.S., to conform name changes.
Section 27: Amends s. 205.1967, F.S., to conform name changes.
Section 28: Amends s. 205.1969, F.S., to conform name changes.
Section 29: Amends s. 205.1971, F.S., to conform name changes.
Section 30: Amends s. 205.1973, F.S., to conform name changes.
Section 31: Provides that the bill takes effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee adopted three amendments on March 31, 2006. The first amendment introduced whereas clauses into the bill to clarify that the intent of this bill is to simply change the name of the act and not to introduce any new taxes or fees. The second amendment changed the definition of certificate to ensure that the certificates issued will bear the words "Local Business Tax Certificate". The third amendment changed the effective date of the bill from July 1, 2006 to January 1, 2007.

On April 11, 2006, the Local Government Council adopted a strike-all amendment to change references to business tax "certificate" to business tax "receipt" in order to clarify that a person who pays occupational business taxes receives only a receipt for payment, not a certificate.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to local occupational license taxes; amending ch. 205, F.S., consisting of ss. 205.013-205.1973, F.S.; changing the term "local occupational license tax" to "local business tax"; defining the term "receipt" as it relates to business taxes; amending provisions to conform; providing an effective date.

WHEREAS, local governments impose an occupational license tax for the privilege of engaging in a business or profession, and

WHEREAS, what a particular charge is named by government is not dispositive of its correct characterization, and

WHEREAS, local governments have a bona fide interest in protecting their residents from consumer fraud, and

WHEREAS, some unscrupulous persons present a local occupational license to consumers as proof of competency to perform various repairs and services, and

23 WHEREAS, local consumers are victimized by these
24 representations, and
25 WHEREAS, changing the name of the item issued by local
26 governments from occupational license tax to local business tax
27 may eliminate some fraudulent misrepresentations, and
28 WHEREAS, the Legislature seeks to change the name of the
29 "Local Occupational License Tax Act" to the "Local Business Tax
30 Act" and make related changes, NOW, THEREFORE,
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Section 205.013, Florida Statutes, is amended
35 to read:
36 205.013 Short title.--This chapter shall be known and may
37 be cited as the "Local Business ~~Occupational License~~ Tax Act."
38 Section 2. Section 205.022, Florida Statutes, is amended
39 to read:
40 205.022 Definitions.--When used in this chapter, the
41 following terms and phrases shall have the meanings ascribed to
42 them in this section, except when the context clearly indicates
43 a different meaning:
44 (1) ~~(6)~~ "Business," "profession," and "occupation" do not
45 include the customary religious, charitable, or educational
46 activities of nonprofit religious, nonprofit charitable, and
47 nonprofit educational institutions in this state, which
48 institutions are more particularly defined and limited as
49 follows:

50 (a) "Religious institutions" means churches and
51 ecclesiastical or denominational organizations or established
52 physical places for worship in this state at which nonprofit
53 religious services and activities are regularly conducted and
54 carried on, and also means church cemeteries.
55 (b) "Educational institutions" means state tax-supported
56 or parochial, church and nonprofit private schools, colleges, or
57 universities conducting regular classes and courses of study
58 required for accreditation by or membership in the Southern
59 Association of Colleges and Schools, the Department of
60 Education, or the Florida Council of Independent Schools.
61 Nonprofit libraries, art galleries, and museums open to the
62 public are defined as educational institutions and eligible for
63 exemption.
64 (c) "Charitable institutions" means only nonprofit
65 corporations operating physical facilities in this state at
66 which are provided charitable services, a reasonable percentage
67 of which are without cost to those unable to pay.
68 (2) "Receipt" means the document that is issued by the
69 local governing authority which bears the words "Local Business
70 Tax Receipt" and evidences that the person in whose name the
71 document is issued has complied with the provisions of this
72 chapter relating to the business tax.
73 (3) ~~(5)~~ "Classification" means the method by which a
74 business or group of businesses is identified by size or type,
75 or both.
76 (4) ~~(7)~~ "Enterprise zone" means an area designated as an
77 enterprise zone pursuant to s. 290.0065. This subsection expires

78 on the date specified in s. 290.016 for the expiration of the
79 Florida Enterprise Zone Act.
80 (5) ~~(1)~~ "Local business tax ~~occupational license~~" means the
81 fees charged and the method by which a local governing authority
82 grants the privilege of engaging in or managing any business,
83 profession, or occupation within its jurisdiction. It does not
84 mean any fees or licenses paid to any board, commission, or
85 officer for permits, registration, examination, or inspection.
86 Unless otherwise provided by law, these are deemed to be
87 regulatory and in addition to, but not in lieu of, any local
88 business tax ~~occupational license~~ imposed under the provisions
89 of this chapter.
90 (6) ~~(2)~~ "Local governing authority" means the governing
91 body of any county or incorporated municipality of this state.
92 (7) ~~(3)~~ "Person" means any individual, firm, partnership,
93 joint adventure, syndicate, or other group or combination acting
94 as a unit, association, corporation, estate, trust, business
95 trust, trustee, executor, administrator, receiver, or other
96 fiduciary, and includes the plural as well as the singular.
97 (8) ~~(4)~~ "Taxpayer" means any person liable for taxes
98 imposed under the provisions of this chapter; any agent required
99 to file and pay any taxes imposed hereunder; and the heirs,
100 successors, assignees, and transferees of any such person or
101 agent.
102 Section 3. Section 205.023, Florida Statutes, is amended
103 to read:
104 205.023 Requirement to report status of fictitious name
105 registration.--As a prerequisite to receiving a local business

106 tax receipt ~~occupational license~~ under this chapter or
107 transferring a business license under s. 205.033(2) or s.
108 205.043(2), the applicant or new owner must present to the
109 county or municipality that has jurisdiction to issue or
110 transfer the receipt ~~license~~ either:
111 (1) A copy of the applicant's or new owner's current
112 fictitious name registration, issued by the Division of
113 Corporations of the Department of State; or
114 (2) A written statement, signed by the applicant or new
115 owner, which sets forth the reason that the applicant or new
116 owner need not comply with the Fictitious Name Act.
117 Section 4. Section 205.0315, Florida Statutes, is amended
118 to read:
119 205.0315 Ordinance adoption after October 1,
120 1995.--Beginning October 1, 1995, a county or municipality that
121 has not adopted a business ~~an occupational license~~ tax ordinance
122 or resolution may adopt a business ~~an occupational license~~ tax
123 ordinance. The business ~~occupational license~~ tax rate structure
124 and classifications in the adopted ordinance must be reasonable
125 and based upon the rate structure and classifications prescribed
126 in ordinances adopted by adjacent local governments that have
127 implemented s. 205.0535. If no adjacent local government has
128 implemented s. 205.0535, or if the governing body of the county
129 or municipality finds that the rate structures or
130 classifications of adjacent local governments are unreasonable,
131 the rate structure or classifications prescribed in its
132 ordinance may be based upon those prescribed in ordinances

133 adopted by local governments that have implemented s. 205.0535
134 in counties or municipalities that have a comparable population.
135 Section 5. Section 205.032, Florida Statutes, is amended
136 to read:
137 205.032 Levy; counties.--The governing body of a county
138 may levy, by appropriate resolution or ordinance, a business ~~an~~
139 ~~occupational license~~ tax for the privilege of engaging in or
140 managing any business, profession, or occupation within its
141 jurisdiction. However, the governing body must first give at
142 least 14 days' public notice between the first and last reading
143 of the resolution or ordinance by publishing a notice in a
144 newspaper of general circulation within its jurisdiction as
145 defined by law. The public notice must contain the proposed
146 classifications and rates applicable to the business
147 ~~occupational license~~ tax.
148 Section 6. Section 205.033, Florida Statutes, is amended
149 to read:
150 205.033 Conditions for levy; counties.--
151 (1) The following conditions are imposed on the authority
152 of a county governing body to levy a business ~~an occupational~~
153 ~~license~~ tax:
154 (a) The tax must be based upon reasonable classifications
155 and must be uniform throughout any class.
156 (b) Unless the county implements s. 205.0535 or adopts a
157 new business ~~occupational license~~ tax ordinance under s.
158 205.0315, a business ~~an occupational license~~ tax levied under
159 this subsection may not exceed the rate provided by this chapter
160 in effect for the year beginning October 1, 1971; however,

161 beginning October 1, 1980, the county governing body may
162 increase business ~~occupational license~~ taxes authorized by this
163 chapter. The amount of the increase above the ~~license~~ tax rate
164 levied on October 1, 1971, for ~~license~~ taxes levied at a flat
165 rate may be up to 100 percent for business ~~occupational license~~
166 taxes that are $100 or less; 50 percent for business
167 ~~occupational license~~ taxes that are between $101 and $300; and
168 25 percent for business ~~occupational license~~ taxes that are more
169 than $300. Beginning October 1, 1982, the increase may not
170 exceed 25 percent for ~~license~~ taxes levied at graduated or per
171 unit rates. Authority to increase business ~~occupational license~~
172 taxes does not apply to licenses or receipts granted to any
173 utility franchised by the county for which a franchise fee is
174 paid.
175 (c) A receipt ~~license~~ is not valid for more than 1 year,
176 and all receipts ~~licenses~~ expire on September 30 of each year,
177 except as otherwise provided by law.
178 (2) Any receipt ~~business license~~ may be transferred to a
179 new owner, when there is a bona fide sale of the business, upon
180 payment of a transfer fee of up to 10 percent of the annual
181 business ~~license~~ tax, but not less than $3 nor more than $25,
182 and presentation of the original receipt ~~license~~ and evidence of
183 the sale.
184 (3) Upon written request and presentation of the original
185 receipt ~~license~~, any receipt ~~license~~ may be transferred from one
186 location to another location in the same county upon payment of
187 a transfer fee of up to 10 percent of the annual business
188 ~~license~~ tax, but not less than $3 nor more than $25.

189 (4) The revenues derived from the business ~~occupational~~
190 ~~license~~ tax, exclusive of the costs of collection and any credit
191 given for municipal business ~~license~~ taxes, shall be apportioned
192 between the unincorporated area of the county and the
193 incorporated municipalities located therein by a ratio derived
194 by dividing their respective populations by the population of
195 the county. This subsection does not apply to counties that have
196 established a new rate structure under s. 205.0535.
197 (5) The revenues so apportioned shall be sent to the
198 governing authority of each municipality, according to its
199 ratio, and to the governing authority of the county, according
200 to the ratio of the unincorporated area, within 15 days
201 following the month of receipt. This subsection does not apply
202 to counties that have established a new rate structure under s.
203 205.0535.
204 (6)(a) Each county, as defined in s. 125.011(1), or any
205 county adjacent thereto may levy and collect, by an ordinance
206 enacted by the governing body of the county, an additional
207 business ~~occupational license~~ tax up to 50 percent of the
208 appropriate business ~~license~~ tax imposed under subsection (1).
209 (b) Subsections (4) and (5) do not apply to any revenues
210 derived from the additional tax imposed under this subsection.
211 Proceeds from the additional business ~~license~~ tax must be placed
212 in a separate interest-earning account, and the governing body
213 of the county shall distribute this revenue, plus accrued
214 interest, each fiscal year to an organization or agency
215 designated by the governing body of the county to oversee and
216 implement a comprehensive economic development strategy through

217 advertising, promotional activities, and other sales and
218 marketing techniques.
219 (c) An ordinance that levies an additional business
220 ~~occupational license~~ tax under this subsection may not be
221 adopted after January 1, 1995.
222 (7) Notwithstanding any other provisions of this chapter,
223 the revenue received from a county business ~~occupational license~~
224 tax may be used for overseeing and implementing a comprehensive
225 economic development strategy through advertising, promotional
226 activities, and other sales and marketing techniques.
227 Section 7. Section 205.042, Florida Statutes, is amended
228 to read:
229 205.042 Levy; municipalities.--The governing body of an
230 incorporated municipality may levy, by appropriate resolution or
231 ordinance, a business ~~an occupational license~~ tax for the
232 privilege of engaging in or managing any business, profession,
233 or occupation within its jurisdiction. However, the governing
234 body must first give at least 14 days' public notice between the
235 first and last reading of the resolution or ordinance by
236 publishing the notice in a newspaper of general circulation
237 within its jurisdiction as defined by law. The notice must
238 contain the proposed classifications and rates applicable to the
239 business ~~occupational license~~ tax. The business ~~occupational~~
240 ~~license~~ tax may be levied on:
241 (1) Any person who maintains a permanent business location
242 or branch office within the municipality, for the privilege of
243 engaging in or managing any business within its jurisdiction.

244 (2) Any person who maintains a permanent business location
245 or branch office within the municipality, for the privilege of
246 engaging in or managing any profession or occupation within its
247 jurisdiction.
248 (3) Any person who does not qualify under subsection (1)
249 or subsection (2) and who transacts any business or engages in
250 any occupation or profession in interstate commerce, if the
251 business ~~license~~ tax is not prohibited by s. 8, Art. I of the
252 United States Constitution.
253 Section 8. Section 205.043, Florida Statutes, is amended
254 to read:
255 205.043 Conditions for levy; municipalities.--
256 (1) The following conditions are imposed on the authority
257 of a municipal governing body to levy a business ~~an occupational~~
258 ~~license~~ tax:
259 (a) The tax must be based upon reasonable classifications
260 and must be uniform throughout any class.
261 (b) Unless the municipality implements s. 205.0535 or
262 adopts a new business ~~occupational license~~ tax ordinance under
263 s. 205.0315, a business ~~an occupational license~~ tax levied under
264 this subsection may not exceed the rate in effect in the
265 municipality for the year beginning October 1, 1971; however,
266 beginning October 1, 1980, the municipal governing body may
267 increase business ~~occupational license~~ taxes authorized by this
268 chapter. The amount of the increase above the ~~license~~ tax rate
269 levied on October 1, 1971, for ~~license~~ taxes levied at a flat
270 rate may be up to 100 percent for business ~~occupational license~~
271 taxes that are $100 or less; 50 percent for business

272 ~~occupational license~~ taxes that are between $101 and $300; and
273 25 percent for business ~~occupational license~~ taxes that are more
274 than $300. Beginning October 1, 1982, an increase may not exceed
275 25 percent for ~~license~~ taxes levied at graduated or per unit
276 rates. Authority to increase business ~~occupational license~~ taxes
277 does not apply to receipts or licenses granted to any utility
278 franchised by the municipality for which a franchise fee is
279 paid.
280 (c) A receipts ~~license~~ is not valid for more than 1 year
281 and all receipts ~~licenses~~ expire on September 30 of each year,
282 except as otherwise provided by law.
283 (2) Any business receipt ~~license~~ may be transferred to a
284 new owner, when there is a bona fide sale of the business, upon
285 payment of a transfer fee of up to 10 percent of the annual
286 ~~license~~ tax, but not less than $3 nor more than $25, and
287 presentation of the original receipt ~~license~~ and evidence of the
288 sale.
289 (3) Upon written request and presentation of the original
290 receipt ~~license~~, any receipt ~~license~~ may be transferred from one
291 location to another location in the same municipality upon
292 payment of a transfer fee of up to 10 percent of the annual
293 ~~license~~ tax, but not less than $3 nor more than $25.
294 (4) If the governing body of the county in which the
295 municipality is located has levied a business ~~an occupational~~
296 ~~license~~ tax or subsequently levies such a tax, the collector of
297 the county tax may issue the receipt ~~license~~ and collect the tax
298 thereon.

299 Section 9. Section 205.045, Florida Statutes, is amended
300 to read:
301 205.045 Transfer of administrative duties.--The governing
302 body of a municipality that levies a business ~~an occupational~~
303 ~~license~~ tax may request that the county in which the
304 municipality is located issue the municipal receipt ~~license~~ and
305 collect the tax thereon. The governing body of a county that
306 levies a business ~~an occupational license~~ tax may request that
307 municipalities within the county issue the county receipt
308 ~~license~~ and collect the tax thereon. Before any local government
309 may issue receipts ~~occupational licenses~~ on behalf of another
310 local government, appropriate agreements must be entered into by
311 the affected local governments.
312 Section 10. Section 205.053, Florida Statutes, is amended
313 to read:
314 205.053 Business tax receipts ~~Occupational licenses~~; dates
315 due and delinquent; penalties.--
316 (1) All business tax receipts ~~licenses~~ shall be sold by
317 the appropriate tax collector beginning August 1 of each year,
318 are due and payable on or before September 30 of each year, and
319 expire on September 30 of the succeeding year. If September 30
320 falls on a weekend or holiday, the tax is due and payable on or
321 before the first working day following September 30. Provisions
322 for partial receipts ~~licenses~~ may be made in the resolution or
323 ordinance authorizing such receipts ~~licenses~~. Receipts ~~Licenses~~
324 that are not renewed when due and payable are delinquent and
325 subject to a delinquency penalty of 10 percent for the month of
326 October, plus an additional 5 percent penalty for each

327 subsequent month of delinquency until paid. However, the total
328 delinquency penalty may not exceed 25 percent of the business
329 ~~occupational license~~ tax for the delinquent establishment.
330 (2) Any person who engages in or manages any business,
331 occupation, or profession without first obtaining a local
332 business tax receipt ~~occupational license~~, if required, is
333 subject to a penalty of 25 percent of the tax ~~license~~ due, in
334 addition to any other penalty provided by law or ordinance.
335 (3) Any person who engages in any business, occupation, or
336 profession covered by this chapter, who does not pay the
337 required business ~~occupational license~~ tax within 150 days after
338 the initial notice of tax due, and who does not obtain the
339 required receipt ~~occupational license~~ is subject to civil
340 actions and penalties, including court costs, reasonable
341 attorneys' fees, additional administrative costs incurred as a
342 result of collection efforts, and a penalty of up to $250.
343 Section 11. Section 205.0532, Florida Statutes, is amended
344 to read:
345 205.0532 Revocation or refusal to renew; doing business
346 with Cuba.--Any local governing authority issuing a business tax
347 receipt ~~an occupational license~~ to any individual, business, or
348 entity under this chapter may revoke or refuse to renew such
349 receipt ~~license~~ if the individual, business, or entity, or
350 parent company of such individual, business, or entity, is doing
351 business with Cuba.
352 Section 12. Section 205.0535, Florida Statutes, is amended
353 to read:
354 205.0535 Reclassification and rate structure revisions.--

355 (1) By October 1, 1995, any municipality or county may, by
356 ordinance, reclassify businesses, professions, and occupations
357 and may establish new rate structures, if the conditions
358 specified in subsections (2) and (3) are met. A person who is
359 engaged in the business of providing local exchange telephone
360 service or a pay telephone service in a municipality or in the
361 unincorporated area of a county and who pays the business
362 ~~occupational license~~ tax under the category designated for
363 telephone companies or a pay telephone service provider
364 certified pursuant to s. 364.3375 is deemed to have but one
365 place of business or business location in each municipality or
366 unincorporated area of a county. Pay telephone service providers
367 may not be assessed a business ~~an occupational license~~ tax on a
368 per-instrument basis.
369 (2) Before adopting a reclassification and revision
370 ordinance, the municipality or county must establish an equity
371 study commission and appoint its members. Each member of the
372 study commission must be a representative of the business
373 community within the local government's jurisdiction. Each
374 equity study commission shall recommend to the appropriate local
375 government a classification system and rate structure for
376 business ~~local occupational license~~ taxes.
377 (3)(a) After the reclassification and rate structure
378 revisions have been transmitted to and considered by the
379 appropriate local governing body, it may adopt by majority vote
380 a new business ~~occupational license~~ tax ordinance. Except that a
381 minimum ~~license~~ tax of up to $25 is permitted, the
382 reclassification may ~~shall~~ not increase the ~~occupational license~~

383 tax by more than the following: for receipts ~~licenses~~ costing
384 $150 or less, 200 percent; for receipts ~~licenses~~ costing more
385 than $150 but not more than $500, 100 percent; for receipts
386 ~~licenses~~ costing more than $500 but not more than $2,500, 75
387 percent; for receipts ~~licenses~~ costing more than $2,500 but not
388 more than $10,000, 50 percent; and for receipts ~~licenses~~ costing
389 more than $10,000, 10 percent; however, in no case may the tax
390 on any receipt ~~license~~ be increased more than $5,000.
391 (b) The total annual revenue generated by the new rate
392 structure for the fiscal year following the fiscal year during
393 which the rate structure is adopted may not exceed:
394 1. For municipalities, the sum of the revenue base and 10
395 percent of that revenue base. The revenue base is the sum of the
396 business ~~occupational license~~ tax revenue generated by receipts
397 ~~licenses~~ issued for the most recently completed local fiscal
398 year or the amount of revenue that would have been generated
399 from the authorized increases under s. 205.043(1)(b), whichever
400 is greater, plus any revenue received from the county under s.
401 205.033(4).
402 2. For counties, the sum of the revenue base, 10 percent
403 of that revenue base, and the amount of revenue distributed by
404 the county to the municipalities under s. 205.033(4) during the
405 most recently completed local fiscal year. The revenue base is
406 the business ~~occupational license~~ tax revenue generated by
407 receipts ~~licenses~~ issued for the most recently completed local
408 fiscal year or the amount of revenue that would have been
409 generated from the authorized increases under s. 205.033(1)(b),

410 whichever is greater, but may not include any revenues
411 distributed to municipalities under s. 205.033(4).
412 (c) In addition to the revenue increases authorized by
413 paragraph (b), revenue increases attributed to the increases in
414 the number of receipts ~~licenses~~ issued are authorized.
415 (4) After the conditions specified in subsections (2) and
416 (3) are met, municipalities and counties may, every other year
417 thereafter, increase by ordinance the rates of business ~~local~~
418 ~~occupational license~~ taxes by up to 5 percent. The increase,
419 however, may not be enacted by less than a majority plus one
420 vote of the governing body.
421 (5) A receipt may not ~~No license shall~~ be issued unless
422 the federal employer identification number or social security
423 number is obtained from the person to be taxed ~~licensed~~.
424 Section 13. Section 205.0536, Florida Statutes, is amended
425 to read:
426 205.0536 Distribution of county revenues.--A county that
427 establishes a new rate structure under s. 205.0535 shall retain
428 all business ~~occupational license~~ tax revenues collected from
429 businesses, professions, or occupations whose places of business
430 are located within the unincorporated portions of the county.
431 Any business ~~occupational license~~ tax revenues collected by a
432 county that establishes a new rate structure under s. 205.0535
433 from businesses, professions, or occupations whose places of
434 business are located within a municipality, exclusive of the
435 costs of collection, must be apportioned between the
436 unincorporated area of the county and the incorporated
437 municipalities located therein by a ratio derived by dividing

438 their respective populations by the population of the county. As
439 used in this section, the term "population" means the latest
440 official state estimate of population certified under s.
441 186.901. The revenues so apportioned shall be sent to the
442 governing authority of each municipality, according to its
443 ratio, and to the governing authority of the county, according
444 to the ratio of the unincorporated area, within 15 days after
445 the month of receipt.
446 Section 14. Section 205.0537, Florida Statutes, is amended
447 to read:
448 205.0537 Vending and amusement machines.--The business
449 premises where a coin-operated or token-operated vending machine
450 that dispenses products, merchandise, or services or where an
451 amusement or game machine is operated must assure that any
452 required municipal or county business tax receipt ~~occupational~~
453 ~~license~~ for the machine is secured. The term "vending machine"
454 does not include coin-operated telephone sets owned by persons
455 who are in the business of providing local exchange telephone
456 service and who pay the business tax ~~occupational license~~ under
457 the category designated for telephone companies in the
458 municipality or county or a pay telephone service provider
459 certified pursuant to s. 364.3375. The business ~~license~~ tax for
460 vending and amusement machines must be assessed based on the
461 highest number of machines located on the business premises on
462 any single day during the previous receipted ~~licensing~~ year or,
463 in the case of new businesses, be based on an estimate for the
464 current year. Replacement of one vending machine with another
465 machine during a receipted ~~licensing~~ year does not affect the

466 tax assessment for that year, unless the replacement machine
467 belongs to a business ~~an occupational license~~ tax classification
468 that requires a higher tax rate. For the first year in which a
469 municipality or county assesses a business ~~an occupational~~
470 ~~license~~ tax on vending machines, each business owning machines
471 located in the municipality or county must notify the
472 municipality or county, upon request, of the location of such
473 machines. Each business owning machines must provide notice of
474 the provisions of this section to each affected business
475 premises where the machines are located. The business premises
476 must secure the receipt ~~license~~ if it is not otherwise secured.
477 Section 15. Section 205.054, Florida Statutes, is amended
478 to read:
479 205.054 Business ~~Occupational license~~ tax; partial
480 exemption for engaging in business or occupation in enterprise
481 zone.--
482 (1) Notwithstanding the provisions of s. 205.033(1)(a) or
483 s. 205.043(1)(a), the governing body of a county or municipality
484 may authorize by appropriate resolution or ordinance, adopted
485 pursuant to the procedure established in s. 205.032 or s.
486 205.042, the exemption of 50 percent of the business
487 ~~occupational license~~ tax levied for the privilege of engaging in
488 or managing any business, profession, or occupation in the
489 respective jurisdiction of the county or municipality when such
490 privilege is exercised at a permanent business location or
491 branch office located in an enterprise zone.
492 (2) Such exemption applies to each classification for
493 which a business tax receipt ~~an occupational license~~ is required

494 in the jurisdiction. Classifications shall be the same in an
495 enterprise zone as elsewhere in the jurisdiction. Each county or
496 municipal business tax receipt ~~occupational license~~ issued with
497 the exemption authorized in this section shall be in the same
498 general form as the other county or municipal business tax
499 receipts ~~occupational licenses~~ and shall expire at the same time
500 as those other receipts ~~licenses~~ expire as fixed by law. Any
501 receipt ~~license~~ issued with the exemption authorized in this
502 section is nontransferable. The exemption authorized in this
503 section does not apply to any penalty authorized in s. 205.053.
504 (3) Each tax collecting authority of a county or
505 municipality which provides the exemption authorized in this
506 section shall issue to each person who may be entitled to the
507 exemption a receipt ~~license~~ pursuant to the provisions contained
508 in this section. Before a receipt ~~license~~ with such exemption is
509 issued to an applicant, the tax collecting authority must, in
510 each case, be provided proof that the applicant is entitled to
511 such exemption. Such proof shall be made by means of a statement
512 filed under oath with the tax collecting authority, which
513 statement indicates that the permanent business location or
514 branch office of the applicant is located in an enterprise zone
515 of a jurisdiction which has authorized the exemption permitted
516 in this section.
517 (4) Any receipt ~~license~~ obtained with the exemption
518 authorized in this subsection by the commission of fraud upon
519 the issuing authority is ~~shall be deemed null and~~ void. Any
520 person who has fraudulently obtained such exemption and
521 thereafter engages, under color of the receipt ~~license~~, in any

522 business, profession, or occupation requiring the business tax
523 receipt ~~license~~ is subject to prosecution for engaging in a
524 business, profession, or occupation without having the required
525 receipt ~~license~~ under the laws of the state.
526 (5) If ~~In the event~~ an area nominated as an enterprise
527 zone pursuant to s. 290.0055 has not yet been designated
528 pursuant to s. 290.0065, the governing body of a county or
529 municipality may enact the appropriate ordinance or resolution
530 authorizing the exemption permitted in this section; however,
531 such ordinance or resolution will not be effective until such
532 area is designated pursuant to s. 290.0065.
533 (6) This section expires on the date specified in s.
534 290.016 for the expiration of the Florida Enterprise Zone Act;
535 and a receipt may not ~~no license shall~~ be issued with the
536 exemption authorized in this section for any period beginning on
537 or after that date.
538 Section 16. Section 205.063, Florida Statutes, is amended
539 to read:
540 205.063 Exemptions; motor vehicles.--Vehicles used by any
541 person receipted ~~licensed~~ under this chapter for the sale and
542 delivery of tangible personal property at ~~either~~ wholesale or
543 retail from his or her place of business on which a business tax
544 ~~license~~ is paid may ~~shall~~ not be construed to be separate places
545 of business, and a business tax ~~no license~~ may not be levied on
546 such vehicles or the operators thereof as salespersons or
547 otherwise by a county or incorporated municipality, any other
548 law to the contrary notwithstanding.

549 Section 17. Section 205.064, Florida Statutes, is amended
550 to read:
551 205.064 Farm, aquacultural, grove, horticultural,
552 floricultural, tropical piscicultural, and tropical fish farm
553 products; certain exemptions.--
554 (1) A ~~No~~ local business tax receipt is not ~~occupational~~
555 ~~license shall be~~ required of any natural person for the
556 privilege of engaging in the selling of farm, aquacultural,
557 grove, horticultural, floricultural, tropical piscicultural, or
558 tropical fish farm products, or products manufactured therefrom,
559 except intoxicating liquors, wine, or beer, when such products
560 were grown or produced by such natural person in the state.
561 (2) A wholesale farmers' produce market may ~~shall have the~~
562 ~~right to~~ pay a tax of not more than $200 for a receipt ~~license~~
563 that will entitle the market's stall tenants to engage in the
564 selling of agricultural and horticultural products therein, in
565 lieu of such tenants being required to obtain individual local
566 business tax receipts ~~occupational licenses~~ to so engage.
567 Section 18. Section 205.065, Florida Statutes, is amended
568 to read:
569 205.065 Exemption; nonresident persons regulated by the
570 Department of Business and Professional Regulation.--If any
571 person engaging in or managing a business, profession, or
572 occupation regulated by the Department of Business and
573 Professional Regulation has paid a business ~~an occupational~~
574 ~~license~~ tax for the current year to the county or municipality
575 in the state where the person's permanent business location or
576 branch office is maintained, no other local governing authority

577 may levy a business ~~an occupational license~~ tax, or any
578 registration or regulatory fee equivalent to the business
579 ~~occupational license~~ tax, on the person for performing work or
580 services on a temporary or transitory basis in another
581 municipality or county. ~~In no event shall any~~ Work or services
582 performed in a place other than the county or municipality where
583 the permanent business location or branch office is maintained
584 may not be construed as creating a separate business location or
585 branch office of that person for the purposes of this chapter.
586 Any properly licensed contractor asserting an exemption under
587 this section who is unlawfully required by the local governing
588 authority to pay a business ~~an occupational license~~ tax, or any
589 registration or regulatory fee equivalent to a business ~~the~~
590 ~~occupational license~~ tax, has ~~shall have~~ standing to challenge
591 the propriety of the local government's actions, and the
592 prevailing party in such a challenge is entitled to recover a
593 reasonable attorney's fee.
594 Section 19. Section 205.162, Florida Statutes, is amended
595 to read:
596 205.162 Exemption allowed certain disabled persons, the
597 aged, and widows with minor dependents.--
598 (1) All disabled persons physically incapable of manual
599 labor, widows with minor dependents, and persons 65 years of age
600 or older, with not more than one employee or helper, and who use
601 their own capital only, not in excess of $1,000, may ~~shall be~~
602 ~~allowed to~~ engage in any business or occupation in counties in
603 which they live without being required to pay ~~for~~ a business tax
604 ~~license~~. The exemption provided by this section shall be allowed

605 only upon the certificate of the county physician, or other
606 reputable physician, that the applicant claiming the exemption
607 is disabled, the nature and extent of the disability being
608 specified therein, and in case the exemption is claimed by a
609 widow with minor dependents, or a person over 65 years of age,
610 proof of the right to the exemption shall be made. Any person
611 entitled to the exemption provided by this section shall, upon
612 application and furnishing of the necessary proof as aforesaid,
613 be issued a receipt ~~license~~ which shall have plainly stamped or
614 written across the face thereof the fact that it is issued under
615 this section, and the reason for the exemption shall be written
616 thereon.
617 (2) Neither ~~In no event under~~ this nor ~~or~~ any other law
618 exempts ~~shall~~ any person~~, veteran or otherwise, be allowed any~~
619 ~~exemption whatsoever~~ from the payment of any amount required by
620 law for the issuance of a license to sell intoxicating liquors
621 or malt and vinous beverages.
622 Section 20. Section 205.171, Florida Statutes, is amended
623 to read:
624 205.171 Exemptions allowed disabled veterans of any war or
625 their unremarried spouses.--
626 (1) Any bona fide, permanent resident elector of the state
627 who served as an officer or enlisted person during any of the
628 periods specified in s. 1.01(14) in the Armed Forces of the
629 United States, National Guard, or United States Coast Guard or
630 Coast Guard Reserve, or any temporary member thereof, who has
631 actually been, or may hereafter be, reassigned by the air force,
632 army, navy, coast guard, or marines to active duty during any

633 war, declared or undeclared, armed conflicts, crises, etc., who
634 was honorably discharged from the service of the United States,
635 and who at the time of his or her application for a business tax
636 receipt is ~~license as hereinafter mentioned shall be~~ disabled
637 from performing manual labor shall, upon sufficient
638 identification, proof of being a permanent resident elector in
639 the state, and production of an honorable discharge from the
640 service of the United States:
641 (a) Be granted a receipt ~~license~~ to engage in any business
642 or occupation in the state which may be carried on mainly
643 through the personal efforts of the receiptholder ~~licensee~~ as a
644 means of livelihood and for which the state license or~~,~~ county~~,~~
645 or municipal receipt ~~license~~ does not exceed the sum of $50 for
646 each without payment of any business ~~license~~ tax otherwise
647 provided for by law; or
648 (b) Be entitled to an exemption to the extent of $50 on
649 any receipt ~~license~~ to engage in any business or occupation in
650 the state which may be carried on mainly through the personal
651 efforts of the receiptholder ~~licensee~~ as a means of livelihood
652 when the state license or~~,~~ county~~,~~ or municipal receipt ~~license~~
653 for such business or occupation is ~~shall be~~ more than $50. The
654 exemption ~~heretofore referred to~~ shall extend to and include the
655 right of the receiptholder ~~licensee~~ to operate an automobile-
656 for-hire of not exceeding five-passenger capacity, including the
657 driver, when ~~it shall be made to appear that~~ such automobile is
658 ~~bona fide~~ owned or contracted to be purchased by the
659 receiptholder ~~licensee~~ and is being operated by him or her as a
660 means of livelihood and that the proper business ~~license~~ tax for

661 the operation of such motor vehicle for private use has been
662 applied for and attached to the ~~said~~ motor vehicle and the
663 proper fees ~~therefor~~ paid by the receiptholder ~~licensee~~.
664 (2) When ~~any~~ such person applies ~~shall apply~~ for a receipt
665 ~~license~~ to conduct any business or occupation for which ~~either~~
666 the county or municipal business ~~license~~ tax exceeds ~~as fixed by~~
667 ~~law shall exceed the sum of~~ $50, the remainder of such ~~license~~
668 tax in excess of $50 shall be paid in cash.
669 (3) Each ~~and every~~ tax collecting authority of this state
670 and of each county ~~thereof~~ and each municipality ~~therein~~ shall
671 issue to such persons as may be entitled hereunder a receipt
672 ~~license~~ pursuant to the foregoing provision and subject to the
673 conditions thereof. Such receipt ~~license~~ when issued shall be
674 marked across the face ~~thereof~~ "Veterans Exempt Receipt
675 ~~License~~"--"Not Transferable." Before issuing the receipt ~~same~~,
676 proof shall be duly made ~~in each case~~ that the applicant is
677 entitled under ~~the conditions of~~ this law to receive the
678 exemption ~~herein provided for~~. The proof may be made by
679 establishing to the satisfaction of such tax collecting
680 authority by means of certificate of honorable discharge or
681 certified copy thereof that the applicant is a veteran within
682 the purview of this section and by exhibiting:
683 (a) A certificate of government-rated disability to an
684 extent of 10 percent or more;
685 (b) The affidavit or testimony of a reputable physician
686 who personally knows the applicant and who makes oath that the
687 applicant is disabled from performing manual labor as a means of
688 livelihood;

689 (c) The certificate of the veteran's service officer of
690 the county in which applicant lives, duly executed under the
691 hand and seal of the chief officer and secretary thereof,
692 attesting the fact that the applicant is disabled and entitled
693 to receive a receipt ~~license~~ within the meaning and intent of
694 this section;
695 (d) A pension certificate issued to him or her by the
696 United States by reason of such disability; or
697 (e) Such other reasonable proof as may be required by the
698 tax collecting authority to establish the fact that such
699 applicant is ~~so~~ disabled.
700
701 All receipts ~~licenses~~ issued under this section shall be in the
702 same general form as other state, county, and municipal licenses
703 and shall expire at the same time as such other licenses are
704 fixed by law to expire.
705 (4) Receipts ~~All licenses~~ obtained ~~under the provisions of~~
706 ~~this section~~ by the commission of fraud upon any issuing
707 authority are ~~shall be deemed null and~~ void. Any person who has
708 fraudulently obtained a receipt ~~any such license~~, or who has
709 fraudulently received any transfer of a receipt ~~license~~ issued
710 to another, and has thereafter engaged in any business or
711 occupation requiring a receipt ~~license~~ under color thereof is
712 ~~shall be~~ subject to prosecution ~~as~~ for engaging in a business or
713 occupation without having the required receipt ~~license~~ under the
714 laws of the state. Such receipt may ~~license shall~~ not be issued
715 in any county other than the county where the ~~wherein said~~
716 veteran is a ~~bona fide~~ resident citizen elector, unless such

717 veteran produces ~~applying therefor shall produce to the tax~~
718 ~~collecting authority in such county~~ a certificate of the tax
719 collector of his or her home county to the effect that no
720 exemption from taxation ~~license~~ has been granted to such veteran
721 in his or her home county under ~~the authority of~~ this section.
722 (5) Neither ~~In no event, under~~ this nor ~~or~~ any other law
723 exempts~~, shall~~ any person~~, veteran or otherwise, be allowed any~~
724 ~~exemption whatsoever~~ from the payment of any amount required by
725 law for the issuance of a license to sell intoxicating liquors
726 or malt and vinous beverages.
727 (6) The unremarried spouse of a ~~the~~ deceased disabled
728 veteran of any war in which the United States Armed Forces
729 participated is ~~will be~~ entitled to the same exemptions as the
730 disabled veteran.
731 Section 21. Section 205.191, Florida Statutes, is amended
732 to read:
733 205.191 Religious tenets; exemption.--~~Nothing in~~ This
734 chapter does not ~~shall be construed to~~ require a business tax
735 receipt ~~license~~ for practicing the religious tenets of any
736 church.
737 Section 22. Section 205.192, Florida Statutes, is amended
738 to read:
739 205.192 Charitable, etc., organizations; occasional sales,
740 fundraising; exemption.--A business tax receipt is not ~~No~~
741 ~~occupational license shall be~~ required of any charitable,
742 religious, fraternal, youth, civic, service, or other similar
743 ~~such~~ organization that ~~when the organization~~ makes occasional
744 sales or engages in fundraising projects that ~~when the projects~~

745 are performed exclusively by the members, ~~thereof~~ and ~~when~~ the
746 proceeds derived from the activities are used exclusively in the
747 charitable, religious, fraternal, youth, civic, and service
748 activities of the organization.
749 Section 23. Section 205.193, Florida Statutes, is amended
750 to read:
751 205.193 Mobile home setup operations; local business tax
752 receipt ~~license~~ prohibited; exception.--A ~~No~~ county,
753 municipality, or other unit of local government may not require
754 a ~~duly~~ licensed mobile home dealer or a ~~duly~~ licensed mobile
755 home manufacturer, or an employee of a ~~such~~ dealer or
756 manufacturer, who performs setup operations as defined in s.
757 320.822 to be a business tax receiptholder ~~licensed~~ to engage in
758 such operations. However, such dealer or manufacturer must ~~shall~~
759 ~~be required to~~ obtain a local receipt ~~occupational license~~ for
760 his or her permanent business location or branch office, which
761 receipt ~~license~~ shall not require for its issuance any
762 conditions other than those required by chapter 320.
763 Section 24. Section 205.194, Florida Statutes, is amended
764 to read:
765 205.194 Prohibition of local business tax receipt
766 ~~occupational licensure~~ without exhibition of state license or
767 registration.--
768 (1) Any person applying for or renewing a local business
769 tax receipt ~~occupational license~~ for the ~~licensing~~ period
770 beginning October 1, 1985, to practice any profession regulated
771 by the Department of Business and Professional Regulation, or
772 any board or commission thereof, must exhibit an active state

773 certificate, registration, or license, or proof of copy of the
774 same, before such local receipt ~~occupational license~~ may be
775 issued. Thereafter, only persons applying for the first time for
776 a receipt ~~local occupational license~~ must exhibit such
777 certification, registration, or license.
778 (2) The Department of Business and Professional Regulation
779 shall, by August 1 of each year, supply to the local official
780 who issues local business tax receipts ~~occupational licenses~~ a
781 current list of professions it regulates and information
782 regarding those persons for whom receipts ~~local occupational~~
783 ~~licenses~~ should not be renewed due to the suspension,
784 revocation, or inactivation of such person's state license,
785 certificate, or registration. The official who issues local
786 business tax receipts ~~occupational licenses~~ shall not renew such
787 license unless such person can exhibit an active state
788 certificate, registration, or license.
789 (3) This section shall not apply to s. 489.113, s.
790 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.
791 489.521, or s. 489.537.
792 Section 25. Section 205.196, Florida Statutes, is amended
793 to read:
794 205.196 Pharmacies and pharmacists.--A ~~No~~ state, county,
795 or municipal licensing agency may not ~~shall~~ issue a business tax
796 receipt ~~an occupational license~~ to operate a pharmacy unless the
797 applicant produces ~~shall first exhibit~~ a current permit issued
798 by the Board of Pharmacy; however, no such receipt is
799 ~~occupational license shall be~~ required ~~in order~~ to practice the
800 profession of pharmacy.

801 Section 26. Section 205.1965, Florida Statutes, is amended
802 to read:
803 205.1965 Assisted living facilities.--A county or
804 municipality may not issue a business tax receipt ~~an~~
805 ~~occupational license~~ for the operation of an assisted living
806 facility pursuant to part III of chapter 400 without first
807 ascertaining that the applicant has been licensed by the Agency
808 for Health Care Administration to operate such facility at the
809 specified location or locations. The Agency for Health Care
810 Administration shall furnish to local agencies responsible for
811 issuing business tax receipts ~~occupational licenses~~ sufficient
812 instructions for making the ~~above~~ required determinations.
813 Section 27. Section 205.1967, Florida Statutes, is amended
814 to read:
815 205.1967 Prerequisite for issuance of pest control
816 business tax receipt ~~occupational license~~.--A municipality or
817 county may not issue a business tax receipt ~~an occupational~~
818 ~~license~~ to any pest control business regulated ~~coming~~ under
819 chapter 482~~,~~ unless a current license has been procured from the
820 Department of Agriculture and Consumer Services for each of its
821 business locations in that municipality or county. Upon
822 presentation of the requisite licenses from the department and
823 the required fee, a business tax receipt ~~an occupational license~~
824 shall be issued by the municipality or county in which
825 application is made.
826 Section 28. Section 205.1969, Florida Statutes, is amended
827 to read:

828 205.1969 Health studios; consumer protection.--A ~~No~~ county
829 or municipality may not ~~shall~~ issue or renew a business tax
830 receipt ~~an occupational license~~ for the operation of a health
831 studio pursuant to ss. 501.012-501.019 or ballroom dance studio
832 pursuant to s. 501.143, unless such business exhibits a current
833 license, registration, or letter of exemption from the
834 Department of Agriculture and Consumer Services.
835 Section 29. Section 205.1971, Florida Statutes, is amended
836 to read:
837 205.1971 Sellers of travel; consumer protection.--A ~~No~~
838 county or municipality may not ~~shall~~ issue or renew a business
839 tax receipt ~~an occupational license~~ to engage in business as a
840 seller of travel pursuant to part XI of chapter 559 unless such
841 business exhibits a current registration or letter of exemption
842 from the Department of Agriculture and Consumer Services.
843 Section 30. Section 205.1973, Florida Statutes, is amended
844 to read:
845 205.1973 Telemarketing businesses; consumer protection.--A
846 county or municipality may not issue or renew a business tax
847 receipt ~~an occupational license~~ for the operation of a
848 telemarketing business under ss. 501.604 and 501.608, unless
849 such business exhibits a current license or registration from
850 the Department of Agriculture and Consumer Services or a current
851 affidavit of exemption.
852 Section 31. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1431 CS Impact Fees
SPONSOR(S): Cretul
TIED BILLS: **IDEN./SIM. BILLS:** SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee	7 Y, 2 N, w/CS	Strickland	Grayson
2) Fiscal Council		Monroe KDM	Kelly cl
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act." The bill provides a framework for the creation of impact fee ordinances and levy of impact fees.

The bill provides legislative findings and legislative intent regarding the need for and use of impact fees.

The bill provides definitions for the applicable terms within the "Impact Fee Act."

The bill requires that impact fees:

- Be a one time charge, although partial payments may be collected over time during the course of a development.
- Be used for capital outlay projects only.
- Represent a proportionate share of the cost of the project that is needed to serve new development.

The bill authorizes local governments to levy impact fees pursuant to its home rule authority.

The bill authorizes special districts to levy impact fees only when authorized to do so by general law.

The bill requires public notice prior to the enactment of an impact fee ordinance.

The bill sets forth certain criteria for a impact fee ordinance.

The bill authorizes an exemption from the levy of an impact fee and requires specification of the criteria used in determining such an exemption and the alternative source of revenue which will offset the fee that is exempted.

The bill requires that an impact fee ordinance include a credits calculation with specified provisions regarding the calculation and requiring a credit against certain types of taxes and other payments.

The bill provides that an impact fee ordinance enacted prior to July 1, 2006, need not comply with the provisions of this bill until July 1, 2008.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill creates a framework for establishing an impact fee ordinance and levying impact fees. To the extent that current impact fee ordinances and levying practices are inconsistent with the provisions of this bill, those required to pay impact fees may pay more or less. For those local governments that do not currently levy impact fees, creation of an impact fee ordinance and the levying of impact fees pursuant to the provisions would create an additional cost to those required to pay the impact fee.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes:

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act."

Legislative findings and intent:

The bill provides legislative findings that:

- Impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth.
- Impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.

The bill provides legislative intent to ensure that impact fees throughout the state are used to maintain adequate public facilities, represent a proportionate share of the cost of each public facility, and promote orderly growth and development.

Definitions:

The bill provides the following definitions relating to impact fees:

- Capital outlay project – The buildings, equipment, and structures that are built, installed, or established to serve the need for infrastructure in a new or expanded development, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks, and recreational projects.
- Impact fee: A total or partial reimbursement to a local government for the cost of the additional public facilities or services necessitated by new development or the expansion of existing development.
- Local Government: A county, municipality, or special district that is authorized by its enabling legislation or by general law to impose an impact fee.
- Public Notice: Notice as required by s. 125.66(2), F.S., for a county, s. 166.041 (3) (a), F.S., for a municipality, or s. 189.417, F.S., for a special district.
- Rational Nexus: A reasonable connection.

Impact fee requirements:

The bill requires an impact fee to do the following:

- Be a one-time charge, although the charge may be paid at certain times over the course of the development process.

- Be used for capital outlay projects only. Specifically, the impact fee may not be used to fund operating costs and infrastructure deficiencies.
- Represent a proportionate share of the cost of the capital outlay project that is needed to serve the new development.

Authorization to levy impact fees:

The bill authorizes to a local government by its home rule power, to adopt an impact fee ordinance within its jurisdiction in order to fund infrastructure necessary to serve new development.

The bill further authorizes a special district to levy an impact fee only if it is authorized to so by general law.

Notice:

The bill provides that public notice must be given prior to a county, municipality, or special district enacting an impact fee ordinance.

Impact fee ordinance requirements:

The bill provides that an impact fee must do the following:

- Specify the geographical area to be served by the collection of the impact fee.
- Specify that there is a rational nexus between the anticipated need for the capital outlay project and the growth generated by the new development.
- Specify that there is a rational nexus between the anticipated use of the revenue that is collected from the impact fee and the benefits that will accrue to the new development upon completion of the capital outlay project.
- Specify the criteria and methodology used to calculate the amount of the impact fee and the assumptions on which they are based.
- Demonstrate that the impact fee does not exceed a proportionate share of the cost of the capital outlay project or system improvement needed to serve the new development.
- Specify certain times during the development process when partial payments of the impact fee are due.
- Require that the revenue from the impact fee is spent only on the capital outlay project for which the fee was collected.
- Specify that the revenue from the impact fee that is collected by a local government shall be deposited into an interest-bearing account. The interest from the account shall also be used only for the capital outlay project.
- Specify that the revenue from the impact fee and disbursement shall be accounted for and reported separately from other governmental sources of revenue. The accounting and reporting of the revenue from an impact fee shall be available for audit pursuant to s. 218.39, F.S.
- Provide a process for refunding an impact fee that was not expended on or encumbered for the capital outlay project for which it was collected within a reasonable amount of time, not to exceed 8 years following the date of the adoption of the ordinance.
- Specify who is entitled to a refund after the time for construction of the capital outlay project has expired. [developer, property owner of record at the time of the refund, some other individual entity]

Impact fee credits:

The bill authorizes an impact fee ordinance to provide credits for outside funding sources, improvements initiated by developers, in-kind contributions, and local tax payments that fund capital improvements.

In addition, the bill requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the bill requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the bill requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

Impact fee exemptions:

The bill requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the bill requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the bill requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

Compliance:

The bill provides that an impact fee ordinance that is enacted before July 1, 2006, need not comply with the provisions in this bill until July 1, 2008.

Background:

The Florida Constitution grants local governments broad home rule authority. Impact fees are a unique product of local governments' home rule powers, and the development of such fees has occurred in Florida by home rule ordinance rather than by direct statutory authorization or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.[1]

There have been a number of court decisions that address impact fees.[2] In *Hollywood, Inc. v. Broward County*,[3] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new developement and the fees collected are adequately earmarked for the benefit of the residents of the new development.[4] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[5] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[6]

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[1] This information is adapted from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook*, 2002 Edition, p. 25.

[2] See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

[3] 431 So. 2d 606 (Fla. 4th DCA 1983).

[4] *See id.* at 611.

[5] *See id.* at 611-612.

[6] *See id* at 614.

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[7] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[8] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[9]

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[10]

Recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[11] In City *of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[12]

As developed under case law, a legally sufficient impact fee has the following characteristics:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for pubic facilities;
- the fee represents a proportional share of the cost of public facilities needed to serve new development;
- the fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- the fee is a one-time charge, although collection may be spread over a period of time;
- the fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions towards the cost of the increased capacity for public facilities.

The Legislative Committee on Intergovernmental Relations (LCIR) reports that forty counties imposed impact fees in FY 2001/02, collecting $466,571,712. In addition, 156 municipalities levying impact fees collected $133,132,215 in FY 2001/02, with thirty-one cities collecting more than $1 million. The largest category of impact fees is transportation for counties, and physical environment for municipalities. An estimated 19 counties levy school impact fees on behalf of school districts in their county.

The 2005 Florida Legislature created the Florida Impact Fee Review Task Force (Task Force). The Task Force was comprised of 15 members representing the state and local governments, the building

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[7] 583 So. 2d 635 (Fla. 1991)

[8] *See id.* at 637, citing, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).

[9] *See id.* at 637

[10] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.

[11] 760 So. 2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.

[12] 831 So. 2d 233 (Fla. 2d DCA 2002)

and development community, the school boards, and an affordable housing advocate. The Task Force was established to serve as an advisory body to the Legislature on the issue of impact fees.

In the Task Force's final report issued to the Legislature, they proposed a number of recommended statutory changes to existing law rather than the creation of a uniform impact fee statute. Further, the task force offered the following recommendations:

- Data – Require local governments to use the most recent and localized data when calculating an impact fee.
- Affordable Housing – Require that all impact fee ordinances significantly address affordable housing. This may include waiving, deferring, exempting, paying out of another source, or establishing a significant affordable housing program. They further recommend fully funding the Sadowski Act.
- Accounting and Reporting Collections and Expenditures – Require that all impact fee collections and expenditures be accounted and reported.
- Notice – Require that local governments provide notice of not less than 90 days before the effective date of an impact fee ordinance.
- Administrative Charges – Require that administrative charges for impact fee collections be limited to "no more than actual cost."

In the Task Force's report, they recommended no statutory guidance regarding the following impact fee topics:

- Methodology used to calculate impact fees;
- Sharing of impact fees between counties and cities;
- Timing of impact fee payments;
- Time limits for the expenditure of impact fee collections and impact fee refunds;
- Switching the legal burden of proof for impact fee challenges;
- Creation of a presumptively unchallengeable impact fee;
- Impact fee caps; and
- A model impact fee ordinance.

The Task Force recommended that the Legislature consider the following alternative revenue sources for local governments to meet their infrastructure demands:

- Authorizing passage of the Local Option Sales Tax, which includes the Local Government Infrastructure Surtax and the Small County Surtax by majority or supermajority vote of the Board of County Commissioners, and the School Capital Outlay Surtax by majority or supermajority vote of the District School Board, as an option to the referendum requirement;
- Increasing the bonding capacity of County Revenue Sharing Dollars;
- Finding an alternative to augment the Public Education Capital Outlay (PECO) fund;
- Fully funding the Sadowski program for affordable housing, and
- Authorizing all local governments to assess a Documentary Stamp Surtax, similar to Miami-Dade County's $0.45 per $100.

C. SECTION DIRECTORY:

Section 1: Creates s. 163.31801, F.S., relating to impact fees.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate: Local governments that have not already established impact fees may benefit by establishing impact fees consistent with the provisions of this bill. Other local governments that have already established impact fees may either benefit or not based upon the consistency of their impact fee ordinance with the provisions of this bill.

2. Expenditures:

   Indeterminate: Some local governments may need to reenact existing impact fee ordinances to come into compliance with the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate: To the extent that impact fee ordinances have been created and impact fees levied inconsistent with the provisions of this bill, the development community may or may not benefit from the passage of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Growth Management Committee adopted one amendment. The amendment requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the amendment requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the amendment requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

CHAMBER ACTION

The Growth Management Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to impact fees; creating s. 163.31801, F.S.; creating the "Impact Fee Act"; providing legislative intent; providing definitions; requiring that an impact fee meet certain specified requirements; authorizing local governments to adopt ordinances to levy impact fees to fund certain infrastructure needs; requiring public notice before such ordinances are enacted; requiring such ordinances to specify certain criteria for calculating and imposing impact fees; specifying certain requirements for the use of fee revenues; providing a process for refunding fees, including certain credits; specifying the use of fee revenues to supplement certain funds; authorizing certain credits and exemptions for certain developments; providing certain dates for compliance; providing an effective date.

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

23 Section 1. Section 163.31801, Florida Statutes, is created
24 to read:
25 163.31801 Impact fees; short title; intent; definitions;
26 ordinances levying impact fees.--
27 (1) This section may be cited as the "Impact Fee Act."
28 (2) The Legislature finds that impact fees are an
29 important source of revenue for a local government to use in
30 funding the infrastructure necessitated by new growth. The
31 Legislature further finds that impact fees are an outgrowth of
32 the home rule power of a local government to provide certain
33 services within its jurisdiction. Due to the increased reliance
34 of local governments on impact fees, it is the intent of the
35 Legislature to ensure that impact fees throughout the state are
36 used to maintain adequate public facilities, represent a
37 proportionate share of the cost of each public facility, and
38 promote orderly growth and development.
39 (3) As used in this section, the term:
40 (a) "Capital outlay project" means the buildings,
41 equipment, and structures that are built, installed, or
42 established to serve the need for infrastructure in a new or
43 expanded development, including, but not limited to,
44 transportation, sanitary sewer, solid waste, drainage, potable
45 water, education, parks, and recreational projects.
46 (b) "Impact fee" means a total or partial reimbursement to
47 a local government for the cost of the additional public
48 facilities or services necessitated by new development or the
49 expansion of existing development.

50 (c) "Local government" means a county, municipality, or
51 special district that is authorized by its enabling legislation
52 or by general law to impose an impact fee.
53 (d) "Public notice" means notice as required by s.
54 125.66(2) for a county, s. 166.041(3)(a) for a municipality, or
55 s. 189.417 for a special district. The procedures for public
56 notice which are required in this section are established as the
57 minimum procedures for public notice.
58 (e) "Rational nexus" means a reasonable connection.
59 (4) An impact fee must:
60 (a) Be a one-time charge, although partial payments may be
61 collected at certain times over the course of the development
62 process.
63 (b) Be used for capital outlay projects only. Operating
64 costs and infrastructure deficiencies may not be funded by the
65 revenue from the impact fee.
66 (c) Represent a proportionate share of the cost of the
67 capital outlay project that is needed to serve the new
68 development.
69 (5) A local government is authorized by its home rule
70 power to adopt an ordinance levying an impact fee within its
71 jurisdiction in order to fund the need for infrastructure
72 created by new development or the expansion of existing
73 development. A special district may levy an impact fee only if
74 it is authorized to do so by general law.
75 (6) Before enacting an ordinance levying an impact fee, a
76 county, municipality, or special district must give public
77 notice of the proposed enactment.

78 (7) The ordinance levying an impact fee must:
79 (a) Specify the geographical area to be served by the
80 collection of the impact fee.
81 (b) Specify that there is a rational nexus between the
82 anticipated need for the capital outlay project and the growth
83 generated by the new development.
84 (c) Specify that there is a rational nexus between the
85 anticipated use of the revenue that is collected from the impact
86 fee and the benefits that will accrue to the new development
87 upon completion of the capital outlay project.
88 (d) Specify the criteria and methodology used to calculate
89 the amount of the impact fee and the assumptions on which they
90 are based.
91 (e) Demonstrate that the impact fee does not exceed a
92 proportionate share of the cost of the capital outlay project or
93 system improvement needed to serve the new development.
94 (f) Specify certain times during the development process
95 when partial payments of the impact fee are due.
96 (g) Require that the revenue from the impact fee is spent
97 only on the capital outlay project for which the fee was
98 collected.
99 (h) Specify that the revenue from the impact fee that is
100 collected by a local government shall be deposited into an
101 interest-bearing account. The interest from the account shall
102 also be used only for the capital outlay project.
103 (i) Specify that the revenue from the impact fee and
104 disbursement shall be accounted for and reported separately from
105 other governmental sources of revenue. The accounting and

106 reporting of the revenue from an impact fee shall be available
107 for audit pursuant to s. 218.39.
108 (j) Provide a process for refunding an impact fee that was
109 not expended on or encumbered for the capital outlay project for
110 which it was collected within a reasonable amount of time, not
111 to exceed 8 years following the date of the adoption of the
112 ordinance. A refund may be required after the time for
113 construction of the capital outlay project has expired. An
114 ordinance levying an impact fee must specify who is entitled to
115 the refund, whether it is the developer, the property owner of
116 record at the time of the refund, or some other individual or
117 entity.
118 (8) An ordinance levying an impact fee must include the
119 calculation of the amount of the fee to be paid a credit for the
120 full present value of all taxes, fees, assessments, liens,
121 charges, or other payments of any kind that have been or will be
122 available to the local government or other facility provider and
123 that will be used to construct capital outlay projects of the
124 same type for which the impact fee is imposed. The calculation
125 of the credit shall:
126 (a) Estimate such payments for a period of not less than
127 the useful life of the type of project for which the fee is
128 imposed.
129 (b) Include adjustments in the estimated annual payments
130 to account for inflation, increased taxable values, and
131 increased payments.
132 (c) Use a discount rate no greater than the current costs
133 of borrowing to finance such capital improvements.

134 (d) Be based solely upon the estimated payments from new
135 development and the property upon which the new development is
136 located.
137 (9) A local government imposing an impact fee shall also
138 provide a credit for all taxes or other payments of any kind
139 through state, federal, or other revenues anticipated to be
140 expended to construct capital outlay projects of the same type
141 for which the impact fee is imposed.
142 (10) An ordinance levying an impact fee must specify that
143 impact fees may only be used to supplement other funds utilized
144 to construct capital outlay projects.
145 (11) An ordinance levying an impact fee may provide
146 credits for outside funding sources, improvements initiated by
147 developers, in-kind contributions, and local tax payments that
148 fund capital improvements.
149 (12) An ordinance levying an impact fee may exempt all or
150 part of a development from the impact fee. The ordinance must
151 specify the criteria used in determining an exemption and the
152 alternative source of revenue which will offset the fee that is
153 exempted.
154 (13) An ordinance levying an impact fee which is enacted
155 before July 1, 2006, need not comply with the provisions of this
156 section until July 1, 2008.
157 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1623 CS Persons with Disabilities
SPONSOR(S): Bean
TIED BILLS: **IDEN./SIM. BILLS:** SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	9 Y, 0 N, w/CS	DePalma	Walsh
2) Fiscal Council		Ekholm LE	Kelly ck
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

House Bill 1623 CS creates the Interagency Services Committee for Youth and Young Adults with Disabilities within the Agency for Persons with Disabilities. It directs the committee to establish goals to ensure the successful transition to employment or further education of youth and young adults with disabilities and to eliminate barriers that impede educational opportunities leading to future employment.

The bill specifies committee membership and directs the Department of Children and Family Services, the Department of Education, the Department of Health, and the Agency for Persons with Disabilities to provide staff support to the committee. The bill also provides duties and responsibilities of the committee.

The committee shall present a progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007, and a final report detailing committee findings and recommendations by January 1, 2008. The committee is abolished on June 1, 2008.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families—The bill is intended to eliminate barriers to educational opportunities for, and to ensure the successful transition to employment or further education of, youth and young adults with disabilities.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND[1]

Children with disabilities face significant obstacles as they transition out of traditional educational and service arrangements. According to the National Organization on Disability's Harris Survey of Americans with Disabilities:

- young people with disabilities drop out of high school at twice the rate of their peers;
- as many as 90 percent of children with disabilities are living at poverty level three years after graduation;
- 80 percent of people with significant disabilities are not working; and
- currently, only one out of ten persons with a developmental disability will achieve integrated, competitive employment, and most will earn less than $2.40 an hour in a sheltered workshop.[2]

Florida-specific data also reveals disparities in graduation rates and employment opportunities for youths with disabilities. As reported by the Florida Department of Education's Data Warehouse, the graduation rate in 2003-04 for students with disabilities was only 36.6 percent (8,376 out of a total 22,890 disabled students graduated), while 68.6 percent of other, non-disabled students graduated (117,706 out of a total of 171,447 students). Moreover, a mere 12 percent of students with disabilities were enrolled in postsecondary programs,[3] and only 17.5 percent of students with developmental disabilities were employed after leaving secondary schools, with average quarterly earnings of approximately $3,700.

The Individuals with Disabilities Education Act (IDEA) requires that schools provide a free and appropriate education (FAPE) to all students who have not reached age 22 and have not earned a regular high school diploma. A student who graduates with a credential other than a standard diploma, and who chooses to continue to receive FAPE, can continue to generate funding through the Florida Education Financing Program (FEFP) until receiving a standard diploma or "aging out." A student with disabilities ages out when he or she reaches age 22 or completes the school year in which they turn 22. In December 2004, there were 364,877 students ages six to 21 served under IDEA, Part B, representing approximately 15 percent of total public school students.[4]

The transition to adulthood is a difficult process for all adolescents, but such transition presents additional challenges for young people with disabilities. Various transition services and supports are necessary to assist adolescents in adjusting to the change from the home and school environment to independent living and meaningful employment. Students with disabilities often face this process ill-

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[1] A substantial portion of the background analysis is patterned after the Senate Staff Analysis to identical Senate Bill 1278, prepared by the Senate Committee on Children and Families.
[2] The 2004 National Organization on Disability/Harris Survey of Americans with Disabilities, www.nod.org
[3] According to 2002 Florida Education and Training Placement Information Program (FETPIP) surveys, as reported by Florida Developmental Disabilities Council, Inc.
[4] Florida Department of Education, Bureau of Exceptional Education and Student Services, http://www.firn.edu/doef

equipped for further vocational training, post secondary education, or securing gainful employment. According to Agency for Persons with Disabilities, some of the barriers to a smooth transition include:

- Students leaving school are often placed on a waitlist for adult services, and may not be able to keep a job they had previously obtained in school because of a lack of transitional supports as adults. Medicaid waiver rules require students to return to school for services until age 22 if they have a special education diploma.
- Youths with disabilities and their families often are unprepared for the transition from an entitlement program (such as a free and appropriate education) to an adult service system.
- Priorities and expectations in the systems serving children and youths with disabilities are very different than the structure of the service and support system for adults, which is primarily focused on community integration.
- Commitment to the philosophy of self-determination and choice varies across agencies; in some programs self-determination is the cornerstone of the supports, while other agencies provide fewer choices in services and supports.
- Eligibility for services and supports vary by agency, and often support staff and families may be unaware of services for which they are eligible because planning processes are frequently not coordinated.
- Social Security benefits often create a disincentive to work. Individuals on Social Security Disability Income (SSDI) who require supports and health benefits to obtain a job lose eligibility for those services if they make more than $830 per month, thus losing the benefits that enable them to obtain and keep meaningful employment.
- Agencies may have different criteria for providers of the same service. For example, supported employment services can be offered by either not-for-profit or for-profit providers through the Agency for Persons with Disabilities. The Division of Vocational Rehabilitation (DOE), however, requires that such providers be not-for-profit.

Although there are a variety of federal and state programs and agencies with some involvement in meeting the educational and vocational needs of children and adolescents with disabilities, successfully integrating these efforts has proven difficult. Recently, there have been several statewide initiatives focused on helping to identify challenges faced by young adults with disabilities as they transition from high school to adult life, and developing strategies to create an effective transition system. The state agencies involved in these interagency activities include Agency for Persons with Disabilities, the Department of Education, the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, and the Department of Juvenile Justice. A variety of private organizations and individuals have also been involved in these activities, including the Able Trust, the Advocacy Center for Persons with Disabilities, Inc., the ADA Working Group, Center for Autism and Related Disabilities at the University of South Florida, Family Network on Disabilities of Florida, Inc., the Florida Developmental Disabilities Council, Inc., the Florida Independent Living Council, Inc., the Florida Institute for Family Involvement, the Florida Recreation and Parks Association, the Florida Rehabilitation Council, the Florida Schools Health Association, the Transition Center at the University of Florida, the Transition to Independence Process Project, Workforce Florida, Inc., parents, self-advocates, and teachers from throughout the state.[5]

Florida's Partners in Transition

In 2003, a partnership of agencies was formed under the auspices of the Florida Developmental Disabilities Council (FDDC) to identify issues and barriers faced by Florida's disabled youth as they transition from high school to adulthood. The partnership contracted with national experts to examine existing research and documents on transition, and held three public forums. As a result, a workgroup of 40 individuals was put together in March 2003 to review the findings and draft a statewide strategic

[5]Florida Partners in Transition, http://partnersintransition.org/members.htm

plan for transition. In September 2003, a team of Florida representatives attended the National Leadership Summit on Improving Results, which provided additional impetus for developing interagency partnerships for transition planning. Since that time, Florida's Partners in Transition has developed the Florida Strategic Plan on Transition, defining how state agencies, organizations, families, youth, and government programs can work together to reach young Floridians with disabilities in an attempt to support their transition to independence through education, meaningful work and a life in the community. A statewide summit was hosted January 25-26, 2005, for the purpose of providing an opportunity for local level leadership teams to be introduced to the Partners in Transition State Strategic Plan, to host facilitated planning sessions for the implementation of the strategic plan within their areas, and to hear from state and national experts on research-based practices in transition from school to adult life.

The 2006 Summit is scheduled for April 2006 and this year's objectives will be to enhance local level, cross-disciplinary leadership teams' efforts to achieve post-school results for students with disabilities, to develop goals and action steps for local implementation of the Statewide Strategic Plan, and to identify technical assistance needs of Leadership Teams.[6]

Blue Ribbon Task Force (BRTF) on Inclusive Community Living, Transition, and Employment of Individuals with Disabilities

In 2004, the Governor issued Executive Order 04-62, establishing the Florida Blue Ribbon Task Force on Inclusive Community Living, Transition, and Employment of Persons with Developmental Disabilities. The BRTF was charged with evaluating systems, programs, projects, and activities to determine consistency with Federal law, including the Americans with Disabilities Act and the Developmental Disabilities Assistance Act, Individuals with Disabilities Education Act, No Child Left Behind, Rehabilitation Act of 1973, and Bill of Rights for People with Developmental Disabilities.[7] The Governor directed the BRTF to concentrate on implementing strategies that result in improved inclusive community living options, transition outcomes, and employment for people with developmental disabilities so that they may achieve full integration and inclusion in society, in a manner that is consistent with the strengths, resources, and capabilities of each individual.

The BRTF issued a final report in December 2004 with four key recommendations intended to "achieve a system that aligns resources and eliminates barriers to effective transition, integrated employment, and inclusive community living and addresses priority needs of people with developmental disabilities."[8] These recommendations included:

- Developing a cost effective, coordinated, comprehensive system of supports and services (accomplished through a BRTF working group).
- Developing a transition plan that ensures transition outcome measures, a statewide assessment system that measures year to year progress, an incentive system to reward schools for students achieving employment, and an enhanced data system.
- Allocation of a portion of federal Workforce Investment Act state set-aside funds for competitive, integrated employment.
- An increase in funding to expand the number of persons served by the Home and Community Based Services waiver, and the Family and Supported Living waiver administered by Agency for Persons with Disabilities.

[6] Florida Developmental Disabilities Council, Florida's Transition Plans Comparison Chart (DRAFT), February 9, 2006.
[7] Florida Blue Ribbon Task Force (BRTF) on Inclusive Community Living, Transition, and Employment of Persons with Developmental Disabilities, Final Report, December 15, 2004.
[8] Ibid, page 6.

The Blue Ribbon Task Force Implementation Working Group

The Blue Ribbon Task Force Implementation Working Group (BIWG) was established to support the planning and actions necessary to assure that the BRTF recommendations were achieved. In July 2005, Florida was selected as one of six states participating in the National Governors' Association (NGA) Policy Academy on Improving Outcomes for Young Adults with Disabilities. Most of the Core Team members of the NGA Policy Academy were also members of the BIWG. Each participating state is required to determine and develop the most effective strategies for itself, given its specific challenges and opportunities and will:

- develop clear goals and realistic strategies for making both tangible short-term progress and key first steps toward broader system change;
- design a governance structure that drives implementation of innovative strategies and ensures coordination across all relevant agencies;
- undertake service integration and coordination such as mapping delivery systems, integrating case management, coordinating funds, and implementing effective memoranda of understanding among agencies; and
- develop cross-system outcomes and performance measures for the targeted population, including strategic data collection and analysis techniques in order to determine what strategies are successful and where change is required.[9]

According to the FDDC, "[g]iven the similarities in the goals and focus of the two initiatives and need to maximize the efforts of the mutual serving member agencies and organizations, the NGA Policy Academy was merged with the BIWG initiative to focus the first phase of the BIWG implementation efforts on the transition related recommendations in the Blue Ribbon Task Force final report." The Core Team members, agencies and organizations on the BIWG have developed Implementation Plans for each agency and organization, establishing measures of success, objectives, action steps, responsible parties, timelines, and resources or partners needed for success.

Phase II of the BIWG/NGA initiative will address Inclusive Community Living recommendations, as well as other Phase I recommendations, with a continued focus on strengthening cross-agency collaborations among the domains of housing, transportation, health, assistive technology, education, employment, community integration, and consumer advocacy.

Creation of a Committee or Task Force

Section 20.03 (8), F.S., states that a "Committee" or "task force" refers to an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

EFFECT OF PROPOSED CHANGES

The bill creates the Interagency Services Committee for Youth and Young Adults with Disabilities within the Agency for Persons with Disabilities. This committee is intended to establish goals to ensure successful transition to employment or further education of youth and young adults with disabilities, as well as to eliminate barriers that impede educational opportunities leading to future employment of these youths.

The bill requires that the committee consist of heads, or their designees, of the following agencies and bureaus or divisions of agencies:

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[9] Florida Developmental Disabilities Council, Florida's Transition Plans Comparison Chart (DRAFT), February 9, 2006.

- The Department of Education and, in that department, the Bureau of Exceptional Education and Student Services, the Division of Vocational Rehabilitation, the Division of Blind Services, the Division of Community Colleges, workforce education, and the office of interagency programs.
- The Agency for Persons with Disabilities.
- The Agency for Health Care Administration.
- The Division of Children's Medical Services Network in the Department of Health.
- Children's mental health in the Department of Children and Family Services.
- The Department of Juvenile Justice.
- The Department of Corrections.
- The Commission for the Transportation Disadvantaged.
- The Florida Housing Finance Corporation.

The bill provides that agency representatives must be at least at the bureau chief level. The committee is required to invite representation from the following private and public parties:

- The Able Trust.
- The Business Leadership Network.
- The Florida Advocacy Center.
- The Governor's Americans with Disabilities Act Working Group.
- The Florida Association for Centers for Independent Living.
- An individual with a disability.
- A parent or guardian of an individual with a disability.

The bill requires members of the committee to designate one of its members as chairperson, and meetings and records of the committee are subject to s. 119.07 and s. 286.011, F.S., the open records and open meetings laws.

The bill requires that the Department of Children and Family Services, the Department of Education, the Department of Health, and the Agency for Persons with Disabilities provide staff support to the committee, and the chairperson is to designate one of the agencies to perform "administrative responsibilities" for the committee.

Committee members are to serve without compensation, but are entitled to reimbursement for travel and per diem, as provided in s. 112.061, F.S. Public officers and employees are to be reimbursed through the budget entity from which their salary is paid. Reimbursement for members who are not public officers or employees shall alternate between the budget entities represented on the committee.

The bill requires that the committee accomplish the following:

- Identify the roles and responsibilities of each agency with regard to the committee goals.
- Develop collaborative relationships to identify and assist in removing federal and state barriers to achieving goals.
- Identify common or comparable performance measures for all agencies that serve youth and young adults with disabilities.
- Design a mechanism to annually assess the progress toward the goals of each agency.
- Collect and disseminate information on research-based practices of state and local agencies on successful strategies.
- Develop strategies to educate public and private employers on the benefit of hiring persons with disabilities.
- Develop strategies to encourage each public employer to hire persons with disabilities.

- Recommend a statewide system of accountability which would include incentives for persons with disabilities; service providers, including school districts, technical centers, and community colleges; and businesses and industries providing integrated competitive employment to individuals with disabilities.

The committee must present a progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007, must submit a final report on its findings and recommendations by January 1, 2008, and is abolished on June 1, 2008.

The bill has an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates the Interagency Services Committee for Persons with Disabilities with the Agency for Persons with Disabilities.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Costs will include travel and per diem expenses for committee members, administrative support costs, and staff time. Travel and per diem costs should be minimal unless the committee conducts meetings outside Tallahassee. Reimbursement for members who are not public officers or employees shall alternate between budget entities represented on the committee.

   Since the committee will select the chairperson who will then designate the agency to provide administrative support, the costs to each of the agencies named cannot be determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 22, 2006 meeting, the Committee on Elder and Long-Term Care adopted a strike-all amendment to House Bill 1623 with the following changes:

- Provides for the Interagency Services Committee for Youth and Young Adults with Disabilities to be created within the Agency for Persons with Disabilities.
- Revises committee composition, and directs the committee to invite representation from various private and public entities.
- Provides a reimbursement schedule for committee members who are not public officers or employees.
- Refines duties and responsibilities of the committee.
- Requires the committee to submit both a progress report to the Governor, the President of the Senate, and the Speaker of the House by March 1, 2007, and a final report detailing committee findings and recommendations by January 1, 2008.
- Pushes back the date upon which the committee is abolished by one year to June 1, 2008.

A committee substitute was favorably reported, and this analysis is drafted to the committee substitute.

CHAMBER ACTION

The Elder & Long-Term Care Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to youth and young adults with disabilities; creating the Interagency Services Committee for Youth and Young Adults with Disabilities within the Agency for Persons with Disabilities; providing legislative intent; providing for membership, duties, and responsibilities; requiring specified member agencies to provide staff support for the committee; providing for reimbursement of certain expenses; providing that the committee is subject to open records and open meetings requirements; requiring the committee to submit a report to the Governor and Legislature; providing for termination of the committee; providing an effective date.

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

Section 1. Interagency Services Committee for Youth and Young Adults with Disabilities.--

23 (1) There is created within the Agency for Persons with
24 Disabilities the Interagency Services Committee for Youth and
25 Young Adults with Disabilities. It is the intent of the
26 Legislature that the committee establish goals to ensure
27 successful transition to employment or further education of
28 youth and young adults with disabilities and to eliminate
29 barriers that impede educational opportunities leading to future
30 employment.
31 (2)(a) The committee shall consist of heads, or their
32 designees, of the following agencies and bureaus or divisions of
33 agencies: the Department of Education and, in that department,
34 the Bureau of Exceptional Education and Student Services, the
35 Division of Vocational Rehabilitation, the Division of Blind
36 Services, the Division of Community Colleges, the Office of
37 Workforce Education, and the Office of Interagency Programs; the
38 Agency for Persons with Disabilities; the Agency for Health Care
39 Administration; the Division of Children's Medical Services
40 Network in the Department of Health; the Children's Mental
41 Health Program in the Department of Children and Family
42 Services; the Department of Juvenile Justice; the Department of
43 Corrections; the Commission for the Transportation
44 Disadvantaged; and the Florida Housing Finance Corporation.
45 Agency representatives must be at least at the bureau chief
46 level. The committee shall invite representation from the
47 following private and public parties: the Able Trust; the
48 Business Leadership Network; the Advocacy Center for Persons
49 with Disabilities; the Governor's Working Group on the Americans
50 with Disabilities Act; the Florida Association of Centers for

51 Independent Living; an individual with a disability; and a
52 parent or guardian of an individual with a disability. The
53 members of the committee shall designate one member as the
54 chairperson.
55 (b) The Department of Children and Family Services, the
56 Department of Education, the Department of Health, and the
57 Agency for Persons with Disabilities shall provide staff support
58 to the committee. The chairperson may designate one of the
59 agencies providing staff support to perform administrative
60 responsibilities for the committee.
61 (c) Committee members shall serve without compensation but
62 are entitled to reimbursement for expenses incurred in carrying
63 out their duties as provided in s. 112.061, Florida Statutes.
64 Members who are public officers or employees shall be reimbursed
65 by the budget entity through which they are compensated.
66 Reimbursement for members who are not public officers or
67 employees shall alternate between the budget entities
68 represented on the committee.
69 (d) The meetings and records of the committee are subject
70 to ss. 119.07 and 286.011, Florida Statutes, and s. 24, Art. I
71 of the State Constitution.
72 (3) The committee shall:
73 (a) Identify the roles and responsibilities of each agency
74 with regard to the committee goals.
75 (b) Develop collaborative relationships to identify and
76 assist in removing federal and state barriers to achieving the
77 goals.

78 (c) Identify common or comparable performance measures for
79 all agencies that serve youth and young adults with
80 disabilities.
81 (d) Design a mechanism to annually assess the progress
82 toward the goals by each agency.
83 (e) Collect and disseminate information on the research-
84 based practices and successful strategies of state and local
85 agencies.
86 (f) Develop strategies to educate public and private
87 employers on the benefit of hiring persons with disabilities.
88 (g) Develop strategies to encourage public employers to
89 hire persons with disabilities.
90 (h) Recommend a statewide system of accountability that
91 includes incentives for persons with disabilities; service
92 providers, including school districts, technical centers, and
93 community colleges; and businesses and industries providing
94 integrated competitive employment to individuals with
95 disabilities.
96 (4) The committee shall submit a report of its progress to
97 the Governor, the President of the Senate, and the Speaker of
98 the House of Representatives by March 1, 2007, and submit a
99 final report on its findings and recommendations by January 1,
100 2008. The committee is abolished on June 1, 2008.
101 Section 2. This act shall take effect July 1, 2006.

HB 7109

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7109 PCB FT 06-04 Property Taxation
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	9 Y, 0 N	Monroe	Diez-Arguelles
1) Growth Management Committee	8 Y, 0 N	Strickland	Grayson
2) Fiscal Council		Monroe KDSM	Kelly ck
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law limits the increase in assessed value of homesteaded property. Changes, additions, and improvements to such property are assessed at full just value. However, if a homestead property is destroyed by misfortune or calamity, the property may be repaired or replaced without being assessed at full just value, provided that the just value of property as repaired or replaced does not exceed 125 percent of the just value before the destruction.

The bill amends s. 193.155(4), F.S., to provide that changes, additions, or improvements to damaged or destroyed homestead property shall not increase the assessed value if:

- the square footage of a homestead is increased by 10 percent or less, or
- the square footage of the house as rebuilt or repaired does not exceed 1500 square feet.

The bill also amends s. 196.031, F.S., to specifically provide that under the following conditions damaged or destroyed homestead property shall retain its homestead status, when the property is uninhabitable on January 1:

- the property otherwise qualifies as homestead property,
- the owner notifies the property appraiser that he or she intends to repair or rebuild the property and make it his or her primary residence once it is rebuilt, and
- the owner does not claim a homestead exemption on any other property or otherwise violate the provisions of s. 196.031, F.S.

The Revenue Estimating Conference has estimated that this bill will reduce local revenues by $3.8 million on an annual basis, assuming no change in millage rates. The bill will have no effect upon General Revenue.

This bill will take effect upon becoming law and apply retroactively to January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes -This bill will change how property appraisers determine if homestead property should be reassessed upon being rebuilt after being damaged or destroyed by misfortune. As such, it will cause a shift in the property tax burden resulting in lower taxes for some persons.

B. EFFECT OF PROPOSED CHANGES:

Background:

Article VII, s. 4 of the State Constitution requires that all property be assessed at its just market value for ad valorem tax purposes. Just value has been interpreted to mean fair market value.

Article VII s. 4(c) of the State Constitution, provides for a homestead property assessment increase limitation. This provision is commonly known as "Save our Homes". The annual increase in a homestead property's assessed value is limited to 3 percent or the Consumer Price Index percentage change, whichever is lower, not to exceed just value. If there is a change in ownership, the property must be assessed at its just value on the following January 1. The value of changes, additions, or improvements to the homestead property is assessed as provided by general law. Section 193.155, F.S., implements this assessment limitation.

Section 193.155(4), F.S., provides that changes, additions, or improvements to homestead property are assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed. However, paragraph (b) of s. 193.155(4), F.S., stipulates that changes, additions, or improvements do not include replacement of a portion of real property damaged or destroyed by misfortune or calamity when the just value of the damaged or destroyed portion as replaced has a just value that is not more than 125 percent of the previous just value of the damaged or destroyed portion. The value of any replaced real property or portion thereof which is in excess of 125 percent of the just value of the damaged or destroyed property is deemed to be a change, addition, or improvement and subject to assessment.

Proposed Changes:

The bill amends s. 193.155(4), F.S., to provide that changes, additions, or improvements to damaged or destroyed homestead property shall not increase the assessed value if:

- the square footage of a homestead is increased by 10 percent or less, or
- the square footage of the house as rebuilt or repaired does not exceed 1500 square feet.

The bill also amends s. 196.031, F.S., to specifically provide that under the following conditions damaged or destroyed homestead property shall retain its homestead status, when the property is uninhabitable on January 1:

- the property otherwise qualifies as homestead property,
- the owner notifies the property appraiser that he or she intends to repair or rebuild the property and make it his or her primary residence once it is rebuilt, and
- the owner does not claim a homestead exemption on any other property or otherwise violate the provisions of s. 196.031, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 193.155(4), F.S., to change the criteria under which the repair or replacement of property destroyed by a calamity will not trigger a reassessment under Save our Homes.

Section 2 amends s. 196.031, F.S., to specifically provide that a homestead destroyed by misfortune or calamity shall not lose its homestead status under certain conditions, even if the home is not inhabitable on January 1.

Section 3 provides that the bill shall take effect upon becoming law and apply retroactively to January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has estimated that the bill reduces local revenues by $3.8 million on an annualized basis, assuming no change in millage rates by local governments.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may reduce the assessed value of some property that replaces homestead property damaged or destroyed by misfortune or calamity, if the repairs or replacements fall within the bill's square footage thresholds but would have exceeded the current-law threshold of 125 percent of just value.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill reduces the authority that cities or counties have to raise ad valorem tax revenues in the aggregate. As such, the mandates provision would appear to apply. However, since the bill is implementing a constitutional provision, it can be argued that the mandates provision does not affect this bill. Nevertheless, it is recommended that the bill be passed by a two-thirds margin to avoid any possible constitutional issues.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to homestead property assessments;
3 amending s. 193.155, F.S.; revising exceptions applicable
4 to damaged or destroyed homestead property to a
5 requirement that changes, additions, or improvements to
6 homestead property be assessed at just value under certain
7 circumstances; providing for assessment of changed or
8 improved homestead property; amending s. 196.031,F.S.;
9 providing for the continued granting of a homestead
10 exemption for certain damaged or destroyed homestead
11 property under certain circumstances; providing for
12 retroactive application; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Subsection (4) of section 193.155, Florida
17 Statutes, is amended to read:
18 193.155 Homestead assessments.--Homestead property shall
19 be assessed at just value as of January 1, 1994. Property
20 receiving the homestead exemption after January 1, 1994, shall
21 be assessed at just value as of January 1 of the year in which
22 the property receives the exemption.
23 (4)(a) Except as provided in paragraph (b), changes,
24 additions, or improvements to homestead property shall be
25 assessed at just value as of the first January 1 after the
26 changes, additions, or improvements are substantially completed.
27 (b) Changes, additions, or improvements that replace all
28 or ~~do not include replacement of~~ a portion of homestead ~~real~~

29 property damaged or destroyed by misfortune or calamity shall
30 not increase the homestead property's assessed value when the
31 square footage of the homestead property as changed or improved
32 does not exceed 110 percent of the square footage of the
33 homestead property before the damage or destruction ~~just value~~
34 ~~of the damaged or destroyed portion as replaced is not more than~~
35 ~~125 percent of the just value of the damaged or destroyed~~
36 ~~portion~~. Additionally, the homestead property's assessed value
37 shall not increase if the total square footage of the homestead
38 property as changed or improved does not exceed 1,500 square
39 feet. Changes, additions, or improvements that do not cause the
40 total to exceed 110 percent of the total square footage of the
41 homestead property before the damage or destruction or that do
42 not cause the total to exceed 1,500 total square feet shall be
43 reassessed as provided under subsection (1). The homestead
44 property's assessed value shall be increased by the just value
45 of that portion of the changed or improved homestead property
46 ~~any replaced real property, or portion thereof,~~ which is in
47 excess of 110 ~~125~~ percent of the square footage of the homestead
48 property before the damage or destruction or of that portion
49 exceeding 1,500 square feet ~~just value of the damaged or~~
50 ~~destroyed property shall be deemed to be a change, addition, or~~
51 ~~improvement~~. Homestead ~~Replaced real~~ property damaged or
52 destroyed by misfortune or calamity which, after being changed
53 or improved, has a square footage ~~with a just value~~ of less than
54 100 percent of the homestead ~~original~~ property's total square
55 footage before the damage or destruction ~~just value~~ shall be
56 assessed pursuant to subsection (5). For purposes of determining

57 assessed value pursuant to this paragraph, the just value of the
58 changed or improved portion in excess of 110 percent of the
59 square footage of the homestead property before the damage or
60 destruction, or that portion exceeding 1,500 square feet, shall
61 be determined based on the average just value of all square
62 footage in the improved portions of the homestead property
63 determined as of January 1 of the year following the change or
64 improvement.
65 (c) Changes, additions, or improvements include
66 improvements made to common areas or other improvements made to
67 property other than to the homestead property by the owner or by
68 an owner association, which improvements directly benefit the
69 homestead property. Such changes, additions, or improvements
70 shall be assessed at just value, and the just value shall be
71 apportioned among the parcels benefiting from the improvement.
72 Section 2. Subsection (7) is added to section 196.031,
73 Florida Statutes, to read:
74 196.031 Exemption of homesteads.--
75 (7) When homestead property is damaged or destroyed by
76 misfortune or calamity and the property is uninhabitable on
77 January 1 after the damage or destruction occurs, the homestead
78 exemption may be granted if the property is otherwise qualified
79 and if the property owner notifies the property appraiser that
80 he or she intends to repair or rebuild the property and live in
81 the property as his or her primary residence after the property
82 is repaired or rebuilt and does not claim a homestead exemption
83 on any other property or otherwise violate this section.

84 Section 3. This act shall take effect upon becoming a law
85 and shall apply retroactively to January 1, 2006.

HJR 7129

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7129 PCB ENVR 06-04 Dept. of Interior Constitutional Amendment
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	6 Y, 0 N	Kliner	Kliner
1) Fiscal Council		Dixon/Darity	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of the Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources, including fish and wildlife. If approved:

- Effective July 1, 2009, the Department of the Interior shall be created. On that date the constitutional mandate establishing the Fish and Wildlife Conservation Commission and its duties shall be removed from the Florida Constitution. The Department of the Interior shall be responsible, as provided by law, for conserving and protecting the natural resources and scenic beauty of the state in accordance with Article II, section 7(a) of the State Constitution, including supervision of fish and wildlife.
- The office of director of the interior shall take effect January 6, 2009.
- The office would be initially filled for a 2-year term at the 2008 General Election, with 4-year terms following thereafter.

Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the General Election. The Division of Elections estimates that the cost of compliance would be approximately $50,000.

Since the specific responsibilities and organization of the Department of Interior would be determined by general law, the fiscal impact of the creation of the department is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The proposed constitutional amendment does not appear to implicate any of the House Principles; however, if the constitutional amendment passes the Legislature will begin to create an umbrella agency to oversee issues relating to natural resources, including fish and wildlife. Depending on how the Legislature structures the agency, this measure may decrease public employment by possibly eliminating duplicative services or combining certain disciplines relating to natural resource conservation and management.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, two governmental entities exercise primary supervision over matters pertaining to Florida's natural resources. [1]

- The Department of Environmental Protection (DEP) is an executive agency overseen by a governor-appointed Secretary. The DEP is primarily responsible for managing and regulating activities that impact Florida's land, air and water quality.
- The Fish and Wildlife Conservation Commission (FWC) is a constitutionally-created body managed by a Commission of seven members that are appointed by the Governor and confirmed by the Florida Senate to five-year terms. The FWC is responsible for managing and regulating activities that impact Florida's marine and freshwater animals and terrestrial wildlife.

Both agencies perform functions relating to land management, construction permitting, pollution control, and law enforcement. In addition, both FWC and DEP have land acquisition programs and each develops recreational trails.

Short History of Conservation in Florida

Between 1845 and 1889 the enforcement responsibility for fishing and conservation fell to each of the individual counties, towns or municipalities. The Florida Fish Commission was established in 1889, and Fish Wardens were appointed by state commissioners to enforce Florida fish laws. Between 1905 and 1913 enforcement was returned to the individual counties. During that time, Fish and Game Wardens were authorized for appointment for each county, enforced ordinances relating to fish, oyster and game, and were compensated by the county government.

In 1913, the first state wildlife conservation agency, Game and Fish, was created. That same year a revised game law established state ownership of wild birds and game and set up small county and state resident hunting license fees. The 1915 Legislature abolished the State Department of Game and Fish, and gave ownership of game and birds to the county in which that wildlife was found, and authorized employment of county game wardens by county commissions. A portion of these laws were held to be unconstitutional and the 1917 Legislature corrected itself, giving ownership of game, birds and fish back to the state.[2]

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[1] The Department of Agriculture and Consumer Services, which is administered by an elected Cabinet officer oversees the state's agricultural resources.

[2] Florida Game and Freshwater Commission. Florida Wildlife, V. 47 Number 6 50th Anniversary Edition. Tallahassee, FL: Florida Game and Freshwater Commission, Nov-Dec. 1993. p. 8

The 1925 Legislature established a State Department of Game and Fresh Water Fish, making Florida the 46th state to create a state conservation agency. The 1927 rewrite of the statute provided for an appointment of a Wildlife Conservation Commission, made up of one person from each congressional district and one at-large member who would advise and assist the Commission. The newly organized agency had the power to acquire lands as well, which assisted the agency to create breeding grounds through the selective closing of private lands.[3]

In 1933 the Legislature abolished the State Department of Game and Fish and assigned its duties to a new State Board of Conservation, a body that absorbed the Shell Fish Commission and the Geology Board. The State Board of Conservation lasted for two years. In 1935 the Legislature reorganized the State Board of Conservation into two departments: the State Conservation Department and the State Department of Game and Fresh Water Fish. In 1937 the Legislature allowed the Commission to establish cooperative agreements with eth U.S. Forest service and the State Forest and Park Service to promote conservation on lands administered by these agencies. The Legislature continued to pass game and fish laws, some opposed by the Commission. In 1937 and 1939, there were two failed attempts to amend the state constitution to establish as a constitutional body, an independent Game and Fish Commission.[4]

In 1942 Florida voters approved a constitutional amendment to create a Commission of five members who would serve without pay. This Commission could only be abolished by constitutional amendment. It was empowered to set bag limits, fix open and closed seasons on a statewide, regional or local basis, and to regulate the manner and method of taking, transporting, stocking and otherwise using birds, game, freshwater fish, reptiles and amphibians.

In 1952 Florida Governor Fuller Warren proposed a new Department of the Interior made up of the Game and Fresh Water Fish Commission and the State Board of Conservation. In 1953, newly elected Governor Daniel McCarty decided to merge the Game and Fresh Water Fish Commission with the State Board of Conservation to form a Department of Interior headed by a an elected cabinet official.[5] This was a continuation of the work Governor McCarty's predecessor Governor Fuller Warren started in 1952, when the members of the Legislature felt that the Commission was "superior" to the Senate and House because its regulations had the power of law without legislative approval or the governor's signature.[6] However, the work that Governor Warren had started and Governor McCarty was continuing never came to pass due to Governor McCarty's death less than nine months after taking office prevented implementation of this plan.[7]

In 1968 the Legislature provided for a new Department of Natural Resources (DNR), which took over many conservation functions and projects throughout the state, and which worked closely with the Commission. The Department of Environmental Regulation (DER) was created in 1975. While DNR primarily concentrated on issues relating to the acquisition and management of state lands (submerged lands and uplands) and reported to the Cabinet, the DER had the regulatory authority to control the discharge of pollutants to the environment and the destruction of wetlands by dredging and filling and reported to the Governor.[8] In 1993 the Department of Environmental Protection (DEP) was established from the merger of the Departments of Natural Resources and Environmental Regulation.

On November 3, 1998, Revision 5 to the Florida Constitution amended Article IV, Section 9 and created Article XII, Section 23 (1998 Revision) for the purpose of creating the FWC. The move consolidated the regulation of wild animal life, freshwater aquatic life, and marine life in one agency. In doing so, the Game Commission and Marine Commission were abolished and the jurisdiction of both entities was transferred to the FWC.

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[3] Ibid. pp 10, 11
[4] Ibid. p. 15
[5] Ibid. p. 28
[6] Ibid. p. 22
[7] Ibid. p. 28
[8] Ibid. pp 22, 23

Prior to 1999, regulation of Florida's wild animal life, freshwater aquatic life, and marine life was performed primarily by three governmental entities:

1) The Florida Game and Fresh Water Fish Commission (Game Commission), a constitutional entity with exclusive regulatory and executive authority over wild animal life and freshwater aquatic life.
2) The Marine Fisheries Commission (Marine Commission), a statutory entity placed within the DEP with limited jurisdiction over the management of marine life.
3) The DEP, a statutory agency with authority over some aspects of marine life and full authority over marine law enforcement.

C. SECTION DIRECTORY:

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources. Upon voter approval it would leave the regulation of fish and wildlife, natural resources, and the scenic beauty of the state to be determined by the Legislature. The constitutional amendment language would read as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE IV, SECTIONS 4 AND 9;
ARTICLE XII, SECTIONS 23 AND 26

DIRECTOR OF THE INTERIOR, DEPARTMENT OF THE INTERIOR CREATED; FISH AND WILDLIFE CONSERVATION COMMISSION ABOLISHED.-- Proposing an amendment of the State Constitution to create a Cabinet-level Department of the Interior to exercise the regulatory and executive powers of the state regarding all matters, except as otherwise provided by law, relating to fish and wildlife, natural resources, and the scenic beauty of the state; and for the creation of the Commissioner of the Interior, a Cabinet officer selected by statewide election to oversee all matters relating to the department and to serve with the Governor and other Cabinet officers as the State Board of Administration, as Trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, and as the agency head of the Department of Law Enforcement; and to remove the constitutional mandate of the Fish and Wildlife Conservation Commission previously charged with overseeing matters relating to fish and wildlife; and to preserve the prohibition of any special law or general law of local application relating to hunting and fishing; and to provide an effective date of July 1, 2009, for the creation of the Department of the Interior and an effective date of January 6, 2009 for the creation of the Cabinet office of Commissioner of the Interior, with the office to be filled at the 2008 general election to an initial term of 2 years, with subsequent 4-year terms.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections estimates that the cost of compliance would be approximately $50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This joint resolution proposes a constitutional amendment which, if approved by the voters, would create an agency with certain responsibilities to be established by general law. As such, the fiscal impact of the creation of the Department of the Interior is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The Mandates Provision is not applicable to proposed amendments to the state constitution.

2. Other:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.[9] The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election or on such other date as may be specified in the amendment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the United States, 26 States have chosen to place the state's game and fish regulation and environmental regulation within a subdivision of an "umbrella" agency:

> Alabama, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (Cabinet level agency), Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Utah, Wisconsin, and West Virginia.

There are 20 states where game and fish regulation are within a stand alone agency:

[9] See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

Alaska, Arizona, Colorado, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Virginia, Vermont, Washington, and Wyoming.

Four states have game and fish agencies that are constitutionally created:

Arkansas, California, Florida, and Oklahoma.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 House Joint Resolution
2 A joint resolution proposing the amendment of Section 11
3 of Article III, Sections 4 and 9 of Article IV, and
4 Section 23 of Article XII and the creation of Section 26
5 of Article XII of the State Constitution to create the
6 Cabinet office of Commissioner of the Interior, create a
7 Department of the Interior, and remove the constitutional
8 mandate for a Fish and Wildlife Conservation Commission.
9
10 Be It Resolved by the Legislature of the State of Florida:
11
12 That the following amendment of Section 11 of Article III,
13 Sections 4 and 9 of Article IV, and Section 23 of Article XII
14 and the creation of Section 26 of Article XII of the State
15 Constitution are agreed to and shall be submitted to the
16 electors of this state for approval or rejection at the next
17 general election or at an earlier special election specifically
18 authorized by law for that purpose:
19 ARTICLE III
20 LEGISLATURE
21 SECTION 11. Prohibited special laws.--
22 (a) There shall be no special law or general law of local
23 application pertaining to:
24 (1) election, jurisdiction or duties of officers, except
25 officers of municipalities, chartered counties, special
26 districts or local governmental agencies;
27 (2) assessment or collection of taxes for state or county
28 purposes, including extension of time therefor, relief of tax

29 officers from due performance of their duties, and relief of
30 their sureties from liability;
31 (3) rules of evidence in any court;
32 (4) punishment for crime;
33 (5) petit juries, including compensation of jurors, except
34 establishment of jury commissions;
35 (6) change of civil or criminal venue;
36 (7) conditions precedent to bringing any civil or criminal
37 proceedings, or limitations of time therefor;
38 (8) refund of money legally paid or remission of fines,
39 penalties or forfeitures;
40 (9) creation, enforcement, extension or impairment of
41 liens based on private contracts, or fixing of interest rates on
42 private contracts;
43 (10) disposal of public property, including any interest
44 therein, for private purposes;
45 (11) vacation of roads;
46 (12) private incorporation or grant of privilege to a
47 private corporation;
48 (13) effectuation of invalid deeds, wills or other
49 instruments, or change in the law of descent;
50 (14) change of name of any person;
51 (15) divorce;
52 (16) legitimation or adoption of persons;
53 (17) relief of minors from legal disabilities;
54 (18) transfer of any property interest of persons under
55 legal disabilities or of estates of decedents;
56 (19) hunting or ~~fresh water~~ fishing;

57 (20) regulation of occupations which are regulated by a
58 state agency; or
59 (21) any subject when prohibited by general law passed by
60 a three-fifths vote of the membership of each house. Such law
61 may be amended or repealed by like vote.
62 (b) In the enactment of general laws on other subjects,
63 political subdivisions or other governmental entities may be
64 classified only on a basis reasonably related to the subject of
65 the law.
66 ARTICLE IV
67 EXECUTIVE
68 SECTION 4. Cabinet.--
69 (a) There shall be a cabinet composed of an attorney
70 general, a chief financial officer, a commissioner of the
71 interior, and a commissioner of agriculture. In addition to the
72 powers and duties specified herein, they shall exercise such
73 powers and perform such duties as may be prescribed by law. In
74 the event of a tie vote of the governor and cabinet, the side on
75 which the governor voted shall be deemed to prevail.
76 (b) The attorney general shall be the chief state legal
77 officer. There is created in the office of the attorney general
78 the position of statewide prosecutor. The statewide prosecutor
79 shall have concurrent jurisdiction with the state attorneys to
80 prosecute violations of criminal laws occurring or having
81 occurred, in two or more judicial circuits as part of a related
82 transaction, or when any such offense is affecting or has
83 affected two or more judicial circuits as provided by general
84 law. The statewide prosecutor shall be appointed by the attorney

85 general from not less than three persons nominated by the
86 judicial nominating commission for the supreme court, or as
87 otherwise provided by general law.
88 (c) The chief financial officer shall serve as the chief
89 fiscal officer of the state, and shall settle and approve
90 accounts against the state, and shall keep all state funds and
91 securities.
92 (d) The commissioner of agriculture shall have supervision
93 of matters pertaining to agriculture except as otherwise
94 provided by law.
95 (e) The commissioner of the interior shall have
96 supervision of matters pertaining to the state's natural
97 resources and scenic beauty, including fish and wildlife, except
98 as otherwise provided by law.
99 (f) ~~(e)~~ The governor as chair, the chief financial officer,
100 and the attorney general shall constitute the state board of
101 administration, which shall succeed to all the power, control,
102 and authority of the state board of administration established
103 pursuant to Article IX, Section 16 of the Constitution of 1885,
104 and which shall continue as a body at least for the life of
105 Article XII, Section 9(c).
106 (g) ~~(f)~~ The governor as chair, the chief financial officer,
107 the attorney general, the commissioner of the interior, and the
108 commissioner of agriculture shall constitute the trustees of the
109 internal improvement trust fund and the land acquisition trust
110 fund as provided by law.
111 (h) ~~(g)~~ The governor as chair, the chief financial officer,
112 the attorney general, the commissioner of the interior, and the

113 commissioner of agriculture shall constitute the agency head of
114 the Department of Law Enforcement.
115 SECTION 9. Department of the Interior ~~Fish and wildlife~~
116 ~~conservation commission~~.--There shall be a Department of the
117 Interior to be responsible for conserving and protecting the
118 state's natural resources and scenic beauty, including fish and
119 wildlife, except as otherwise provided by law ~~fish and wildlife~~
120 ~~conservation commission, composed of seven members appointed by~~
121 ~~the governor, subject to confirmation by the senate for~~
122 ~~staggered terms of five years. The commission shall exercise the~~
123 ~~regulatory and executive powers of the state with respect to~~
124 ~~wild animal life and fresh water aquatic life, and shall also~~
125 ~~exercise regulatory and executive powers of the state with~~
126 ~~respect to marine life, except that all license fees for taking~~
127 ~~wild animal life, fresh water aquatic life, and marine life and~~
128 ~~penalties for violating regulations of the commission shall be~~
129 ~~prescribed by general law. The commission shall establish~~
130 ~~procedures to ensure adequate due process in the exercise of its~~
131 ~~regulatory and executive functions. The legislature may enact~~
132 ~~laws in aid of the commission, not inconsistent with this~~
133 ~~section, except that there shall be no special law or general~~
134 ~~law of local application pertaining to hunting or fishing. The~~
135 ~~commission's exercise of executive powers in the area of~~
136 ~~planning, budgeting, personnel management, and purchasing shall~~
137 ~~be as provided by law. Revenue derived from license fees for the~~
138 ~~taking of wild animal life and fresh water aquatic life shall be~~
139 ~~appropriated to the commission by the legislature for the~~
140 ~~purposes of management, protection, and conservation of wild~~

141 ~~animal life and fresh water aquatic life. Revenue derived from~~
142 ~~license fees relating to marine life shall be appropriated by~~
143 ~~the legislature for the purposes of management, protection, and~~
144 ~~conservation of marine life as provided by law. The commission~~
145 ~~shall not be a unit of any other state agency and shall have its~~
146 ~~own staff, which includes management, research, and enforcement.~~
147 ~~Unless provided by general law, the commission shall have no~~
148 ~~authority to regulate matters relating to air and water~~
149 ~~pollution~~.
150 ARTICLE XII
151 SCHEDULE
152 SECTION 23. Department of the Interior ~~Fish and wildlife~~
153 ~~conservation commission~~.--
154 ~~(a) The initial members of the commission shall be the~~
155 ~~members of the game and fresh water fish commission and the~~
156 ~~marine fisheries commission who are serving on those commissions~~
157 ~~on the effective date of this amendment, who may serve the~~
158 ~~remainder of their respective terms. New appointments to the~~
159 ~~commission shall not be made until the retirement, resignation,~~
160 ~~removal, or expiration of the terms of the initial members~~
161 ~~results in fewer than seven members remaining.~~
162 ~~(b) The jurisdiction of the marine fisheries commission as~~
163 ~~set forth in statutes in effect on March 1, 1998, shall be~~
164 ~~transferred to the fish and wildlife conservation commission.~~
165 ~~The jurisdiction of the marine fisheries commission transferred~~
166 ~~to the commission shall not be expanded except as provided by~~
167 ~~general law. All rules of the marine fisheries commission and~~
168 ~~game and fresh water fish commission in effect on the effective~~

169 ~~date of this amendment shall become rules of the fish and~~
170 ~~wildlife conservation commission until superseded or amended by~~
171 ~~the commission.~~
172 ~~(c)~~ The creation of the Department of the Interior
173 pursuant to the amendment to Section 9 of Article IV shall take
174 effect July 1, 2009, and on that ~~the effective~~ date ~~of this~~
175 ~~amendment~~, the constitutional mandate for a fish and wildlife
176 conservation ~~marine fisheries commission and game and fresh~~
177 ~~water fish~~ commission shall be removed ~~abolished~~.
178 ~~(d) This amendment shall take effect July 1, 1999.~~
179 SECTION 26. Commissioner of the Interior.--The amendment
180 to Section 4 of Article IV to create the Cabinet office of
181 commissioner of the interior shall take effect January 6, 2009,
182 with the office to be initially filled for a 2-year term at the
183 2008 general election.
184 CONSTITUTIONAL AMENDMENT
185 ARTICLE III, SECTION 11
186 ARTICLE IV, SECTIONS 4 AND 9
187 ARTICLE XII, SECTIONS 23 AND 26
188 CONSERVATION AND PROTECTION OF NATURAL RESOURCES AND SCENIC
189 BEAUTY, INCLUDING FISH AND WILDLIFE.--Proposing amendment of the
190 State Constitution to create a Department of the Interior to be
191 responsible for conserving and protecting the state's natural
192 resources and scenic beauty, including fish and wildlife, except
193 as otherwise provided by law; to create the office of
194 Commissioner of the Interior, a Cabinet office filled by
195 statewide election, to have supervision of matters pertaining to
196 the state's natural resources and scenic beauty, including fish

197 and wildlife, except as otherwise provided by law, and to serve
198 with the Governor and other Cabinet officers as the State Board
199 of Administration, as Trustees of the Internal Improvement Trust
200 Fund and the Land Acquisition Trust Fund, and as the agency head
201 of the Department of Law Enforcement; to remove the
202 constitutional mandate for a Fish and Wildlife Conservation
203 Commission charged with overseeing matters relating to fish and
204 wildlife; to preserve the prohibition against any special law or
205 general law of local application relating to hunting or fishing;
206 and to provide an effective date of July 1, 2009, for the
207 creation of the Department of the Interior and an effective date
208 of January 6, 2009, for the creation of the Cabinet office of
209 Commissioner of the Interior, with the office to be filled at
210 the 2008 general election to an initial term of 2 years, with
211 subsequent 4-year terms.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7173 (PCB FFF 06-01) Welfare of Children
SPONSOR(S): Future of Florida's Families Committee and Rep. Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2470, HB 1607, SB 1798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	7 Y, 0 N	Davis/Preston/Halperin	Collins
1) Fiscal Council		Ekholm LE	Kelly Cb
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill establishes a centralized office to examine, oversee, and implement abuse prevention services by creating the Office of Child Abuse Prevention within the Executive Office of the Governor.

Creating an Office of Child Abuse Prevention is viewed as untangling the fragmented web of services to bring a more efficient, streamlined and accessible array of services to the families of the State of Florida. That is, layers should be removed, communication networks should be developed, prevention management should increase, and accountability should be created. A centralized prevention office will lay the foundation for success in accessing prevention services for years to come.

The bill also addresses the welfare of young adults aging out of the foster care system by expanding the eligibility pool, requiring the development of a plan for each community-base care (CBC) service area, providing for the direct deposit of funds, authorizing CBCs to purchase housing and other services, and providing for the expansion of Kidcare coverage for eligible young adults until age 20.

The bill makes public school employees subject to the reporting requirements of chapter 39, F.S., for purposes of making reports of alleged abuse to the central abuse hotline.

Because of an exemption from regulation by both the Department of Children and Family Services and the Department of Education, the bill requires boarding schools to be accredited.

Finally, the ability of Statewide and Local Advocacy Councils ("SAC") to monitor, investigate, and resolve claims of abuse and neglect is strengthened. The intent of the Legislature is restated to have citizen volunteers as members of the SAC "to discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies."

The fiscal impact to the state is significant—$18,427,790 in recurring and $165,155 in nonrecurring general revenue funds.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The bill creates the Office of Child Abuse Prevention (Office) for the purpose of establishing a comprehensive statewide approach for the prevention of child abuse, abandonment, and neglect. The bill also expands Medicaid eligibility for certain young adults until age 20.

Safeguard Individual Liberty—If the Statewide Advocacy Council were designated as a health oversight agency, it would be entitled to obtain confidential client records without client consent.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION:

In 1982, the Legislature required the Department of Health and Rehabilitative Services along with other state and local agencies to develop a state plan on the prevention of child abuse and neglect (chapter 82-62, Laws of Florida). The act required the plan to be submitted to the Legislature and Governor by January 1, 1983 and to be updated periodically. It was reported in 1982 that, "The impact that abuse and neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse and neglect shall be a priority of this state." Twenty-four years later, the Legislature is still seeking to address and identify ways to reduce incidence of abuse and neglect of children in Florida.

In 2002, Florida was among only three other states and the District of Columbia in having the highest national child maltreatment rate.[1] During the same year, 142,547 investigations of abuse or neglect, involving 254,856 children, were completed. Approximately one-half of the investigations were substantiated or indicated the presence of abuse or neglect. In FY 2003-04, there were reportedly 32.3 victims of maltreatment per 1,000 children in Florida. At that time, the re-abuse and re-neglect rate in Florida was 9.67%, which is higher than state and federal standards of 7% and 6.1%, respectively. These rates are based on maltreatment recurrence within six (6) months.

There were over 130,000 confirmed victims of child abuse and neglect in Florida in 2003. The actual incidence of child abuse and neglect is estimated to be 3 times that number.[2] Child deaths are the most tragic consequences of abuse and neglect. Child neglect deaths are more frequent than abuse deaths as 52% of child deaths that occur are through neglect.

A Florida child is abused or neglected every 4 minutes.[3] Ten thousand Florida children are abused or neglected per month. During 2004, according to the Florida Child Abuse Death Review Team, at least 111 Florida children died from abuse or neglect at the hands of their parents or caretakers; that is a rate of about two children dying each week. They were smothered, slammed down on asphalt, beaten, shot or they drowned while unsupervised.

The cost of child maltreatment to society is tremendous. National estimates of direct and indirect impacts range from $67 to $94 billion each year, and many argue that these estimates are likely to understate the true costs due to the difficulty in capturing the full range of indirect costs such as cash

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[1] U.S. Department of Health and Human Services, 2004. Florida rate was 31.5 per 1,000 children.

[2] "Child Welfare Annual Statistics Data Tables Fiscal Year 2004-2005." http://www.fiu.edu/~cat/fl_victims.htm. Author, Dr. Maureen Kenny, is currently an Associate Professor at Florida International University's College of Education.

[3] "Child Welfare Annual Statistics Data Tables Fiscal Year 2004-2005." http://www.fiu.edu/~cat/fl_victims.htm. Author, Dr. Maureen Kenny, is currently an Associate Professor at Florida International University's College of Education.

and food assistance.[4] Prevention can save lives and precious resources. Despite the potential long-term benefit of preventing child abuse and neglect, only a small percentage of all resources specifically earmarked for child maltreatment in the State of Florida are actually devoted to prevention.[5]

In a study of primary prevention efforts in Florida, researchers found federal and state sources funded $1,360 per year, per child under age five, on primary prevention programs and concluded that Florida's investments in primary prevention programs for young children were at levels insufficient to significantly reduce expenditures on deep-end services. The costs of foregoing prevention include lost productivity, wasted human potential, and reduced quality of life associated with escalation of preventable conditions to chronic, debilitating, and destructive states.[6] The challenges of funding restraints and the requirement to address the immediate, critical needs of maltreated children limit the Legislature's ability to focus on primary prevention oriented efforts. Prevention works best when there are strong connections between state and local government, prevention providers, and community organizations. In order to ensure the well being and success of Florida's children and families, prevention must become a priority for the state's citizens and leaders.

Many programs for children and families continue to focus on "fixing" problems rather than preventing them. Quick fixes are preferred, often for budgetary reasons, and prevention efforts typically require more extensive and comprehensive investments.[7]

There are some notable exceptions to this trend. The Florida Legislature created Healthy Families Florida (HFF) in July 1998 in response to the increasing number of child deaths due to child maltreatment and the increasing rates of maltreatment. Healthy Families Florida, Inc., is a nationally credentialed community-based, voluntary home visiting program designed to enable families to raise healthy, safe and nurtured children. Healthy Families Florida participants had 20 percent less child maltreatment than all families in their target service areas, showing that children in families who completed or had long-term, intensive HFF intervention experienced significantly less child maltreatment than did comparison groups with little or no service.[8]

In 1998, the Legislature appropriated $10 million to HFF to establish the state and local operating infrastructures and to fund 24 community-based programs to begin operations in targeted areas within 26 counties. In FY 1999-2000, the Legislature more than doubled the base funding to $22.2 million, which funded 36 projects serving 43 counties. In FY 2003-2004, the base funding was increased to $28.3 million to expand two projects and create one new project serving four new counties for a total of 38 projects serving parts or all of 53 of Florida's 67 counties. By FY 2003-2004, communities were contributing $9.7 million per year in local in-kind or cash contributions. The 2005-06 General Appropriations Act includes $28.4 million for the HFF program and provides a total funding of $44 million for "Child Abuse Prevention and Intervention" within the Department of Children and Families -- that represents less than 2% of the department's budget.

Healthy Families Florida is one example of a program which has had a positive impact on preventing child maltreatment for the population it serves. There are hundreds of prevention programs statewide funded with local, state, and/or federal dollars; however, due to a lack of data, it is unknown how effective many of these programs are in reducing incidence of abuse, neglect, abandonment, and death of children.

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[4] Fromm, S. (2001). *Total estimated cost of child abuse and neglect in the United States.* Chicago, IL: Prevent Child Abuse America.
[5] Thomas, D., Leicht, C., Hughes, C., Madigan, A., & Dowell, K. (2003). *Emerging practices in the prevention of child abuse and neglect.* www.dhhs.gov. Washington, D.C.: U.S. Department of Health and Human Services.
[6] Feaver, E. & Strickland, L. (2003). The Lawton Chiles Foundation Whole Child Project prevention policy paper. Tallahassee, FL: The Chiles Center.
[7] Lind, C. (2004). *Developing and supporting a continuum of child welfare services,* Welfare Information Network, 8 (6). www.financeprojectinfo.org/win/. Washington, D.C.: The Finance Project.
[8] Five-year Evaluation Results, Healthy Families Florida, March 2005. Sponsored by the Ounce of Prevention Fund of Florida and the State of Florida, Department of Children & Families.

On July 15, 2005, a letter was sent to all members of the Florida House of Representatives requesting the name(s) and contact information of prevention programs within their districts that have been successful in reducing the incidence of abuse or have resulted in children and families not entering the child welfare system. Over 30 legislators responded identifying approximately 75 programs within their districts that were successful. Still, it is reported by the Department of Children and Families that these programs have produced small improvements in the level of child abuse, neglect, and abandonment, mainly because "there remain far too many children and families at risk of and suffering from maltreatment."

Recognizing the importance of reducing maltreatment and the conditions that are likely to promote abuse, the Legislature mandated that the Department of Children and Families work with an interdisciplinary task force to develop a statewide plan for child abuse prevention.[9] This statewide plan was released in June 2005. Membership of the Florida Interprogram Task Force included the following representatives:

- Agency for Persons with Disabilities;
- Agency for Workforce Innovation;
- Community Alliances;
- Community-based Care;
- Department of Children and Families;
- Department of Education;
- Department of Health;
- Department of Juvenile Justice;
- Florida Department of Law Enforcement;
- Miccosukee Tribe;
- Prevent Child Abuse Florida; and
- Parents.

In response to these findings, the Future of Florida's Families Committee was granted authority to conduct an Interim Project to shed light on many of the problems being faced throughout the state in dealing with child maltreatment. While there are varying schools of thought on the origins of child maltreatment, most theories of child maltreatment recognize that the root causes can be organized into a framework of four principal systems: (1) the child; (2) the family; (3) the community; and (4) the society. The interim project examined many of the current prevention strategies that are operating throughout the state with the intent of outlining the prevention methods being used, the populations being served, and the outcomes and effectiveness of the current system.

Having the benefit of the background research, findings and recommendations of the Task Force, and in conjunction with an approved Interim Project, Speaker Allan Bense granted permission for the members of the Future of Florida's Families Committee to conduct a series of public hearings throughout the state with the primary objectives of:

- Bringing awareness to the impact on Florida's families of abuse, neglect, molestation, abandonment, and death of children;
- Enabling the members of the committee to dialogue with at-risk families and providers of prevention and child protective services; and
- Aiding in the development of legislation to reduce the incidence of abuse, neglect, and abandonment of children in Florida.

With the assistance of the various state agencies involved in abuse prevention efforts and state and local providers of services, the public hearings were planned and held in September and October 2005 in Jacksonville, Tampa, Miami, and West Palm Beach.

[9] "Florida's State Plan for the Prevention of Child Abuse, Abandonment, and Neglect: July 2005 through June 2010." Developed by The Florida Interprogram Task Force, June 2005.

At the conclusion of the hearings, stakeholders were asked to provide to the members of the Future of Florida's Families Committee a broad list of Policy Options that could be discussed and evaluated for possible inclusion in a proposed committee bill. Over 26 Policy Options were received. The options were reviewed and ranked by the members of the committee and on January 11, 2006, there was a consensus to incorporate the following recommendations into a Proposed Committee Bill:

- Establish an Office of Child Abuse Prevention within the Executive Office of the Governor.
- Require that some portion of child abuse prevention funding be dedicated to the controlled longitudinal evaluation of program effectiveness.
- Continue to support, strengthen, and expand the Healthy Families Florida Program statewide so that it is available to all families that are at risk of child abuse and neglect and other poor childhood outcomes.
- Identify the Florida Statewide Advocacy Council (FSAC) and the Florida Local Advocacy Councils (FLACs) as "Medicaid Oversight" regarding the release of recipient information in abuse reports.
- Require each school district to establish written procedures for the immediate reporting of suspected or known child abuse by an individual who is employed by or otherwise contracted by a public school.
- Address the needs of young adults in foster care and young adults who age out of foster care to help prevent the occurrence of abuse and neglect of their children.

The Office of Child Abuse Prevention

The fundamental foundation for the delivery of services by the Department of Children and Families (DCF) and the other involved state agencies regarding Abuse Prevention is fragmented. The result of this fragmentation and inefficiency has created a tangled maze of services that is not only un-navigable by the providers but also the recipients of services. This maze has created inefficiency and waste as well as confusion among communities as to what services are being offered and how to access those services.

One of the findings of the committee was that long-term Abuse Prevention can save the state millions if not billions of dollars, but it is not feasible to continue to pour more money into a system in which the foundation for success is flawed. Addressing "prevention" is an issue that must have long-range goals.

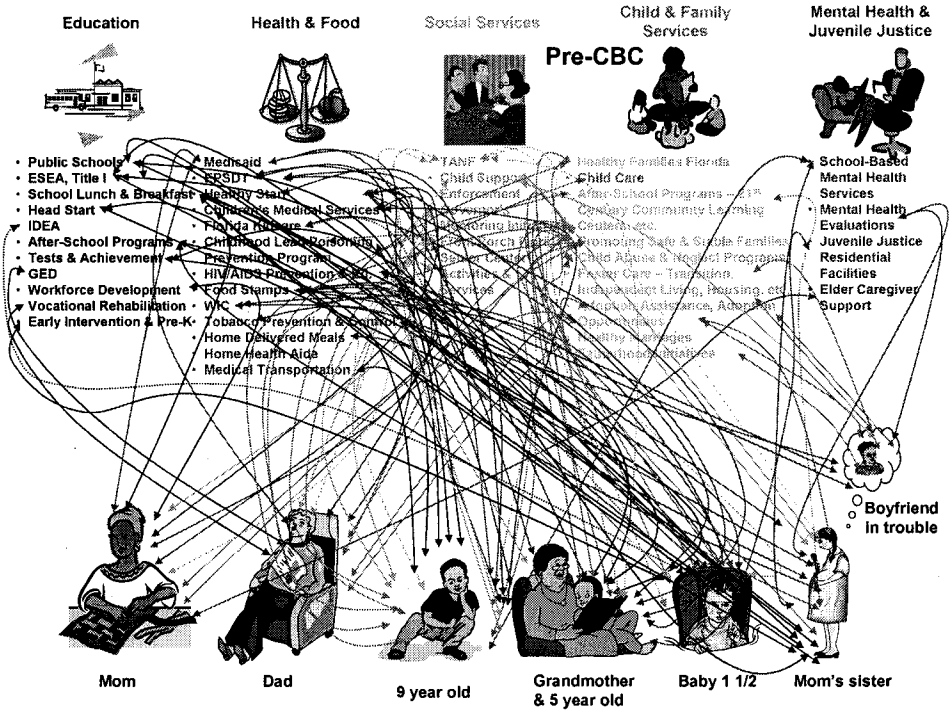
Child abuse, neglect, and abandonment cost the state millions of dollars each year, yet a centralized office to examine, oversee, and implement prevention services of abuse has yet to be put into place. Without an organized effort, there is a concern that prevention will continue to fall through the cracks.

The current system is a tangled maze of services (See diagram which follows):

- Programs that focus on primary and secondary prevention of child abuse are offered by the Department of Children and Families (DCF) and at least six other state agencies, including the: Department of Education, Department of Health, Department of Juvenile Justice, the Agency for Persons with Disabilities, the Agency for Workforce Innovation, and the Florida Department of Law Enforcement, and thousands of community organizations. This results in a tangled maze of services that providers and people trying to access the services must attempt to navigate.
- This uncoordinated system makes it unclear what services are being offered, how to access these services, duplication of services, and results in inefficiency and waste. An Office of Child Abuse Prevention would coordinate statewide prevention efforts and keep children out of the child welfare system.
- Coordination of services would improve delivery of child abuse prevention programs, decrease barriers between community providers and the families needing services, and

connect private providers into a system that would result in a more efficient use of taxpayer monies.

Tangled Maze of Services



Future of Florida's Families Committee, Prevention of Child Abuse and Neglect Public Hearing, Miami, Florida Commission on Marriage and Family Support Initiatives, 3 October 2005

Florida's population is growing significantly, which will increase the number of children and families in the state. The American Community Survey (ACS) has been developed by the Census Bureau to provide population estimates annually. The percent change in growth of children in the United States is a 1.51% increase over the last five years. However, the percent change in growth in children in Florida over the last five years is a 9.87% increase. Therefore, over the last five years the percent increase of children in Florida is over six times the increase in the U.S. Furthermore, the growth in children in Florida accounts for almost one third of the increased number of children in the U.S. Therefore, simply by an increase in numbers, the volume of potential cases of children and families that may enter the child welfare system should increase. This means that there will be more children and families potentially at risk or involved in child abuse and neglect than ever before in the State of Florida.

The Rationale for Prevention

- No disease or social problem has ever been brought under control by providing after-the-fact treatment to the victims of the disease or problem.
- Preventive, proactive, before-the-fact interventions have, historically, been the only effective way to control or eliminate important diseases. Public health prevention programs to control smallpox and polio are prime examples.
- Prevention interventions are not only very effective they are remarkably cost effective – often costing only a small fraction of the expense of the treatment. Hence the phrase, "an ounce of prevention is worth a pound of cure."

Maximizing prevention opportunities may mean making difficult decisions about how organizations utilize their funding. Prevention services reduce costs in the long run and can

provide families with services in a less stigmatized manner. The integration of the full range of family support services requires a re-conceptualization of the frame of mind as to which "prevention is applied." According to the Centers for Disease Control, the cost of not preventing child abuse and neglect in 2001 equaled $94 billion a year nationally. These direct costs include the utilization of the health care system, the mental health system, the child welfare system, the law enforcement, and the judicial system -- while the indirect costs include the provision of special education, mental health and health care, juvenile delinquency, lost productivity to society, and adult criminality. Therefore, prevention should be looked at as a sound investment.

What other states are doing

Oklahoma:

In 1984, the Office of Child Abuse Prevention was created in the Oklahoma Child Abuse Prevention Act. Prior to 1984, the focus of child abuse and neglect was an "after the fact" intervention, preventing the recurrence of child abuse and neglect. The act declared that the prevention of child abuse and neglect was a priority in Oklahoma. In accordance with the Act, the Office of Child Abuse Prevention was created and placed within the Oklahoma State Department of Health to emphasize the focus of prevention. The mission of the office is to promote the health and safety of children and families by reducing family violence and child abuse, including neglect, through public health education, multidisciplinary training of professionals, and funding of community-based family resource and support programs.

California:

In 1977, the Office of Child Abuse Prevention was created in California. It has been reported by the office that having a coordinated streamlined approach to prevention has worked. The office in California has a very similar mission to the Oklahoma Office.

Early History of Independent Living

When they become 18, many young adults, a great number of whom have grown up in foster care, lose the support they received while in care. Without the support of a family, they are on their own to obtain further education and preparation for employment, as well as health care, mental health care, and housing. These young adults encounter tremendous obstacles that may put their emotional, economic, and personal security at risk.

Aftercare is defined as the period of time following discharge from foster care. It is that time when young individuals who have been preparing for self-sufficiency while in care must begin to operationalize the skills they have been working to master. Aftercare services are typically defined as a system of services and resources designed for those youth who are 16-21 years of age, in post placement who are living in an independent living arrangement. Historically, aftercare services have been difficult and challenging to provide, many times because they have been "relegated to an out-of-sight, out-of-mind status." It is now known that aftercare services should begin while the child is still in care.[10]

Federal funds for independent living initiatives were first made available in the United States under the Consolidated Omnibus Budget Reconciliation Act of 1985. This act authorized funds to states to establish independent living initiatives to assist eligible youth 16 years of age and older to make the transition from foster care to independent living.[11] A total of 45 million dollars

[10] See The John H. Chafee Foster Care Independence Program, Aftercare Services, The University of Oklahoma, National Resource Center for Youth Development, 2003.

[11] The Independent Living Program was initially authorized by Public Law 99-272, through the addition of section 477 to Title IV-E of the Social Security Act.

was authorized for the program across the nation, with state shares based on the number of children/youth in foster care. The U.S. Department of Health and Human Services, Administration for Children, Youth and Families, issued the first set of program instructions to the states in early 1987. Each state was able to determine the nature and scope of their Independent Living Program, but guidelines from the federal government provided recommended specific program components. The recommended list included services such as GED or vocational training, daily living skills, job readiness and employability skills, and assistance obtaining higher education.

John H. Chafee Foster Care Independence Program

In a further effort to increase services and strengthen state programs for teens in foster care, Congress passed the Foster Care Independence Act of 1999, which was signed into law as the John H. Chafee Foster Care Independence Program. The Chafee Program made substantial changes in federal efforts targeted toward youth and young adults up to age 21 in the foster care component of the child welfare system. The law significantly improved the ability of states to achieve the national goals of safety, permanence and well-being for youth and young adults in the child welfare system.[12] The new federal law doubled the appropriations nationally and increased Florida's allocation substantially.

The Chafee Program legislation included provisions that:

- Required states to make services available to youth up to 21 years of age;
- Required states to serve youth younger than 16 years of age for the first time;
- Permitted states to use up to 30% of their allocation for room and board costs and services for youth ages 18-21 who leave foster care on or after 18 years of age;
- Allowed states to provide Medicaid insurance to youth 18-21 years of age who leave foster care;
- Increased the limit on youth savings accounts from $1,000 to $10,000 so that youth in foster care can save and still be eligible for Title IV-E foster care benefits;
- Required states to develop outcome measures to assess state performance;
- Required states to use Title IV-E funds to train adoptive/foster care parents, workers in group homes, and case managers to help them address issues confronting adolescents preparing for independent living; and
- Authorized additional funds for adoption incentive payments to states that increased the number of children adopted from foster care.

Education and Training Vouchers

In 2002, Title IV-E of the Social Security Act, related to the Foster Care Independent Living program, was again amended to provide for vouchers for education and training, including postsecondary training, and training for youths aging out of foster care.[13] Conditions required for a state educational and training voucher program under this legislation include, but are not limited to, the following:

- Vouchers may be available to youths otherwise eligible for services under the state independent living program;
- Youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the state program;
- States may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a post secondary education or training program and are making satisfactory progress toward completion of that program;

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[12] See P.L. 106-169.
[13] See P.L. 107-133.

- Vouchers provided for an individual may be available for the cost of attendance at an institution of higher education[14] and shall not exceed the lesser of $5,000 per year or the total cost of attendance; and
- The amount of a voucher under this section shall be disregarded for the purposes of determining the recipient's eligibility for, or the amount of, any other federal or federally supported assistance, with some exceptions.

Florida Law

With the passage of the federal law and increased available funding, the 2002 Legislature established a new framework for Florida's independent living transition services to be provided to these older youth. Specifically provided for was a continuum of independent living transition services to enable older children who are 13 to 18 years of age and in foster care and young adults who are 18 to 23 years of age who were formerly in foster care to develop the skills necessary for successful transition to adulthood and self-sufficiency. Service categories established include the following:

- Pre-independent living services which include life skills training, educational field trips and conferences for children in foster care who are 13 to 15 years of age;
- Life skills services which include independent living skills training, educational support, employment training and counseling for children in foster care who are 15 to 18 years of age; and
- Subsidized independent living services which are services provided in living arrangement that allow a child who is 16 to 18 years of age to live independently of adult supervision under certain specified circumstances.

A category of services for young adults formerly in foster care was also created to provide services, based on the availability of funds, which included aftercare support services, the Road to Independence Scholarship Program, and transitional support services. In addition, young adults who are awarded a Road to Independence Scholarship are exempt from the payment of tuition and fees for state universities, community colleges, and certain postsecondary career and technical programs and retain their Medicaid eligibility.[15]

The Department of Children and Family Services was directed to form an Independent Living Services Integration Workgroup for the purpose of assessing the barriers to the coordination of services and supporting the youths' transition to independent living with a report to be submitted to the Legislature by December 31, 2002.[16] In 2003, the Independent Living Services Integration Workgroup was replaced with the Independent Living Services Workgroup.[17] The representation on the workgroup remained the same with representatives from state agencies involved in service delivery to older foster children as well as representatives from the State Youth Advisory Board and foster parents. The charge to the workgroup was expanded to include assessing the implementation of the independent living transition services system, keeping the Department of Children and Families informed of the problems surfacing and successes experienced with the independent living transition services, and advising the department on strategies that would improve the ability of the system to meet its goals.

The experiences of the independent living transition services program since its inception have pointed to the importance of effective and early service delivery to meet the goals of building the youths' ability to transition to independence and self-sufficiency. However, questions continue to be raised as to whether there is adequate attention being paid to preparing youth for adulthood and independent living, whether funding is sufficient to support the increasing

[14] See definition in section 102 of the Higher Education Act of 1965.
[15] See s. 409.1451, Florida Statutes.
[16] See Chapter 2002-19, Laws of Florida.
[17] See Chapter 2003-146, Laws of Florida.

requests for services, whether services should be more supportive of young adults not pursuing postsecondary education, and whether there is sufficient guidance and oversight being provided to the community-based care agencies that will ensure the effectiveness of the services and ensure that the goals of the program are met. As a result of continuing concerns, the Auditor General was directed to conduct an operational audit of the program and the Office of Program Policy Analysis and Government Accountability (OPPAGA) was directed to develop minimum standards for the program.[18] In addition, OPPAGA conducted another evaluation of the program in 2005.[19]

To date, it remains unclear whether any of the deficiencies identified in the reports have been corrected or whether the recommended minimum standards have been implemented.

Mandatory Reporting Public School Personnel

Florida law requires any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or **other person responsible for the child's welfare** to report such knowledge or suspicion to the Department of Children and Family Services' hotline as prescribed by law.[20]

Florida law also provides that reporters in the following occupation categories are required to provide their names to the hotline staff when reporting:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
- Health or mental health professional other than one listed above.
- Practitioner who relies solely on spiritual means for healing.
- School teacher or other school official or personnel.
- Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker.
- Law enforcement officer.
- Judge.

Other Person Responsible for a Child's Welfare

The term "other person responsible for a child's welfare" is defined as:

> "...the child's legal guardian, legal custodian, or foster parent; **an employee of a private school**, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include law enforcement officers, or employees of municipal or county detention facilities or the Department of Corrections, while acting in an official capacity."[21]

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[18] See Chapter 2004-362, Laws of Florida. Auditor General Report No. 2005-119 and OPPAGA Report No. 04-78, *Independent Living Minimum Standards Recommended for Children in Foster Care*, November 2004.
[19] OPPAGA Report No. 05-61, *Improvements in Independent Living Services Will Better Assist State's Struggling Youth,* December 2005.
[20] See s. 39.201, F.S.
[21] See s. 39.01(47), F.S.

Failure to Report

Florida law provides that a person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.[22]

Public School Personnel

Public school personnel are not currently included in the definition of "other person responsible for a child's welfare." They were removed from the definition in 1993.[23] By not being included in this definition or otherwise being referenced in s. 39.201, F.S., persons knowing or having reasonable cause to suspect that a child is being abused by a public school employee are not required to make a report to the central abuse hotline. Likewise, persons who have such knowledge or suspicion that abuse by a public school employee has occurred and does not report it, cannot be prosecuted for failure to report under s. 39.205, F.S. (*State of Florida vs. Meyers*, 9th Judicial Circuit, 2004, Case No. 03-MM-001038).

Boarding Schools

A "boarding school" is defined as:

> "...a school which is registered with the Department of Education as a school. Its program must follow established school schedules, with holiday breaks and summer recesses in accordance with other public and private school programs. The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year-round, except that this provision does not apply to foreign students. The parents of these children retain custody and planning and financial responsibility."[24]

A small military school in Fort Lauderdale, Florida closed during the summer of 2005 as a result of allegations that students were being abused. During the course of the investigation by Broward County law enforcement, it was determined that boarding schools are exempt from regulation by both the Department of Children and Family Services and the Department of Education:

- A person, family foster home, or residential child-caring agency shall not receive a child for continuing full-time care or custody unless such person, home, or agency has first procured a license from the department to provide such care.

This license requirement does not apply to boarding schools, recreation and summer camps, nursing homes, hospitals, or to persons who care for children of friends or neighbors in their homes for periods not to exceed 90 days or to persons who have received a child for adoption from a licensed child-placing agency.[25]

- It is the intent of the Legislature not to regulate, control, approve, or accredit private educational institutions, but to create a database where current information may be obtained relative to the educational institutions in this state coming within the provisions of this section as a service to the public, to governmental agencies, and to other interested parties. It is not the intent of the Legislature to regulate, control, or monitor, expressly or implicitly, churches, their ministries, or religious instruction, freedoms, or

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[22] See s. 39.205, F.S.
[23] See Chapter 93-25, Laws of Florida.
[24] See s. 409.175, F.S.
[25] See s. 409.175, F.S.

rites. It is the intent of the Legislature that the annual submission of the database survey by a school shall not be used by that school to imply approval or accreditation by the Department of Education.[26]

Statewide and Local Advocacy Councils

The Statewide Advocacy Council (SAC) and Local Advocacy Councils (LAC) (collectively, the "SAC") was created to serve as a volunteer network of councils that undertake to discover, monitor, and investigate the presence of conditions that constitute a threat to the rights, health, safety or welfare of persons who receive services from state agencies. The SAC is entitled to serve as an independent, third-party mechanism for protecting the constitutional and human rights of "clients" by entering into Interagency Agreements with agencies providing "client services" as defined under s. 402.164(2)(c), F.S. "Clients" are strictly limited under the statute to certain individuals receiving particular services at four state agencies: the Agency for Persons with Disabilities (APD), the Department of Children and Families (DCF), the Agency for Health Care Administration (AHCA), and the Department of Elder Affairs (DOEA).

Interagency Agreements[27] are written to address the coordination of efforts and identify the roles and responsibilities of the SAC and each agency in fulfillment of their responsibilities, including access to records. For these agencies, the SAC may:

(1) Monitor by site visit and through access to records the delivery and use of services, programs or facilities, in order to prevent the abuse or deprivation of rights;
(2) Receive, investigate, and resolve reports of abuse or deprivation referred to the council; and
(3) Review existing, new or revised programs of agencies and make recommendations based on how "clients" are affected.

Access to Records

With a few exceptions described below, s. 402.165(2), F.S., provides that the SAC may have access to all client records, files, and reports from any person, service, or facility that is operated, funded, or contracted by the agencies above. The SAC is further permitted to records that are considered "material to investigation" from agencies that do not provide "client services" to "clients;"[28] however, the SAC is not expressly entitled to form interagency agreements or receive records from these agencies.

The SAC's access to "client" records at "client services" agencies has been limited by the Legislature where:[29]

(1) Investigation or monitoring would impede or obstruct matters under investigation by law enforcement agencies or judicial authorities;
(2) There are federal laws and regulations that supersede state laws; and
(3) The records belong to a private licensed practitioner who is providing services outside the state agency or facility, and whose client is competent and refuses disclosure.

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[26] See s. 1002.42(2)(h), F.S.
[27] Interagency Agreements are described in s. 402.165(7)(j), F.S.
[28] Agencies that do not provide "client services" to "clients" include the Department of Education (DOE), the Department of Health (DOH), the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ).
[29] Sections 402.165(8)(a)2. and 402.166(8)(a), F.S.

Federal Regulations that Limit SAC Access to Records

Section 402.165(8)(a)2., F.S., limits the SAC's access to information where such information is protected by superseding federal law. The Social Security Act (SSA) and the Health Insurance Portability and Accountability Act (HIPAA) are examples of two such federal laws. As federal Medicaid law, the SSA makes confidential certain information such as names and addresses, medical services provided, social and economic conditions, agency evaluation of personal information, medical data, income eligibility information, etc., as provided in 42 C.F.R. 431.305. To obtain Medicaid recipient information:

(1) Disclosure must be directly related to the administration of the state Medicaid plan.
- Example: The SAC may request to see medical records of a foster child who receives Medicaid to determine if the child is actually receiving the medical services covered under the plan.

(2) The recipient must give permission for the disclosure.

(3) The disclosing entity must restrict access to persons who are subject to comparable standards of confidentiality.
- This presents some difficulty in some cases where the SAC requests access to mass data records for volunteer members to handle on unsecured home computers.

HIPAA further prohibits disclosure of a patient's personal health information ("PHI") without the consent of the patient. There are several exceptions to these requirements. One exception is disclosure of PHI to a "health oversight agency" (HOA) performing "health oversight activities." A HOA is defined as:[30]

> "...an agency or authority of the United States, a State, a territory, a political subdivision of a State or such public agency, including employees or agents of such public agency or its contracts or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant."

Designation of "Health Oversight Agency"

Currently, the SAC is not a health oversight agency. According to an analysis by the Governor's General Counsel's Office, the SAC is not authorized by law to oversee Florida's health care system, or to oversee government programs in which health information is necessary to determine eligibility. The common usage of the term "oversee" and the types of activities it encompasses in HIPAA imply some authority to manage or supervise. The SAC's role is to "monitor" the delivery and use of services, programs or facilities; to make recommendations; and to receive and resolve reports of abuse. In other words, the SAC is designated to advocate, not oversee.

EFFECT OF PROPOSED CHANGES:

The Office of Child Abuse Prevention

As a result of the interim project, the public hearings, and research conducted, the Future of Florida's Families Committee recommended that an Office of Child Abuse Prevention (office) be created for the purpose of establishing a comprehensive statewide approach for the prevention of child abuse, abandonment, and neglect. The Office of Child Abuse prevention is created

[30] 45 C.F.R. s. 164.051.

within the Executive Office of the Governor, and the Governor shall appoint the director who shall be subject to confirmation by the Senate.

Before the state can fiscally increase new prevention efforts, a centralized statewide integrated service network needs to be created – similar to the Office of Drug Control housed in the Executive Office of the Governor. The purpose of this office would be to continue to address the prevention needs of this state but also to centralize a community network throughout the state to increase communication, to more efficiently deliver services, while providing easy access to the citizens of the State of Florida to those services. By bringing together all the programs in the state it should create an environment conducive to a more "Prevention Focused" state effort to better serve the children and families of Florida.

Creating an Office of Child Abuse Prevention is viewed as untangling the fragmented web of services to bring a more efficient, streamlined and accessible array of services to the families of the State of Florida. That is, layers should be removed, communication networks should be developed, prevention management should increase, and accountability should be created. A centralized prevention office will lay the foundation for success in accessing prevention services for years to come.

The Director: The director's responsibilities include the following:

- Formulate and recommend rules pertaining to the implementation of child abuse prevention efforts.
- Act as the Governor's liaison with state agencies, other state governments, and the public and private sectors on matters that relate to child abuse prevention.
- Work to secure funding.
- Develop a strategic program and funding initiative.
- Advise the Governor on child abuse trends in the state.
- Develop child abuse prevention public awareness campaigns.

The Office: The office is authorized and directed to:

- Oversee the preparation and the implementation of a state plan and revise and update the plan as necessary.
- Conduct or provide for continuing professional education and training in the prevention of child abuse and neglect.
- Work to secure funding.
- Make recommendations pertaining to agreements or contracts towards child abuse and neglect for the establishment of programs and services, training programs, and multidisciplinary and discipline-specific training programs for professionals.
- Monitor, evaluate, and review the development and quality of local and statewide services and programs for the prevention of child abuse and neglect and distribute and publish an annual report of its findings before January 1 of each year.

The office shall develop a state plan for the prevention of child abuse, abandonment, and neglect of children. Appropriate state and local agencies and organizations shall be provided an opportunity to participate in the development of the state plan.

The office shall establish a Child Abuse Prevention Advisory Council, which will be composed of representatives from each appropriate state agency and appropriate local agencies and organizations. The Advisory Council will replace the Interprogram Task Force that is in current law and shall serve as the research arm of the office. Some of its responsibilities include:

- Assisting in developing a plan of action for better coordination and integration of the goals, activities, and funding pertaining to the prevention of child abuse.

- Assisting in providing a basic format to be utilized by districts in the preparation of local plans of action.
- Assisting in examining the local plans.
- Assisting in the preparing the state plan.
- At least biennially, the office shall review the state plan and make necessary revisions based on changing needs and program evaluation results.

Conduct a feasibility study on the establishment of a Children's Cabinet: The office shall conduct a feasibility study on the establishment of a Children's Cabinet. Several states, including Alaska, Arizona, Louisiana, Maine, New Jersey, New Mexico, Pennsylvania, Rhode Island, Tennessee, and West Virginia have Children's Cabinets. There are number of ways they can be set up, implemented and funded. According to the National Governors Association, important factors in determining the success of a Children's Cabinet are proper planning, support, and developing a proper mission to meet the needs of the state.

District Plans: Each district of the Department of Children and Families (DCF) shall develop a plan for its specific geographical region. The plan shall be submitted to the advisory council. In order to accomplish the development of the plan, the office shall establish a task force on the prevention of child abuse, abandonment, and neglect. The office shall appoint the members of the task force.

Evaluation: By February 1, 2009, the Legislature shall evaluate the office and determine whether it should continue to be housed in the Executive Office of the Governor or transferred to a state agency.

Independent Living

The bill amends s. 409.1451, Florida Statutes, related to independent living transition services, to include a number of new provisions. Specifically, the bill:

- Makes young adults who were placed with a court-approved nonrelative or guardian after reaching age 16 and have spent a minimum of 6 months in foster care to be eligible to be provided with independent living transition services;
- Requires the development of a plan by each community-based care service area to be submitted to the department;
- Provides for the direct deposit of RTI funds to the recipient with exceptions;
- Requires the development of a joint transition agreement and provides for access to a grievance process;
- Provides for community-based care lead agencies to purchase housing and other services in order to take advantage of economies of scale; and
- Provides for the expansion of Kidcare coverage for eligible young adults until age 20.

Additionally, the bill amends s.1009.25, Florida Statutes, to require that certain educational fee exemptions be granted to those individuals who, after spending at least 6 months in the custody of DCF after reaching age 16, were placed in a guardianship by the court.

Public School Personnel

The bill adds public school employees back into the definition of "other person responsible for a child's welfare." This makes public school personnel subject to the reporting requirements of Chapter 39, F.S.

Boarding Schools

The bill requires boarding schools to be accredited by either the Florida Council of Independent Schools or the Southern Association of Colleges and Schools and the Council on Accreditation. It also

provides that a boarding school currently in existence or opening and seeking accreditation has three years to comply with the provisions of the bill. The bill provides sanctions for those schools not in compliance by failing to provide evidence of accreditation, documentation of an ongoing accreditation process or registration with the Department of Education.

Statewide and Local Advocacy Councils (SAC)

The bill adds language intended to resolve obstacles faced by the SAC in obtaining "client" records in those cases where information is entitled to them. The amended language restates the intent of the Legislature to use citizen volunteers as members of the SAC "to discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies." The bill clarify that it is further the intent of the Legislature that certain state agencies cooperate with the SAC to provide access to necessary client records.

The bill strengthens the ability of the SAC, and particularly the local councils, to monitor, investigate and resolve claims of abuse and neglect. The bill accomplishes this through the following provisions:

(1) Encourages the Governor to give priority consideration to an individual with expertise in research design, statistical analysis, and/or agency evaluation in the selection of an executive director.
(2) Provides that for all self-generated complaints the SAC shall develop written protocol to provide the Governor's Office including the nature of the abuse or neglect, the agencies involved, additional information, and a strategy for approaching the problem.
(3) Reduces the number of meeting requirements from six times per year to one time per year; and maintains the option for the SAC to hold additional meetings at the call of the Governor, or by written request of a specified number of members including the executive director.
(4) Specifies the information contained in the interagency agreements between the SAC and state agencies, and to require that agreements are completed and reported to the Governor annually by no later than February 1 each year.

C. SECTION DIRECTORY:

Section 1: Amends s. 39.001, F.S., revising legislative purposes and intent of the chapter to include child abuse prevention; creates the Office of Child Abuse Prevention.

Section 2: Amends s. 39.0014, F.S., requiring all public agencies to cooperate and provide information to the Office of Child Abuse Prevention to meet its responsibilities.

Section 3: Amends s. 39.0015, F.S., revising the definition of "child abuse."

Section 4: Amends s. 39.01, F.S., adding definition of "office" and revising definitions of "other person responsible for a child's welfare."

Section 5: Amends s. 39.202, F.S., providing access to records for agencies that provide early intervention and prevention services.

Section 6: Amends s. 39.302, F.S., providing a cross-reference.

Section 7: Amends s. 402.164, F.S., establishing legislative intent for the statewide and local advocacy councils.

Section 8: Amends s. 402.165, F.S., providing guidelines for selection of the executive director of the Florida Statewide Advocacy Council, establishing a process for investigating reports of abuse, revising

council meeting requirements, providing requirements for interagency agreements, and requiring interagency agreement to be renewed annually and submitted to the Governor by a specified date.

Section 9: Amends s. 409.1451, F.S., revising duties of the department regarding independent living transition services.

Section 10: Amends s. 409.175, F.S., revising the definition of "boarding school" to require such schools to meet certain standards within a specified timeframe.

Sections 11 and 12: Amend ss. 39.013 and 39.701, F.S., conforming references to changes made in the act.

Section 13: Amends s. 1009.25, F.S., providing for fee exemption for eligible students.

Section 14: Provides the sum of $11.4 million in recurring funds appropriated from the General Revenue Fund to the Ounce of Prevention Fund of Florida.

Section 15: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state will earn $3,994,766 in Title XIX (Medicaid) funds for the expansion of health care coverage for young adults formerly in foster care up to their 20th birthday.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

D. FISCAL COMMENTS:

The bill appropriates $11.4 million in recurring general revenue funds for the expansion and enhancement of Florida Healthy Families Program.

In addition, the Department of Children and Family Services provided the following Fiscal Comments on the Office of Child Abuse Prevention:

- The creation of this new office per the proposed bill language will require new appropriations. Three staff positions are needed to carry out the oversight, monitoring and analysis of the Prevention activities: Administration Director, Senior Management Analyst and an Administrative Assistant II. There will be a recurring budget need of **$228,180** for Salaries,

Expense and Human Resources; and a non-recurring budget need of **$15,377** for Expense and Operating Capital Outlay. The salary numbers reflect a 10% above base minimum with a 2.5% increase for Fiscal Year 2006-07 and Fiscal Year 2007-08.

The Department of Children and Family Services provided the following Fiscal Comments on the Independent Living sections of the bill:

Expansion of the foster care population eligible to receive independent living transition services:

- An ad hoc report provided by the department's data staff indicates that 188 youth turned age 18 during FY04/05 who were in an unlicensed setting for at least 6 months and placed at age 16 or after. Approximately 50% of the total number of young adults exiting foster care received services from the RTI scholarship services, transitional support services, and/or aftercare support services.

- If the equivalent percentage of young adults who age out of unlicensed placements, as mentioned above, became eligible for the Road to Independence Program award, the additional participants would equal 188 x .50 = 94. The maximum amount of funding that each young adult could receive per year through the Road to Independence Program is $5,000. The 94 additional participants would be potentially eligible for services until their 23rd birthday.

- Estimated costs per year to fund additional participants: 94 times $5,000 equals $470,000 x 5 years of participants (18, 19, 20, 21 and 22 year olds) not yet 23 years of age equals a total of **$2,350,000** per year.

Increase in Casework Staff for Expanded Population:

- A reasonable number of casework staff would be required in order to determine eligibility for services, provide outreach, and provide case management. A 1:20 caseload ratio would be reasonable to provide these services for young adults. As assumed previously, an additional 94 young adults may be served with young adult services each year until age 23. Ninety-four young adults times 5 years equals 470 recipients divided by 20 = 23.5 additional staff needed. Supervisory staff will also be needed at a 6 to 1 ratio for a total of 4 additional supervisors.

- 23.5 caseworkers at $44,531 per year = $1,046,477 for salaries. There will be a recurring budget need of **$1,206,184** for salaries, expense and human resources; and a non-recurring budget need of **$123,211** for expense and operating capital outlay. The salary number reflects a 10% above base minimum with a 2.5% increase for Fiscal Year 2006-07 and Fiscal Year 2007-08.

- 2 supervisors at $49,579 per year = $198,316 for salaries. There will be a recurring budget need of **$225,500** for salaries, expense and human resources; and a non-recurring budget need of **$20,972** for expense and operating capital outlay. The salary number reflects a 10% above base minimum with a 2.5% increase for Fiscal Year 2006-07 and Fiscal Year 2007-08.

Public School Personnel - The Department of Children and Family Services estimates that it will cost the agency **$215,404** in recurring costs for salaries, expense and human resources, and **$20,972** in non-recurring costs for expense and Operating Capital Outlay to implement this provision of the bill.

Expansion of Kidcare Coverage-The bill expands coverage of the Kidcare program for young adults formerly in foster care up to their 20th birthday. The estimated cost of this coverage is $2,802,522 annually in state general revenue funds. This is based on1,523 young adults age 18 and 19. The total

cost would be $6,797,288, which includes the state general revenue funds and federal matching dollars of $3,994,766.

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:

Rulemaking authority is provided to the Executive Office of the Governor for creation of the Office of Child Abuse Prevention.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the Department of Children and Family Services:

- The Florida Legislature, in 1982, in recognition of the importance of reducing maltreatment by addressing conditions that are likely to promote the prevention of abuse, mandated that the Department of Children and Families develop a statewide plan for child abuse prevention. Following the guidelines set forth in Florida statute, the Department of Children and Families established the Florida Interprogram Task Force to work at the state level and with local communities to develop a statewide plan for the prevention of child abuse, neglect and abandonment. Florida's Plan for Prevention of Child Abuse, Abandonment and Neglect: July 2005 - June 2010 was produced. Local communities also developed a local prevention of child abuse, neglect and abandonment plan.

- The Interprogram Task Force has provided technical assistance to the local planning coordinators for the development, implementation, and review of the local plans to assure implementation efforts are successful. The Interprogram Task Force provides technical assistance to the local planning coordinators, both as requested and on a monthly conference call with all state local planners.

- The Executive Committee of the Interprogram Task Force has met on a bi-monthly basis since September 2005 to assure compliance with state and local prevention plan implementation. In addition, the Task Force has seven subcommittees that meet at least monthly. The purpose of the subcommittees is to review quarterly progress reports received from the local planning teams, to provide recommendations on best practices to local planners and to assist with the development of the annual progress report to the Legislature due June 30th of each year.

- In collaboration with the Prevent Child Abuse America Florida Chapter, the Interprogram Task Force will be involved in the Prevention Month kick-off scheduled for April 4, 2006 at the State Capitol in Tallahassee. Prevent Child Abuse America Florida Chapter under contract with the Department of Children and Families provides the annual prevention campaign throughout the state. The theme this year is "Winds of Change."

- If this bill passes and creates an Office of Child Abuse Prevention within the Executive Office of the Governor, it would be replicating the responsibilities of the Department of Children and Families. A number of the proposed requirements are already being completed by the Department of Children and Families and community-based contract providers. Examples of these requirements that are already under way include:

    1. Annual reporting to the Governor, Legislatures, etc.
    2. Establishing a Child Abuse Prevention Advisory Board (this is the Interprogram Task Force).
    3. Providing statewide coordination or single state agency responsibility for oversight of these programs (the Department of Children and Families is the current agency responsible for coordination of programs).
    4. Developing a strategic program and funding initiative that links the separate jurisdictional activities of state agencies (this is planned for the future with the Executive Task Force).
    5. Developing a Child Abuse prevention public awareness campaign; this is done on a yearly basis in April (Child Abuse Prevention Month) under contract with the Ounce of Prevention.

The Office of Child Abuse Prevention may replicate efforts of the Department of Children and Families; however, the mission and purpose of the Department of Children and Family Services as stated in s. 20.19(1), F.S., is to "...work in partnership with local communities to ensure safety, well-being, and self-sufficiency of the people served, to develop a strategic plan for fulfilling its mission...to ensure that the department is accountable to the people of Florida, and to the extent allowed by law and within specific appropriations, the department shall deliver services by contract through private providers."

By having an Office of Child Abuse Prevention with its sole mission and focus towards prevention and intervention will create government efficiency:

- The current system targets all levels of child abuse: primary, secondary, and tertiary. Prevention programs are located at all levels of government and in many different state agencies. In our current system the primary focus is on "tertiary prevention," clinical services, for cases in which the child or family has experienced abuse. This is an appropriate focus because the children and their families need immediate help to deal with abuse, as is the role of the Department of Children and Family Services.

- However, the "after the fact" approach will not prevent child abuse in Florida – it may only prevent a recurrence. Primary prevention programs must not be a secondary thought if Florida wants to decrease the incidence of child abuse. In the long run, prevention reduces harm to children and increases state efficiency.

Statewide and Local Advocacy Councils (SAC)

The purpose for this section of the bill is to resolve difficulties faced by the SAC in obtaining "client" records in those cases where information may be entitled to them. It is increasingly clear that even when the SAC meets all state and federal requirements for obtaining "client" records from appropriate agencies, the SAC has been refused such records. Further, the SAC reports receiving records that have necessary information redacted from them, such as the address or name of the client for whom a report of abuse or neglect was filed. Some reasons for this include incomplete or out-of-date Interagency Agreements, or a lack of clarity on the part of both the SAC and agencies regarding what information is entitled to be shared.

Still, the SAC would need to meet other federal and state requirements before obtaining records, such as: Social Security Administration's requirement that the disclosure of information on Medicaid patients must be relevant to the administration of the state plan, and must have the consent of the recipient; and HIPAA's requirement that access to records is only permitted for persons with comparable standards of confidentiality.

Problems of access may be better addressed by restating the role of the SAC, clarifying the responsibilities of "client" agencies in cooperating with SAC requests, and standardizing the process through with Interagency Agreements and requests for records are generated.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the welfare of children; amending s.
3 39.001, F.S.; providing additional purposes of ch. 39,
4 F.S.; revising legislative intent; creating the Office of
5 Child Abuse Prevention within the Executive Office of the
6 Governor; directing the Governor to appoint a director of
7 the office; providing duties and responsibilities of the
8 director; providing procedures for evaluation of child
9 abuse prevention programs; requiring a report to the
10 Governor, Legislature, secretaries of certain state
11 agencies, and certain committees of the Legislature;
12 providing for information to be included in the report;
13 providing for the development and implementation of a
14 state plan for the coordination of child abuse prevention
15 programs and services; establishing a Child Abuse
16 Prevention Advisory Council; providing for membership,
17 duties, and responsibilities; requiring requests for
18 funding to be based on the state plan; providing for
19 review and revision of the state plan; granting rulemaking
20 authority to the Executive Office of the Governor;
21 requiring the Legislature to evaluate the office by a
22 specified date; amending s. 39.0014, F.S.; providing
23 responsibilities of the office under ch. 39, F.S.;
24 amending s. 39.01, F.S.; providing and revising
25 definitions; amending s. 39.202, F.S.; providing access to
26 records for agencies that provide early intervention and
27 prevention services; amending ss. 39.0015 and 39.302,
28 F.S.; conforming cross-references; amending s. 402.164,

29 F.S.; establishing legislative intent for the statewide
30 and local advocacy councils; amending s. 402.165, F.S.;
31 providing guidelines for selection of the executive
32 director of the Florida Statewide Advocacy Council;
33 establishing a process for investigating reports of abuse;
34 revising council meeting requirements; providing
35 requirements for interagency agreements; requiring
36 interagency agreements to be renewed annually and
37 submitted to the Governor by a specified date; amending s.
38 409.1451, F.S., relating to independent living transition
39 services; revising eligibility requirements for certain
40 young adults; revising duties of the Department of
41 Children and Family Services regarding independent living
42 transition services; including additional parties in the
43 review of a child's academic performance; requiring the
44 department or a community-based care lead agency under
45 contract with the department to develop a plan for
46 delivery of such services; requiring additional aftercare
47 support services; providing additional qualifications to
48 receive an award under the Road-to-Independence Program;
49 providing procedures for the payment of awards; requiring
50 collaboration between certain parties in the development
51 of a plan regarding the provision of transitional
52 services; requiring a community-based care lead agency to
53 develop a plan for purchase and delivery of such services
54 and requiring department approval prior to implementation;
55 permitting the Independent Living Services Advisory
56 Council to have access to certain data held by the

57 department and certain agencies; amending s. 409.175,
58 F.S.; revising the definition of the term "boarding
59 school" to require such schools to meet certain standards
60 within a specified timeframe; amending ss. 39.013, 39.701,
61 and 1009.25, F.S.; conforming references to changes made
62 by the act; providing an appropriation; providing an
63 effective date.
64
65 WHEREAS, in 2002, Florida was among only three other states
66 and the District of Columbia to have the highest national child
67 maltreatment rate, and
68 WHEREAS, during 2002, 142,547 investigations of abuse or
69 neglect, involving 254,856 children, were completed,
70 approximately one-half of which were substantiated or indicated
71 the presence of abuse or neglect, and
72 WHEREAS, a Florida child is abused or neglected every 4
73 minutes and 10,000 Florida children are abused or neglected per
74 month, and
75 WHEREAS, in 2004, according to the Florida Child Abuse
76 Death Review Team, at least 111 Florida children died from abuse
77 or neglect at the hands of their parents or caretakers, an
78 average rate of two dead children each week, and
79 WHEREAS, according to the Centers for Disease Control and
80 Prevention, the cost of failing to prevent child abuse and
81 neglect in 2001 equaled $94 billion a year nationally, and
82 WHEREAS, the direct costs of failing to prevent child abuse
83 and neglect include the costs associated with the utilization of
84 law enforcement services, the health care system, the mental

85 health system, the child welfare system, and the judicial
86 system, while the indirect costs include the provision of
87 special education and mental health and health care, a rise in
88 the incidence of juvenile delinquency, lost productivity to
89 society, and adult criminality, and
90 WHEREAS, although prevention of child maltreatment will
91 save lives and conserve resources, and despite the potential
92 long-term benefit of preventing child abuse and neglect, only a
93 small percentage of all resources specifically earmarked for
94 child maltreatment in the state are actually devoted to the
95 prevention of child maltreatment, and
96 WHEREAS, the 2005-2006 General Appropriations Act provided
97 a total funding of $44 million for child abuse prevention and
98 intervention to the Department of Children and Family Services,
99 which amount represents less than 2 percent of the department's
100 budget, and
101 WHEREAS, Healthy Families Florida is a community-based,
102 voluntary home visiting program that received approximately
103 $28.4 million for the 2005-2006 fiscal year from the Department
104 of Children and Family Services and contracts with 37 community-
105 based organizations to provide services in targeted high-risk
106 areas in 23 counties and to provide services in 30 total
107 counties, and
108 WHEREAS, Healthy Families Florida participants had 20
109 percent less child maltreatment than all families in the Healthy
110 Families Florida target service areas in spite of the fact that,
111 in general, participants are at a significantly higher risk for
112 child maltreatment than the overall population, and

113 WHEREAS, the Department of Children and Family Services,
114 the Department of Education, the Department of Health, the
115 Department of Juvenile Justice, the Department of Law
116 Enforcement, the Agency for Persons with Disabilities, and the
117 Agency for Workforce Innovation all have programs that focus on
118 primary and secondary prevention of child abuse and neglect, but
119 there is no statewide coordination or single state agency
120 responsible for oversight of these programs, and
121 WHEREAS, a statewide coordinated effort would result in
122 better communication among agencies and provide for easier
123 access and more efficiency in the delivery of abuse and neglect
124 services in the communities, NOW, THEREFORE,
125
126 Be It Enacted by the Legislature of the State of Florida:
127
128 Section 1. Subsections (1) and (6) of section 39.001,
129 Florida Statutes, are amended, subsections (7) and (8) are
130 renumbered as subsections (8) and (9) and amended, present
131 subsection (9) is renumbered as subsection (10), and new
132 subsections (7), (11), and (12) are added to that section, to
133 read:
134 39.001 Purposes and intent; personnel standards and
135 screening.--
136 (1) PURPOSES OF CHAPTER.--The purposes of this chapter
137 are:
138 (a) To provide for the care, safety, and protection of
139 children in an environment that fosters healthy social,
140 emotional, intellectual, and physical development; to ensure

141 secure and safe custody; ~~and~~ to promote the health and well-
142 being of all children under the state's care; and to prevent the
143 occurrence of child abuse, neglect, and abandonment.
144 (b) To recognize that most families desire to be competent
145 caregivers and providers for their children and that children
146 achieve their greatest potential when families are able to
147 support and nurture the growth and development of their
148 children. Therefore, the Legislature finds that policies and
149 procedures that provide for prevention and intervention through
150 the department's child protection system should be based on the
151 following principles:
152 1. The health and safety of the children served shall be
153 of paramount concern.
154 2. The prevention and intervention should engage families
155 in constructive, supportive, and nonadversarial relationships.
156 3. The prevention and intervention should intrude as
157 little as possible into the life of the family, be focused on
158 clearly defined objectives, and take the most parsimonious path
159 to remedy a family's problems.
160 4. The prevention and intervention should be based upon
161 outcome evaluation results that demonstrate success in
162 protecting children and supporting families.
163 (c) To provide a child protection system that reflects a
164 partnership between the department, other agencies, and local
165 communities.
166 (d) To provide a child protection system that is sensitive
167 to the social and cultural diversity of the state.

168 (e) To provide procedures which allow the department to
169 respond to reports of child abuse, abandonment, or neglect in
170 the most efficient and effective manner that ensures the health
171 and safety of children and the integrity of families.
172 (f) To preserve and strengthen the child's family ties
173 whenever possible, removing the child from parental custody only
174 when his or her welfare cannot be adequately safeguarded without
175 such removal.
176 (g) To ensure that the parent or legal custodian from
177 whose custody the child has been taken assists the department to
178 the fullest extent possible in locating relatives suitable to
179 serve as caregivers for the child.
180 (h) To ensure that permanent placement with the biological
181 or adoptive family is achieved as soon as possible for every
182 child in foster care and that no child remains in foster care
183 longer than 1 year.
184 (i) To secure for the child, when removal of the child
185 from his or her own family is necessary, custody, care, and
186 discipline as nearly as possible equivalent to that which should
187 have been given by the parents; and to ensure, in all cases in
188 which a child must be removed from parental custody, that the
189 child is placed in an approved relative home, licensed foster
190 home, adoptive home, or independent living program that provides
191 the most stable and potentially permanent living arrangement for
192 the child, as determined by the court. All placements shall be
193 in a safe environment where drugs and alcohol are not abused.
194 (j) To ensure that, when reunification or adoption is not
195 possible, the child will be prepared for alternative permanency

196 goals or placements, to include, but not be limited to, long-
197 term foster care, independent living, custody to a relative on a
198 permanent basis with or without legal guardianship, or custody
199 to a foster parent or legal custodian on a permanent basis with
200 or without legal guardianship.
201 (k) To make every possible effort, when two or more
202 children who are in the care or under the supervision of the
203 department are siblings, to place the siblings in the same home;
204 and in the event of permanent placement of the siblings, to
205 place them in the same adoptive home or, if the siblings are
206 separated, to keep them in contact with each other.
207 (l) To provide judicial and other procedures to assure due
208 process through which children, parents, and guardians and other
209 interested parties are assured fair hearings by a respectful and
210 respected court or other tribunal and the recognition,
211 protection, and enforcement of their constitutional and other
212 legal rights, while ensuring that public safety interests and
213 the authority and dignity of the courts are adequately
214 protected.
215 (m) To ensure that children under the jurisdiction of the
216 courts are provided equal treatment with respect to goals,
217 objectives, services, and case plans, without regard to the
218 location of their placement. It is the further intent of the
219 Legislature that, when children are removed from their homes,
220 disruption to their education be minimized to the extent
221 possible.
222 <u>(n) To create and maintain an integrated prevention</u>
223 <u>framework that enables local communities, state agencies, and</u>

224 organizations to collaborate to implement efficient and properly
225 applied evidence-based child abuse prevention practices.
226 (6) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE,
227 ABANDONMENT, AND NEGLECT OF CHILDREN.--The incidence of known
228 child abuse, abandonment, and neglect has increased rapidly over
229 the past 5 years. The impact that abuse, abandonment, or neglect
230 has on the victimized child, siblings, family structure, and
231 inevitably on all citizens of the state has caused the
232 Legislature to determine that the prevention of child abuse,
233 abandonment, and neglect shall be a priority of this state. To
234 further this end, it is the intent of the Legislature that an
235 Office of Child Abuse Prevention be established ~~a comprehensive~~
236 ~~approach for the prevention of abuse, abandonment, and neglect~~
237 ~~of children be developed for the state and that this planned,~~
238 ~~comprehensive approach be used as a basis for funding~~.
239 (7) OFFICE OF CHILD ABUSE PREVENTION.--
240 (a) For purposes of establishing a comprehensive statewide
241 approach for the prevention of child abuse, abandonment, and
242 neglect, the Office of Child Abuse Prevention is created within
243 the Executive Office of the Governor. The Governor shall appoint
244 a director for the office who shall be subject to confirmation
245 by the Senate.
246 (b) The director shall:
247 1. Formulate and recommend rules pertaining to
248 implementation of child abuse prevention efforts.
249 2. Act as the Governor's liaison with state agencies,
250 other state governments, and the public and private sectors on
251 matters that relate to child abuse prevention.

252 3. Work to secure funding and other support for the
253 state's child abuse prevention efforts, including, but not
254 limited to, establishing cooperative relationships among state
255 and private agencies.
256 4. Develop a strategic program and funding initiative that
257 links the separate jurisdictional activities of state agencies
258 with respect to child abuse prevention. The office may designate
259 lead and contributing agencies to develop such initiatives.
260 5. Advise the Governor and the Legislature on child abuse
261 trends in this state, the status of current child abuse
262 prevention programs and services, the funding of those programs
263 and services, and the status of the office with regard to the
264 development and implementation of the state child abuse
265 prevention strategy.
266 6. Develop child abuse prevention public awareness
267 campaigns to be implemented throughout the state.
268 (c) The office is authorized and directed to:
269 1. Oversee the preparation and implementation of the state
270 plan established under subsection (8) and revise and update the
271 state plan as necessary.
272 2. Conduct, otherwise provide for, or make available
273 continuing professional education and training in the prevention
274 of child abuse and neglect.
275 3. Work to secure funding in the form of appropriations,
276 gifts, and grants from the state, the Federal Government, and
277 other public and private sources in order to ensure that
278 sufficient funds are available for prevention efforts.

279 4. Make recommendations pertaining to agreements or
280 contracts for the establishment and development of:
281 a. Programs and services for the prevention of child abuse
282 and neglect.
283 b. Training programs for the prevention of child abuse and
284 neglect.
285 c. Multidisciplinary and discipline-specific training
286 programs for professionals with responsibilities affecting
287 children, young adults, and families.
288 5. Monitor, evaluate, and review the development and
289 quality of local and statewide services and programs for the
290 prevention of child abuse and neglect and shall publish and
291 distribute an annual report of its findings on or before January
292 1 of each year to the Governor, the Speaker of the House of
293 Representatives, the President of the Senate, the secretary of
294 each state agency affected by the report, and the appropriate
295 substantive committees of the Legislature. The report shall
296 include:
297 a. A summary of the activities of the office.
298 b. A summary detailing the demographic and geographic
299 characteristics of families served by the prevention programs.
300 c. Recommendations, by state agency, for the further
301 development and improvement of services and programs for the
302 prevention of child abuse and neglect.
303 d. The budget requests and prevention program needs by
304 state agency.
305 (8) ~~(7)~~ PLAN FOR COMPREHENSIVE APPROACH.--

306 (a) The office ~~department~~ shall develop a state plan for
307 the prevention of abuse, abandonment, and neglect of children
308 and shall submit the state plan to the Speaker of the House of
309 Representatives, the President of the Senate, and the Governor
310 no later than December 31, 2007 ~~January 1, 1983~~. The Department
311 of Children and Family Services, the Department of Corrections,
312 the Department of Education, the Department of Health, the
313 Department of Juvenile Justice, the Department of Law
314 Enforcement, the Agency for Persons with Disabilities, and the
315 Agency for Workforce Innovation ~~The Department of Education and~~
316 ~~the Division of Children's Medical Services Prevention and~~
317 ~~Intervention of the Department of Health~~ shall participate and
318 fully cooperate in the development of the state plan at both the
319 state and local levels. Furthermore, appropriate local agencies
320 and organizations shall be provided an opportunity to
321 participate in the development of the state plan at the local
322 level. Appropriate local groups and organizations shall include,
323 but not be limited to, community mental health centers; guardian
324 ad litem programs for children under the circuit court; the
325 school boards of the local school districts; the Florida local
326 advocacy councils; community-based care lead agencies; private
327 or public organizations or programs with recognized expertise in
328 working with child abuse prevention programs for children and
329 families; private or public organizations or programs with
330 recognized expertise in working with children who are sexually
331 abused, physically abused, emotionally abused, abandoned, or
332 neglected and with expertise in working with the families of
333 such children; private or public programs or organizations with

334 expertise in maternal and infant health care; multidisciplinary
335 child protection teams; child day care centers; law enforcement
336 agencies;~~,~~ and the circuit courts, when guardian ad litem
337 programs are not available in the local area. The state plan to
338 be provided to the Legislature and the Governor shall include,
339 as a minimum, the information required of the various groups in
340 paragraph (b).
341 (b) The development of the ~~comprehensive~~ state plan shall
342 be accomplished in the following manner:
343 1. The office shall establish a Child Abuse Prevention
344 Advisory Council composed of representatives from each state
345 agency and appropriate local agencies and organizations
346 specified in paragraph (a). The advisory council shall serve as
347 the research arm of the office and ~~The department shall~~
348 ~~establish an interprogram task force comprised of the Program~~
349 ~~Director for Family Safety, or a designee, a representative from~~
350 ~~the Child Care Services Program Office, a representative from~~
351 ~~the Family Safety Program Office, a representative from the~~
352 ~~Mental Health Program Office, a representative from the~~
353 ~~Substance Abuse Program Office, a representative from the~~
354 ~~Developmental Disabilities Program Office, and a representative~~
355 ~~from the Division of Children's Medical Services Prevention and~~
356 ~~Intervention of the Department of Health. Representatives of the~~
357 ~~Department of Law Enforcement and of the Department of Education~~
358 ~~shall serve as ex officio members of the interprogram task~~
359 ~~force. The interprogram task force~~ shall be responsible for:
360 a. Assisting in developing a plan of action for better
361 coordination and integration of the goals, activities, and

362 funding pertaining to the prevention of child abuse,
363 abandonment, and neglect conducted by the office ~~department~~ in
364 order to maximize staff and resources at the state level. The
365 plan of action shall be included in the state plan.
366 b. Assisting in providing a basic format to be utilized by
367 the districts in the preparation of local plans of action in
368 order to provide for uniformity in the district plans and to
369 provide for greater ease in compiling information for the state
370 plan.
371 c. Providing the districts with technical assistance in
372 the development of local plans of action, if requested.
373 d. Assisting in examining the local plans to determine if
374 all the requirements of the local plans have been met and, if
375 they have not, informing the districts of the deficiencies and
376 requesting the additional information needed.
377 e. Assisting in preparing the state plan for submission to
378 the Legislature and the Governor. Such preparation shall include
379 the incorporation into the state plan ~~collapsing~~ of information
380 obtained from the local plans, the cooperative plans with the
381 members of the advisory council ~~Department of Education~~, and the
382 plan of action for coordination and integration of state
383 departmental activities ~~into one comprehensive plan~~. The state
384 ~~comprehensive~~ plan shall include a section reflecting general
385 conditions and needs, an analysis of variations based on
386 population or geographic areas, identified problems, and
387 recommendations for change. In essence, the state plan shall
388 provide an analysis and summary of each element of the local

389 plans to provide a statewide perspective. The state plan shall
390 also include each separate local plan of action.
391 f. Conducting a feasibility study on the establishment of
392 a Children's Cabinet.
393 g.~~f.~~ Working with the specified state agency in fulfilling
394 the requirements of subparagraphs 2., 3., 4., and 5.
395 2. The office, the department, the Department of
396 Education, and the Department of Health shall work together in
397 developing ways to inform and instruct parents of school
398 children and appropriate district school personnel in all school
399 districts in the detection of child abuse, abandonment, and
400 neglect and in the proper action that should be taken in a
401 suspected case of child abuse, abandonment, or neglect, and in
402 caring for a child's needs after a report is made. The plan for
403 accomplishing this end shall be included in the state plan.
404 3. The office, the department, the Department of Law
405 Enforcement, and the Department of Health shall work together in
406 developing ways to inform and instruct appropriate local law
407 enforcement personnel in the detection of child abuse,
408 abandonment, and neglect and in the proper action that should be
409 taken in a suspected case of child abuse, abandonment, or
410 neglect.
411 4. Within existing appropriations, the office ~~department~~
412 shall work with other appropriate public and private agencies to
413 emphasize efforts to educate the general public about the
414 problem of and ways to detect child abuse, abandonment, and
415 neglect and in the proper action that should be taken in a

416 suspected case of child abuse, abandonment, or neglect. The plan
417 for accomplishing this end shall be included in the state plan.
418 5. The office, the department, the Department of
419 Education, and the Department of Health shall work together on
420 the enhancement or adaptation of curriculum materials to assist
421 instructional personnel in providing instruction through a
422 multidisciplinary approach on the identification, intervention,
423 and prevention of child abuse, abandonment, and neglect. The
424 curriculum materials shall be geared toward a sequential program
425 of instruction at the four progressional levels, K-3, 4-6, 7-9,
426 and 10-12. Strategies for encouraging all school districts to
427 utilize the curriculum are to be included in the ~~comprehensive~~
428 state plan for the prevention of child abuse, abandonment, and
429 neglect.
430 6. Each district of the department shall develop a plan
431 for its specific geographical area. The plan developed at the
432 district level shall be submitted to the advisory council
433 ~~interprogram task force~~ for utilization in preparing the state
434 plan. The district local plan of action shall be prepared with
435 the involvement and assistance of the local agencies and
436 organizations listed in this paragraph ~~(a)~~, as well as
437 representatives from those departmental district offices
438 participating in the treatment and prevention of child abuse,
439 abandonment, and neglect. In order to accomplish this, the
440 office ~~district administrator in each district~~ shall establish a
441 task force on the prevention of child abuse, abandonment, and
442 neglect. The office ~~district administrator~~ shall appoint the
443 members of the task force in accordance with the membership

444 requirements of this section. The office ~~In addition, the~~
445 ~~district administrator shall ensure that each subdistrict is~~
446 ~~represented on the task force; and, if the district does not~~
447 ~~have subdistricts, the district administrator~~ shall ensure that
448 both urban and rural areas are represented on the task force.
449 The task force shall develop a written statement clearly
450 identifying its operating procedures, purpose, overall
451 responsibilities, and method of meeting responsibilities. The
452 district plan of action to be prepared by the task force shall
453 include, but shall not be limited to:
454 a. Documentation of the magnitude of the problems of child
455 abuse, including sexual abuse, physical abuse, and emotional
456 abuse, and child abandonment and neglect in its geographical
457 area.
458 b. A description of programs currently serving abused,
459 abandoned, and neglected children and their families and a
460 description of programs for the prevention of child abuse,
461 abandonment, and neglect, including information on the impact,
462 cost-effectiveness, and sources of funding of such programs.
463 c. A continuum of programs and services necessary for a
464 comprehensive approach to the prevention of all types of child
465 abuse, abandonment, and neglect as well as a brief description
466 of such programs and services.
467 d. A description, documentation, and priority ranking of
468 local needs related to child abuse, abandonment, and neglect
469 prevention based upon the continuum of programs and services.
470 e. A plan for steps to be taken in meeting identified
471 needs, including the coordination and integration of services to

472 avoid unnecessary duplication and cost, and for alternative
473 funding strategies for meeting needs through the reallocation of
474 existing resources, utilization of volunteers, contracting with
475 local universities for services, and local government or private
476 agency funding.
477 f. A description of barriers to the accomplishment of a
478 comprehensive approach to the prevention of child abuse,
479 abandonment, and neglect.
480 g. Recommendations for changes that can be accomplished
481 only at the state program level or by legislative action.
482 (9) ~~(8)~~ FUNDING AND SUBSEQUENT PLANS.--
483 (a) All budget requests submitted by the office, the
484 department, the Department of Health, the Department of
485 Education, the Department of Juvenile Justice, the Department of
486 Corrections, the Agency for Persons with Disabilities, the
487 Agency for Workforce Innovation, or any other agency to the
488 Legislature for funding of efforts for the prevention of child
489 abuse, abandonment, and neglect shall be based on the state plan
490 developed pursuant to this section.
491 (b) The office ~~department at the state and district levels~~
492 and the other agencies and organizations listed in paragraph
493 (8)(a) ~~(7)(a)~~ shall readdress the state plan and make necessary
494 revisions every 5 years, at a minimum. Such revisions shall be
495 submitted to the Speaker of the House of Representatives and the
496 President of the Senate no later than June 30 of each year
497 divisible by 5. At least biennially, the office shall review the
498 state plan and make any necessary revisions based on changing
499 needs and program evaluation results. An annual progress report

500 shall be submitted to update the state plan in the years between
501 the 5-year intervals. In order to avoid duplication of effort,
502 these required plans may be made a part of or merged with other
503 plans required by either the state or Federal Government, so
504 long as the portions of the other state or Federal Government
505 plan that constitute the state plan for the prevention of child
506 abuse, abandonment, and neglect are clearly identified as such
507 and are provided to the Speaker of the House of Representatives
508 and the President of the Senate as required above.
509 (11) RULEMAKING.--The Executive Office of the Governor
510 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to
511 implement the provisions of this section.
512 (12) EVALUATION.--By February 1, 2009, the Legislature
513 shall evaluate the office and determine whether it should
514 continue to be housed in the Executive Office of the Governor or
515 transferred to a state agency.
516 Section 2. Section 39.0014, Florida Statutes, is amended
517 to read:
518 39.0014 Responsibilities of public agencies.--All state,
519 county, and local agencies shall cooperate, assist, and provide
520 information to the Office of Child Abuse Prevention ~~department~~
521 as will enable it to fulfill its responsibilities under this
522 chapter.
523 Section 3. Paragraph (b) of subsection (3) of section
524 39.0015, Florida Statutes, is amended to read:
525 39.0015 Child abuse prevention training in the district
526 school system.--
527 (3) DEFINITIONS.--As used in this section:

528 (b) "Child abuse" means those acts as defined in ss.
529 39.01(1), (2), (30), (43), (45), (53) ~~(52)~~, and (64) ~~(63)~~, 827.04,
530 and 984.03(1), (2), and (37).
531 Section 4. Subsections (47) through (72) of section 39.01,
532 Florida Statutes, are renumbered as subsections (48) through
533 (73), present subsections (10) and (47) are amended, and a new
534 subsection (47) is added to that section, to read:
535 39.01 Definitions.--When used in this chapter, unless the
536 context otherwise requires:
537 (10) "Caregiver" means the parent, legal custodian, adult
538 household member, or other person responsible for a child's
539 welfare as defined in subsection (48) ~~(47)~~.
540 (47) "Office" means the Office of Child Abuse Prevention
541 within the Executive Office of the Governor.
542 (48) ~~(47)~~ "Other person responsible for a child's welfare"
543 includes the child's legal guardian, legal custodian, or foster
544 parent; an employee of any ~~a private~~ school, public or private
545 child day care center, residential home, institution, facility,
546 or agency; or any other person legally responsible for the
547 child's welfare in a residential setting; and also includes an
548 adult sitter or relative entrusted with a child's care. For the
549 purpose of departmental investigative jurisdiction, this
550 definition does not include law enforcement officers, or
551 employees of municipal or county detention facilities or the
552 Department of Corrections, while acting in an official capacity.
553 Section 5. Paragraph (a) of subsection (2) of section
554 39.202, Florida Statutes, is amended to read:

555 39.202 Confidentiality of reports and records in cases of
556 child abuse or neglect.--
557 (2) Except as provided in subsection (4), access to such
558 records, excluding the name of the reporter which shall be
559 released only as provided in subsection (5), shall be granted
560 only to the following persons, officials, and agencies:
561 (a) Employees, authorized agents, or contract providers of
562 the department, the Department of Health, or county agencies
563 responsible for carrying out:
564 1. Child or adult protective investigations;
565 2. Ongoing child or adult protective services;
566 3. Early intervention and prevention services;
567 4.~~3.~~ Healthy Start services; ~~or~~
568 5.~~4.~~ Licensure or approval of adoptive homes, foster
569 homes, or child care facilities, or family day care homes or
570 informal child care providers who receive subsidized child care
571 funding, or other homes used to provide for the care and welfare
572 of children; or~~.~~
573 6.~~5.~~ Services for victims of domestic violence when
574 provided by certified domestic violence centers working at the
575 department's request as case consultants or with shared clients.
576
577 Also, employees or agents of the Department of Juvenile Justice
578 responsible for the provision of services to children, pursuant
579 to chapters 984 and 985.
580 Section 6. Subsection (1) of section 39.302, Florida
581 Statutes, is amended to read:

582 39.302 Protective investigations of institutional child
583 abuse, abandonment, or neglect.--
584 (1) The department shall conduct a child protective
585 investigation of each report of institutional child abuse,
586 abandonment, or neglect. Upon receipt of a report that alleges
587 that an employee or agent of the department, or any other entity
588 or person covered by s. 39.01(31) or (48) ~~(47)~~, acting in an
589 official capacity, has committed an act of child abuse,
590 abandonment, or neglect, the department shall initiate a child
591 protective investigation within the timeframe established by the
592 central abuse hotline pursuant to s. 39.201(5) and orally notify
593 the appropriate state attorney, law enforcement agency, and
594 licensing agency. These agencies shall immediately conduct a
595 joint investigation, unless independent investigations are more
596 feasible. When conducting investigations onsite or having face-
597 to-face interviews with the child, such investigation visits
598 shall be unannounced unless it is determined by the department
599 or its agent that such unannounced visits would threaten the
600 safety of the child. When a facility is exempt from licensing,
601 the department shall inform the owner or operator of the
602 facility of the report. Each agency conducting a joint
603 investigation shall be entitled to full access to the
604 information gathered by the department in the course of the
605 investigation. A protective investigation must include an onsite
606 visit of the child's place of residence. In all cases, the
607 department shall make a full written report to the state
608 attorney within 3 working days after making the oral report. A
609 criminal investigation shall be coordinated, whenever possible,

610 with the child protective investigation of the department. Any
611 interested person who has information regarding the offenses
612 described in this subsection may forward a statement to the
613 state attorney as to whether prosecution is warranted and
614 appropriate. Within 15 days after the completion of the
615 investigation, the state attorney shall report the findings to
616 the department and shall include in such report a determination
617 of whether or not prosecution is justified and appropriate in
618 view of the circumstances of the specific case.
619 Section 7. Subsection (1) of section 402.164, Florida
620 Statutes, is amended to read:
621 402.164 Legislative intent; definitions.--
622 (1)(a) It is the intent of the Legislature to use citizen
623 volunteers as members of the Florida Statewide Advocacy Council
624 and the Florida local advocacy councils, and to have volunteers
625 operate a network of councils that shall, without interference
626 by an executive agency, undertake to discover, monitor,
627 investigate, and determine the presence of conditions or
628 individuals that constitute a threat to the rights, health,
629 safety, or welfare of persons who receive services from state
630 agencies.
631 (b) It is the further intent of the Legislature that the
632 monitoring and investigation shall safeguard the health, safety,
633 and welfare of consumers of services provided by these state
634 agencies.
635 <u>(c) It is the further intent of the Legislature that state</u>
636 <u>agencies cooperate with the councils in forming interagency</u>
637 <u>agreements to provide the councils with authorized client</u>

638 records so that the councils may monitor services and
639 investigate claims.
640 Section 8. Subsections (5) and (7) of section 402.165,
641 Florida Statutes, are amended to read:
642 402.165 Florida Statewide Advocacy Council; confidential
643 records and meetings.--
644 (5)(a) Members of the statewide council shall receive no
645 compensation, but are entitled to be reimbursed for per diem and
646 travel expenses in accordance with s. 112.061.
647 (b) The Governor shall select an executive director who
648 shall serve at the pleasure of the Governor and shall perform
649 the duties delegated to him or her by the council. The
650 compensation of the executive director and staff shall be
651 established in accordance with the rules of the Selected Exempt
652 Service. The Governor shall give priority consideration in the
653 selection of an executive director to an individual with
654 professional expertise in research design, statistical analysis,
655 or agency evaluation and analysis.
656 (c) The council may apply for, receive, and accept grants,
657 gifts, donations, bequests, and other payments including money
658 or property, real or personal, tangible or intangible, and
659 service from any governmental or other public or private entity
660 or person and make arrangements as to the use of same.
661 (d) The statewide council shall annually prepare a budget
662 request that, after it is approved by the council, shall be
663 submitted to the Governor. The budget shall include a request
664 for funds to carry out the activities of the statewide council
665 and the local councils.

666 (7) The responsibilities of the statewide council include,
667 but are not limited to:
668 (a) Serving as an independent third-party mechanism for
669 protecting the constitutional and human rights of clients within
670 programs or facilities operated, funded, or contracted by any
671 state agency that provides client services.
672 (b) Monitoring, by site visit and through access to
673 records, the delivery and use of services, programs, or
674 facilities operated, funded, or contracted by any state agency
675 that provides client services, for the purpose of preventing
676 abuse or deprivation of the constitutional and human rights of
677 clients. The statewide council may conduct an unannounced site
678 visit or monitoring visit that involves the inspection of
679 records if the visit is conditioned upon a complaint. A
680 complaint may be generated by the council itself, after
681 consulting with the Governor's office, if information from any
682 state agency that provides client services or from other sources
683 indicates a situation at the program or facility that indicates
684 possible abuse or neglect or deprivation of the constitutional
685 and human rights of clients. The statewide council shall
686 establish and follow uniform criteria for the review of
687 information and generation of complaints. The statewide council
688 shall develop a written protocol for all complaints it generates
689 to provide the Governor's office with information including the
690 nature of the abuse or neglect, the agencies involved, the
691 populations or numbers of individuals affected, the types of
692 records necessary to complete the investigation, and a strategy
693 for approaching the problem. Routine program monitoring and

694 reviews that do not require an examination of records may be
695 made unannounced.
696 (c) Receiving, investigating, and resolving reports of
697 abuse or deprivation of constitutional and human rights referred
698 to the statewide council by a local council. If a matter
699 constitutes a threat to the life, safety, or health of clients
700 or is multiservice-area in scope, the statewide council may
701 exercise its powers without the necessity of a referral from a
702 local council.
703 (d) Reviewing existing programs or services and new or
704 revised programs of the state agencies that provide client
705 services and making recommendations as to how the rights of
706 clients are affected.
707 (e) Submitting an annual report to the Legislature, no
708 later than December 30 of each calendar year, concerning
709 activities, recommendations, and complaints reviewed or
710 developed by the council during the year.
711 (f) Conducting meetings at least one time ~~six times~~ a year
712 at the call of the chair and at other times at the call of the
713 Governor or by written request of eight ~~six~~ members of the
714 council including the executive director.
715 (g) Developing and adopting uniform procedures to be used
716 to carry out the purpose and responsibilities of the statewide
717 council and the local councils.
718 (h) Supervising the operations of the local councils and
719 monitoring the performance and activities of all local councils
720 and providing technical assistance to members of local councils.

721 (i) Providing for the development and presentation of a
722 standardized training program for members of local councils.
723 (j) Developing and maintaining interagency agreements
724 between the council and the state agencies providing client
725 services. The interagency agreements shall address the
726 coordination of efforts and identify the roles and
727 responsibilities of the statewide and local councils and each
728 agency in fulfillment of their responsibilities, including
729 access to records. The interagency agreements shall explicitly
730 define a process that the statewide and local councils shall use
731 to request records from the agency and shall define a process
732 for appeal when disputes about access to records arise between
733 staff and council members. Interagency agreements shall be
734 renewed annually and shall be completed and reported to the
735 Governor no later than February 1.
736 Section 9. Section 409.1451, Florida Statutes, is amended
737 to read:
738 409.1451 Independent living transition services.--
739 (1) SYSTEM OF SERVICES.--
740 (a) The Department of Children and Family Services, its
741 agents, or community-based providers operating pursuant to s.
742 409.1671 shall administer a system of independent living
743 transition services to enable older children in foster care and
744 young adults who exit foster care at age 18 to make the
745 transition to self-sufficiency as adults.
746 (b) The goals of independent living transition services
747 are to assist older children in foster care and young adults who
748 were formerly in foster care to obtain life skills and education

749 for independent living and employment, to have a quality of life
750 appropriate for their age, and to assume personal responsibility
751 for becoming self-sufficient adults.
752 (c) State funds for foster care or federal funds shall be
753 used to establish a continuum of services for eligible children
754 in foster care and eligible young adults who were formerly in
755 foster care which accomplish the goals for the system of
756 independent living transition services by providing services for
757 foster children, pursuant to subsection (4), and services for
758 young adults who were formerly in foster care, pursuant to
759 subsection (5).
760 (d) For children in foster care, independent living
761 transition services are not an alternative to adoption.
762 Independent living transition services may occur concurrently
763 with continued efforts to locate and achieve placement in
764 adoptive families for older children in foster care.
765 (2) ELIGIBILITY.--
766 (a) The department shall serve children who have reached
767 13 years of age but are not yet 18 years of age and who are in
768 foster care by providing services pursuant to subsection (4).
769 Children to be served must meet the eligibility requirements set
770 forth for specific services as provided in this section.
771 (b) The department shall serve young adults who have
772 reached 18 years of age <u>or were placed with a court-approved</u>
773 <u>nonrelative or guardian after reaching 16 years of age and have</u>
774 <u>spent a minimum of 6 months in foster care</u> ~~but are not yet 23~~
775 ~~years of age and who were in foster care when they turned 18~~
776 ~~years of age~~ by providing services pursuant to subsection (5).

777 Young adults are not entitled to be served but must meet the
778 eligibility requirements set forth for specific services in this
779 section.
780 (3) PREPARATION FOR INDEPENDENT LIVING.--
781 (a) It is the intent of the Legislature for the Department
782 of Children and Family Services to assist older children in
783 foster care and young adults who exit foster care at age 18 in
784 making the transition to independent living and self-sufficiency
785 as adults. The department shall provide such children and young
786 adults with opportunities to participate in life skills
787 activities in their foster families and communities which are
788 reasonable and appropriate for their respective ages or for any
789 special needs they may have~~,~~ and shall provide them with
790 services to build life ~~the~~ skills and increase their ability to
791 live independently and become self-sufficient. To support the
792 provision of opportunities for participation in age-appropriate
793 life skills activities, the department shall:
794 1. Develop a list of age-appropriate activities and
795 responsibilities to be offered to all children involved in
796 independent living transition services and their foster parents.
797 2. Provide training for staff and foster parents to
798 address the issues of older children in foster care in
799 transitioning to adulthood, which shall include information on
800 high school completion, grant applications, vocational school
801 opportunities, supporting education and employment
802 opportunities, and ~~providing~~ opportunities to participate in
803 appropriate daily activities.

804 3. Develop procedures to maximize the authority of foster
805 parents or caregivers to approve participation in age-
806 appropriate activities of children in their care. The age-
807 appropriate activities and the authority of the foster parent or
808 caregiver shall be developed into a written plan that the foster
809 parent or caregiver, the child, and the case manager all develop
810 together, sign, and follow. This plan must include specific
811 goals and objectives and be reviewed and updated no less than
812 quarterly.
813 4. Provide opportunities for older children in foster care
814 to interact with mentors.
815 5. Develop and implement procedures for older children to
816 directly access and manage the personal allowance they receive
817 from the department in order to learn responsibility and
818 participate in age-appropriate life skills activities to the
819 extent feasible.
820 6. Make a good faith effort to fully explain, prior to
821 execution of any signature, if required, any document, report,
822 form, or other record, whether written or electronic, presented
823 to a child or young adult pursuant to this chapter and allow for
824 the recipient to ask any appropriate questions necessary to
825 fully understand the document. It shall be the responsibility of
826 the person presenting the document to the child or young adult
827 to comply with this subparagraph.
828 (b) It is further the intent of the Legislature that each
829 child in foster care, his or her foster parents, if applicable,
830 and the department or community-based provider set early
831 achievement and career goals for the child's postsecondary

832 educational and work experience. The department and community-
833 based providers shall implement the model set forth in this
834 paragraph to help ensure that children in foster care are ready
835 for postsecondary education and the workplace.
836 1. For children in foster care who have reached 13 years
837 of age, ~~entering the 9th grade, their foster parents, and~~ the
838 department or community-based provider shall ensure that the
839 child's case plan includes an educational and career path ~~be~~
840 ~~active participants in choosing a post high school goal~~ based
841 upon both the abilities and interests of each child. The child,
842 the foster parents, and a teacher or other school staff member
843 shall be included to the fullest extent possible in developing
844 the path. The path shall be reviewed at each judicial hearing as
845 part of the case plan and ~~goal~~ shall accommodate the needs of
846 children served in exceptional education programs to the extent
847 appropriate for each individual. Such children may continue to
848 follow the courses outlined in the district school board student
849 progression plan. Children in foster care, with the assistance
850 of their foster parents, and the department or community-based
851 provider shall choose one of the following postsecondary goals:
852 a. Attending a 4-year college or university, a community
853 college plus university, or a military academy;
854 b. Receiving a 2-year postsecondary degree;
855 c. Attaining a postsecondary career and technical
856 certificate or credential; or
857 d. Beginning immediate employment, including
858 apprenticeship, after completion of a high school diploma or its
859 equivalent, or enlisting in the military.

860 2. In order to assist the child in foster care in
861 achieving his or her chosen goal, the department or community-
862 based provider shall, with the participation of the child and
863 foster parents, identify:
864 a. The core courses necessary to qualify for a chosen
865 goal.
866 b. Any elective courses which would provide additional
867 help in reaching a chosen goal.
868 c. The grade point requirement and any additional
869 information necessary to achieve a specific goal.
870 d. A teacher, other school staff member, employee of the
871 department or community-based care provider, or community
872 volunteer who would be willing to work with the child as an
873 academic advocate or mentor if foster parent involvement is
874 insufficient or unavailable.
875 3. In order to complement educational goals, the
876 department and community-based providers are encouraged to form
877 partnerships with the business community to support internships,
878 apprenticeships, or other work-related opportunities.
879 4. The department and community-based providers shall
880 ensure that children in foster care and their foster parents are
881 made aware of the postsecondary goals available and shall assist
882 in identifying the coursework necessary to enable the child to
883 reach the chosen goal.
884 (c) All children in foster care and young adults formerly
885 in foster care are encouraged to take part in learning
886 opportunities that result from participation in community
887 service activities.

888 (d) Children in foster care and young adults formerly in
889 foster care shall be provided with the opportunity to change
890 from one postsecondary goal to another, and each postsecondary
891 goal shall allow for changes in each individual's needs and
892 preferences. Any change, particularly a change that will result
893 in additional time required to achieve a goal, shall be made
894 with the guidance and assistance of the department or community-
895 based provider.
896 (4) SERVICES FOR CHILDREN IN FOSTER CARE.--The department
897 shall provide the following transition to independence services
898 to children in foster care who meet prescribed conditions and
899 are determined eligible by the department. The service
900 categories available to children in foster care which facilitate
901 successful transition into adulthood are:
902 (a) Preindependent living services.--
903 1. Preindependent living services include, but are not
904 limited to, life skills training, educational field trips, and
905 conferences. The specific services to be provided to a child
906 shall be determined using a preindependent living assessment.
907 2. A child who has reached 13 years of age but is not yet
908 15 years of age who is in foster care is eligible for such
909 services.
910 3. The department shall conduct an annual staffing for
911 each child who has reached 13 years of age but is not yet 15
912 years of age to ensure that the preindependent living training
913 and services to be provided as determined by the preindependent
914 living assessment are being received and to evaluate the

915 progress of the child in developing the needed independent
916 living skills.
917 4. At the first annual staffing that occurs following a
918 child's 14th birthday, and at each subsequent staffing, the
919 department or community-based provider shall ensure that the
920 child's case plan includes an educational and career path based
921 upon both the abilities and interests of each child and shall
922 provide to each child detailed personalized information on
923 services provided by the Road-to-Independence ~~Scholarship~~
924 Program, including requirements for eligibility; on other
925 grants, scholarships, and waivers that are available and should
926 be sought by the child with assistance from the department,
927 including, but not limited to, the Bright Futures Scholarship
928 Program, as provided in ss. 1009.53-1009.538; on application
929 deadlines; and on grade requirements for such programs.
930 5. Information related to both the preindependent living
931 assessment and all staffings, which shall be reduced to writing
932 and signed by the child participant, shall be included as a part
933 of the written report required to be provided to the court at
934 each judicial review held pursuant to s. 39.701.
935 (b) Life skills services.--
936 1. Life skills services may include, but are not limited
937 to, independent living skills training, including training to
938 develop banking and budgeting skills, interviewing skills,
939 parenting skills, and time management or organizational skills,
940 educational support, employment training, and counseling.
941 Children receiving these services should also be provided with
942 information related to social security insurance benefits and

943 public assistance. The specific services to be provided to a
944 child shall be determined using an independent life skills
945 assessment.
946 2. A child who has reached 15 years of age but is not yet
947 18 years of age who is in foster care is eligible for such
948 services.
949 3. The department shall conduct a staffing at least once
950 every 6 months for each child who has reached 15 years of age
951 but is not yet 18 years of age to ensure that the appropriate
952 independent living training and services as determined by the
953 independent life skills assessment are being received and to
954 evaluate the progress of the child in developing the needed
955 independent living skills.
956 4. The department shall provide to each child in foster
957 care during the calendar month following the child's 17th
958 birthday an independent living assessment to determine the
959 child's skills and abilities to live independently and become
960 self-sufficient. Based on the results of the independent living
961 assessment, services and training shall be provided in order for
962 the child to develop the necessary skills and abilities prior to
963 the child's 18th birthday.
964 5. Information related to both the independent life skills
965 assessment and all staffings, which shall be reduced to writing
966 and signed by the child participant, shall be included as a part
967 of the written report required to be provided to the court at
968 each judicial review held pursuant to s. 39.701.
969 (c) Subsidized independent living services.--

970 1. Subsidized independent living services are living
971 arrangements that allow the child to live independently of the
972 daily care and supervision of an adult in a setting that is not
973 required to be licensed under s. 409.175.
974 2. A child who has reached 16 years of age but is not yet
975 18 years of age is eligible for such services if he or she:
976 a. Is adjudicated dependent under chapter 39; has been
977 placed in licensed out-of-home care for at least 6 months prior
978 to entering subsidized independent living; and has a permanency
979 goal of adoption, independent living, or long-term licensed
980 care; and
981 b. Is able to demonstrate independent living skills, as
982 determined by the department, using established procedures and
983 assessments.
984 3. Independent living arrangements established for a child
985 must be part of an overall plan leading to the total
986 independence of the child from the department's supervision. The
987 plan must include, but need not be limited to, a description of
988 the skills of the child and a plan for learning additional
989 identified skills; the behavior that the child has exhibited
990 which indicates an ability to be responsible and a plan for
991 developing additional responsibilities, as appropriate; a plan
992 for future educational, vocational, and training skills; present
993 financial and budgeting capabilities and a plan for improving
994 resources and ability; a description of the proposed residence;
995 documentation that the child understands the specific
996 consequences of his or her conduct in the independent living
997 program; documentation of proposed services to be provided by

998 the department and other agencies, including the type of service
999 and the nature and frequency of contact; and a plan for
1000 maintaining or developing relationships with the family, other
1001 adults, friends, and the community, as appropriate.
1002 4. Subsidy payments in an amount established by the
1003 department may be made directly to a child under the direct
1004 supervision of a caseworker or other responsible adult approved
1005 by the department.
1006 (5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER
1007 CARE.--Based on the availability of funds, the department shall
1008 provide or arrange for the following services to young adults
1009 formerly in foster care who meet the prescribed conditions and
1010 are determined eligible by the department. The department, or a
1011 community-based care lead agency when the agency is under
1012 contract with the department to provide the services described
1013 under this subsection, shall develop a plan to implement those
1014 services. A plan shall be developed for each community-based
1015 care service area in the state. Each plan that is developed by a
1016 community-based care lead agency shall be submitted to the
1017 department. Each plan shall include the number of young adults
1018 to be served each month of the fiscal year and specify the
1019 number of young adults who will reach 18 years of age who will
1020 be eligible for the plan and the number of young adults who will
1021 reach 23 years of age and will be ineligible for the plan or who
1022 are otherwise ineligible during each month of the fiscal year;
1023 staffing requirements and all related costs to administer the
1024 services and program; expenditures to or on behalf of the
1025 eligible recipients; costs of services provided to young adults

1026 through an approved plan for housing, transportation, and
1027 employment; reconciliation of these expenses and any additional
1028 related costs with the funds allocated for these services; and
1029 an explanation of and a plan to resolve any shortages or
1030 surpluses in order to end the fiscal year with a balanced
1031 budget. The categories of services available to assist a young
1032 adult formerly in foster care to achieve independence are:
1033 (a) Aftercare support services.--
1034 1. Aftercare support services are available to assist
1035 young adults who were formerly in foster care in their efforts
1036 to continue to develop the skills and abilities necessary for
1037 independent living. The aftercare support services available
1038 include, but are not limited to, the following:
1039 a. Mentoring and tutoring.
1040 b. Mental health services and substance abuse counseling.
1041 c. Life skills classes, including credit management and
1042 preventive health activities.
1043 d. Parenting classes.
1044 e. Job and career skills training.
1045 f. Counselor consultations.
1046 g. Temporary financial assistance.
1047 h. Financial literacy skills training.
1048
1049 The specific services to be provided under this subparagraph
1050 shall be determined by an aftercare services assessment and may
1051 be provided by the department or through referrals in the
1052 community.

1053 2. Temporary assistance provided to prevent homelessness
1054 shall be provided as expeditiously as possible and within the
1055 limitations defined by the department.
1056 3.~~2.~~ A young adult who has reached 18 years of age but is
1057 not yet 23 years of age who leaves foster care at 18 years of
1058 age but who requests services prior to reaching 23 years of age
1059 is eligible for such services.
1060 (b) Road-to-Independence ~~Scholarship~~ Program.--
1061 1. The Road-to-Independence ~~Scholarship~~ Program is
1062 intended to help eligible students who are former foster
1063 children in this state to receive the educational and vocational
1064 training needed to achieve independence. The amount of the award
1065 shall be based on the living and educational needs of the young
1066 adult and may be up to, but may not exceed, the amount of
1067 earnings that the student would have been eligible to earn
1068 working a 40-hour-a-week federal minimum wage job.
1069 2. A young adult who has reached 18 years of age but is
1070 not yet 21 years of age is eligible for the initial award, and a
1071 young adult under 23 years of age is eligible for renewal
1072 awards, if he or she:
1073 a. Was a dependent child, under chapter 39, and was living
1074 in licensed foster care or in subsidized independent living at
1075 the time of his or her 18th birthday or is currently in licensed
1076 foster care or subsidized independent living, was adopted from
1077 foster care after reaching 16 years of age, or, after spending
1078 at least 6 months in the custody of the department after
1079 reaching 16 years of age, was placed in a guardianship by the
1080 court;

1081 b. Spent at least 6 months living in foster care before
1082 reaching his or her 18th birthday;
1083 c. Is a resident of this state as defined in s. 1009.40;
1084 and
1085 d. Meets one of the following qualifications:
1086 (I) Has earned a standard high school diploma or its
1087 equivalent as described in s. 1003.43 or s. 1003.435, or has
1088 earned a special diploma or special certificate of completion as
1089 described in s. 1003.438, and has been admitted for full-time
1090 enrollment in an eligible postsecondary education institution as
1091 defined in s. 1009.533;
1092 (II) Is enrolled full time in an accredited high school;
1093 or
1094 (III) Is enrolled full time in an accredited adult
1095 education program designed to provide the student with a high
1096 school diploma or its equivalent.
1097 3. A young adult applying for the ~~a~~ Road-to-Independence
1098 Program ~~Scholarship~~ must apply for any other grants and
1099 scholarships for which he or she may qualify. The department
1100 shall assist the young adult in the application process and may
1101 use the federal financial aid grant process to determine the
1102 funding needs of the young adult.
1103 4. An award shall be available to a young adult who is
1104 considered a full-time student or its equivalent by the
1105 educational institution in which he or she is enrolled, unless
1106 that young adult has a recognized disability preventing full-
1107 time attendance. The amount of the award, whether it is being
1108 used by a young adult working toward completion of a high school

1109 diploma or its equivalent or working toward completion of a
1110 postsecondary education program, shall be determined based on an
1111 assessment of the funding needs of the young adult. This
1112 assessment must consider the young adult's living and
1113 educational costs and other grants, scholarships, waivers,
1114 earnings, and other income to be received by the young adult. An
1115 award shall be available only to the extent that other grants
1116 and scholarships are not sufficient to meet the living and
1117 educational needs of the young adult, but an award may not be
1118 less than $25 in order to maintain Medicaid eligibility for the
1119 young adult as provided in s. 409.903.
1120 5.a. The department must advertise the criteria,
1121 application procedures, and availability of the program to:
1122 (I) Children and young adults in, leaving, or formerly in
1123 foster care.
1124 (II) Case managers.
1125 (III) Guidance and family services counselors.
1126 (IV) Principals or other relevant school administrators
1127 ~~and must ensure that the children and young adults leaving~~
1128 ~~foster care, foster parents, or family services counselors are~~
1129 ~~informed of the availability of the program and the application~~
1130 ~~procedures~~.
1131 b. A young adult must apply for the initial award during
1132 the 6 months immediately preceding his or her 18th birthday, and
1133 the department shall provide assistance with the application
1134 process. A young adult who fails to make an initial application,
1135 but who otherwise meets the criteria for an initial award, may
1136 make one application for the initial award if the application is

1137 made before the young adult's 21st birthday. If the young adult
1138 does not apply for an initial award before his or her 18th
1139 birthday, the department shall inform that young adult of the
1140 opportunity to apply before turning 21 years of age.
1141 c. ~~If funding for the program is available,~~ The department
1142 shall issue awards from the ~~scholarship~~ program for each young
1143 adult who meets all the requirements of the program to the
1144 extent funding is available.
1145 d. An award shall be issued at the time the eligible
1146 student reaches 18 years of age.
1147 e. A young adult who is eligible for the Road-to-
1148 Independence Program, transitional support services, or
1149 aftercare services and who so desires shall be allowed to reside
1150 with the licensed foster family or group care provider with whom
1151 he or she was residing at the time of attaining his or her 18th
1152 birthday or to reside in another licensed foster home or with a
1153 group care provider arranged by the department.
1154 f. If the award recipient transfers from one eligible
1155 institution to another and continues to meet eligibility
1156 requirements, the award must be transferred with the recipient.
1157 g. ~~Scholarship~~ Funds awarded to any eligible young adult
1158 under this program are in addition to any other services or
1159 funds provided to the young adult by the department through
1160 transitional support services or aftercare services ~~its~~
1161 ~~independent living transition services~~.
1162 h. The department shall provide information concerning
1163 young adults receiving funding through the Road-to-Independence
1164 Program ~~Scholarship~~ to the Department of Education for inclusion

1165 in the student financial assistance database, as provided in s.
1166 1009.94.
1167 i. ~~Scholarship~~ Funds are intended to help eligible young
1168 adults ~~students~~ who are former foster children in this state to
1169 receive the educational and vocational training needed to become
1170 independent and self-supporting. The funds shall be terminated
1171 when the young adult has attained one of four postsecondary
1172 goals under subsection (3) or reaches 23 years of age, whichever
1173 occurs earlier. In order to initiate postsecondary education, to
1174 allow for a change in career goal, or to obtain additional
1175 skills in the same educational or vocational area, a young adult
1176 may earn no more than two diplomas, certificates, or
1177 credentials. A young adult attaining an associate of arts or
1178 associate of science degree shall be permitted to work toward
1179 completion of a bachelor of arts or a bachelor of science degree
1180 or an equivalent undergraduate degree. Road-to-Independence
1181 Program ~~Scholarship~~ funds may not be used for education or
1182 training after a young adult has attained a bachelor of arts or
1183 a bachelor of science degree or an equivalent undergraduate
1184 degree.
1185 j. The department shall evaluate and renew each award
1186 annually during the 90-day period before the young adult's
1187 birthday. In order to be eligible for a renewal award for the
1188 subsequent year, the young adult must:
1189 (I) Complete the number of hours, or the equivalent
1190 considered full time by the educational institution, unless that
1191 young adult has a recognized disability preventing full-time
1192 attendance, in the last academic year in which the young adult

1193 earned an award ~~a scholarship~~, except for a young adult who
1194 meets the requirements of s. 1009.41.
1195 (II) Maintain appropriate progress as required by the
1196 educational institution, except that, if the young adult's
1197 progress is insufficient to renew the award ~~scholarship~~ at any
1198 time during the eligibility period, the young adult may restore
1199 eligibility by improving his or her progress to the required
1200 level.
1201 k. ~~Scholarship~~ Funds may be terminated during the interim
1202 between an award and the evaluation for a renewal award if the
1203 department determines that the award recipient is no longer
1204 enrolled in an educational institution as defined in sub-
1205 subparagraph 2.d., or is no longer a state resident. The
1206 department shall notify a recipient ~~student~~ who is terminated
1207 and inform the recipient ~~student~~ of his or her right to appeal.
1208 l. An award recipient who does not qualify for a renewal
1209 award or who chooses not to renew the award may subsequently
1210 apply for reinstatement. An application for reinstatement must
1211 be made before the young adult reaches 21 ~~23~~ years of age, and a
1212 student may not apply for reinstatement more than once. In order
1213 to be eligible for reinstatement, the young adult must meet the
1214 eligibility criteria and the criteria for award renewal for the
1215 ~~scholarship~~ program.
1216 (c) Transitional support services.--
1217 1. In addition to any services provided through aftercare
1218 support or the Road-to-Independence Program ~~Scholarship~~, a young
1219 adult formerly in foster care may receive other appropriate
1220 short-term funding and services, which may include financial,

1221 housing, counseling, employment, education, mental health,
1222 disability, and other services, if the young adult demonstrates
1223 that the services are critical to the young adult's own efforts
1224 to achieve self-sufficiency and to develop a personal support
1225 system. The department or community-based care provider shall
1226 work with the young adult in developing a joint transition plan
1227 that is consistent with a needs assessment identifying the
1228 specific need for transitional services to support the young
1229 adult's own efforts. The young adult must have specific tasks to
1230 complete or maintain included in the plan and be accountable for
1231 the completion of or making progress towards the completion of
1232 these tasks. If the young adult and the department or community-
1233 based care provider cannot come to agreement regarding any part
1234 of the plan, the young adult may access a grievance process to
1235 its full extent in an effort to resolve the disagreement.
1236 2. A young adult formerly in foster care is eligible to
1237 apply for transitional support services if he or she has reached
1238 18 years of age but is not yet 23 years of age, was a dependent
1239 child pursuant to chapter 39, was living in licensed foster care
1240 or in subsidized independent living at the time of his or her
1241 18th birthday, and had spent at least 6 months living in foster
1242 care before that date.
1243 3. If at any time the services are no longer critical to
1244 the young adult's own efforts to achieve self-sufficiency and to
1245 develop a personal support system, they shall be terminated.
1246 (d) Payment of aftercare, Road-to-Independence Program
1247 ~~scholarship~~, or transitional support funds.--

1248 1. Payment of aftercare, Road-to-Independence Program
1249 ~~scholarship~~, or transitional support funds shall be made
1250 directly to the recipient unless the recipient requests in
1251 writing to the community-based care lead agency, or the
1252 department, that the payments or a portion of the payments be
1253 made directly on the recipient's behalf in order to secure
1254 services such as housing, counseling, education, or employment
1255 training as part of the young adult's own efforts to achieve
1256 self-sufficiency.
1257 2. After the completion of aftercare support services that
1258 satisfy the requirements of sub-subparagraph (a)1.h., payment of
1259 awards under the Road-to-Independence Program shall be made by
1260 direct deposit to the recipient, unless the recipient requests
1261 in writing to the community-based care lead agency or the
1262 department that:
1263 a. The payments be made directly to the recipient by check
1264 or warrant;
1265 b. The payments or a portion of the payments be made
1266 directly on the recipient's behalf to institutions the recipient
1267 is attending to maintain eligibility under this section; or
1268 c. The payments be made on a two-party check to a business
1269 or landlord for a legitimate expense, whether reimbursed or not.
1270 A legitimate expense for the purposes of this sub-subparagraph
1271 shall include automobile repair or maintenance expenses;
1272 educational, job, or training expenses; and costs incurred,
1273 except legal costs, fines, or penalties, when applying for or
1274 executing a rental agreement for the purposes of securing a home
1275 or residence.

1276 3. The community-based care lead agency may purchase
1277 housing, transportation, or employment services to ensure the
1278 availability and affordability of specific transitional services
1279 thereby allowing an eligible young adult to utilize these
1280 services in lieu of receiving a direct payment. Prior to
1281 purchasing such services, the community-based care lead agency
1282 must have a plan approved by the department describing the
1283 services to be purchased, the rationale for purchasing the
1284 services, and a specific range of expenses for each service that
1285 is less than the cost of purchasing the service by an individual
1286 young adult. The plan must include a description of the
1287 transition of a young adult using these services into
1288 independence and a timeframe for achievement of independence. An
1289 eligible young adult who can demonstrate an ability to obtain
1290 these services independently and prefers a direct payment shall
1291 receive such payment. The plan must be reviewed annually and
1292 evaluated for cost-efficiency and for effectiveness in assisting
1293 young adults in achieving independence, preventing homelessness
1294 among young adults, and enabling young adults to earn a livable
1295 wage in a permanent employment situation.
1296 4. The young adult who resides with a foster family may
1297 not be included as a child in calculating any licensing
1298 restriction on the number of children in the foster home.
1299 (e) Appeals process.--
1300 1. The Department of Children and Family Services shall
1301 adopt by rule a procedure by which a young adult may appeal an
1302 eligibility determination or the department's failure to provide
1303 aftercare, Road-to-Independence Program ~~scholarship~~, or

1304 transitional support services, or the termination of such
1305 services, if such funds are available.
1306 2. The procedure developed by the department must be
1307 readily available to young adults, must provide timely
1308 decisions, and must provide for an appeal to the Secretary of
1309 Children and Family Services. The decision of the secretary
1310 constitutes final agency action and is reviewable by the court
1311 as provided in s. 120.68.
1312 (6) ACCOUNTABILITY.--The department shall develop outcome
1313 measures for the program and other performance measures.
1314 (7) INDEPENDENT LIVING SERVICES ADVISORY COUNCIL.--The
1315 Secretary of Children and Family Services shall establish the
1316 Independent Living Services Advisory Council for the purpose of
1317 reviewing and making recommendations concerning the
1318 implementation and operation of the independent living
1319 transition services. This advisory council shall continue to
1320 function as specified in this subsection until the Legislature
1321 determines that the advisory council can no longer provide a
1322 valuable contribution to the department's efforts to achieve the
1323 goals of the independent living transition services.
1324 (a) Specifically, the advisory council shall assess the
1325 implementation and operation of the system of independent living
1326 transition services and advise the department on actions that
1327 would improve the ability of the independent living transition
1328 services to meet the established goals. The advisory council
1329 shall keep the department informed of problems being experienced
1330 with the services, barriers to the effective and efficient
1331 integration of services and support across systems, and

1332 successes that the system of independent living transition
1333 services has achieved. The department shall consider, but is not
1334 required to implement, the recommendations of the advisory
1335 council.
1336 (b) The advisory council shall report to the appropriate
1337 substantive committees of the Senate and the House of
1338 Representatives on the status of the implementation of the
1339 system of independent living transition services; efforts to
1340 publicize the availability of aftercare support services, the
1341 Road-to-Independence ~~Scholarship~~ Program, and transitional
1342 support services; ~~specific barriers to financial aid created by~~
1343 ~~the scholarship and possible solutions;~~ the success of the
1344 services; problems identified; recommendations for department or
1345 legislative action; and the department's implementation of the
1346 recommendations contained in the Independent Living Services
1347 Integration Workgroup Report submitted to the Senate and the
1348 House substantive committees December 31, 2002. This advisory
1349 council report shall be submitted by December 31 of each year
1350 that the council is in existence and shall be accompanied by a
1351 report from the department which identifies the recommendations
1352 of the advisory council and either describes the department's
1353 actions to implement these recommendations or provides the
1354 department's rationale for not implementing the recommendations.
1355 (c) Members of the advisory council shall be appointed by
1356 the secretary of the department. The membership of the advisory
1357 council must include, at a minimum, representatives from the
1358 headquarters and district offices of the Department of Children
1359 and Family Services, community-based care lead agencies, the

1360 Agency for Workforce Innovation, the Department of Education,
1361 the Agency for Health Care Administration, the State Youth
1362 Advisory Board, Workforce Florida, Inc., the Statewide Guardian
1363 Ad Litem Office, foster parents, recipients of Road-to-
1364 Independence Program funding, and advocates for foster children.
1365 The secretary shall determine the length of the term to be
1366 served by each member appointed to the advisory council, which
1367 may not exceed 4 years.
1368 (d) The Department of Children and Family Services shall
1369 provide administrative support to the Independent Living
1370 Services Advisory Council to accomplish its assigned tasks. The
1371 advisory council shall be afforded access to all appropriate
1372 data from the department, each community-based care lead agency,
1373 and other relevant agencies in order to accomplish the tasks set
1374 forth in this section. The data collected may not include any
1375 information that would identify a specific child or young adult.
1376 (8) PERSONAL PROPERTY.--Property acquired on behalf of
1377 clients of this program shall become the personal property of
1378 the clients and is not subject to the requirements of chapter
1379 273 relating to state-owned tangible personal property. Such
1380 property continues to be subject to applicable federal laws.
1381 (9) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN FOSTER
1382 CARE.--The department shall enroll in the Florida KidCare
1383 program, outside the open enrollment period, each young adult
1384 who is eligible as described in paragraph (2)(b) and who has not
1385 yet reached his or her 20th ~~19th~~ birthday.
1386 (a) A young adult who was formerly in foster care at the
1387 time of his or her 18th birthday and who is 18 years of age but

1388 not yet 20 ~~19,~~ shall pay the premium for the Florida KidCare
1389 program as required in s. 409.814.
1390 (b) A young adult who has health insurance coverage from a
1391 third party through his or her employer or who is eligible for
1392 Medicaid is not eligible for enrollment under this subsection.
1393 (10) RULEMAKING.--The department shall adopt by rule
1394 procedures to administer this section, including balancing the
1395 goals of normalcy and safety for the youth and providing the
1396 caregivers with as much flexibility as possible to enable the
1397 youth to participate in normal life experiences. The department
1398 shall not adopt rules relating to reductions in ~~scholarship~~
1399 awards. The department shall engage in appropriate planning to
1400 prevent, to the extent possible, a reduction in ~~scholarship~~
1401 awards after issuance.
1402 Section 10. Paragraph (b) of subsection (2) of section
1403 409.175, Florida Statutes, is amended to read:
1404 409.175 Licensure of family foster homes, residential
1405 child-caring agencies, and child-placing agencies; public
1406 records exemption.--
1407 (2) As used in this section, the term:
1408 (b) "Boarding school" means a school which is accredited
1409 by the Florida Council of Independent Schools or the Southern
1410 Association of Colleges and Schools; which is accredited by the
1411 Council on Accreditation, the Commission on Accreditation of
1412 Rehabilitation Facilities, or the Coalition for Residential
1413 Education; and which is registered with the Department of
1414 Education as a school. Its program must follow established
1415 school schedules, with holiday breaks and summer recesses in

1416 accordance with other public and private school programs. The
1417 children in residence must customarily return to their family
1418 homes or legal guardians during school breaks and must not be in
1419 residence year-round, except that this provision does not apply
1420 to foreign students. The parents of these children retain
1421 custody and planning and financial responsibility. A boarding
1422 school currently in existence and a boarding school opening and
1423 seeking accreditation has 3 years to comply with the
1424 requirements of this paragraph. A boarding school must provide
1425 proof of accreditation or documentation of the accreditation
1426 process upon request. A boarding school that cannot produce the
1427 required documentation or that has not registered with the
1428 Department of Education shall be considered to be providing
1429 residential group care without a license. The department may
1430 impose administrative sanctions or seek civil remedies as
1431 provided under paragraph (11)(a).
1432 Section 11. Subsection (2) of section 39.013, Florida
1433 Statutes, is amended to read:
1434 39.013 Procedures and jurisdiction; right to counsel.--
1435 (2) The circuit court shall have exclusive original
1436 jurisdiction of all proceedings under this chapter, of a child
1437 voluntarily placed with a licensed child-caring agency, a
1438 licensed child-placing agency, or the department, and of the
1439 adoption of children whose parental rights have been terminated
1440 under this chapter. Jurisdiction attaches when the initial
1441 shelter petition, dependency petition, or termination of
1442 parental rights petition is filed or when a child is taken into
1443 the custody of the department. The circuit court may assume

1444 jurisdiction over any such proceeding regardless of whether the
1445 child was in the physical custody of both parents, was in the
1446 sole legal or physical custody of only one parent, caregiver, or
1447 some other person, or was in the physical or legal custody of no
1448 person when the event or condition occurred that brought the
1449 child to the attention of the court. When the court obtains
1450 jurisdiction of any child who has been found to be dependent,
1451 the court shall retain jurisdiction, unless relinquished by its
1452 order, until the child reaches 18 years of age. However, if a
1453 youth petitions the court at any time before his or her 19th
1454 birthday requesting the court's continued jurisdiction, the
1455 juvenile court may retain jurisdiction under this chapter for a
1456 period not to exceed 1 year following the youth's 18th birthday
1457 for the purpose of determining whether appropriate aftercare
1458 support, Road-to-Independence Program ~~Scholarship~~, transitional
1459 support, mental health, and developmental disability services,
1460 to the extent otherwise authorized by law, have been provided to
1461 the formerly dependent child who was in the legal custody of the
1462 department immediately before his or her 18th birthday. If a
1463 petition for special immigrant juvenile status and an
1464 application for adjustment of status have been filed on behalf
1465 of a foster child and the petition and application have not been
1466 granted by the time the child reaches 18 years of age, the court
1467 may retain jurisdiction over the dependency case solely for the
1468 purpose of allowing the continued consideration of the petition
1469 and application by federal authorities. Review hearings for the
1470 child shall be set solely for the purpose of determining the
1471 status of the petition and application. The court's jurisdiction

1472 terminates upon the final decision of the federal authorities.
1473 Retention of jurisdiction in this instance does not affect the
1474 services available to a young adult under s. 409.1451. The court
1475 may not retain jurisdiction of the case after the immigrant
1476 child's 22nd birthday.
1477 Section 12. Paragraph (a) of subsection (6) of section
1478 39.701, Florida Statutes, is amended to read:
1479 39.701 Judicial review.--
1480 (6)(a) In addition to paragraphs (1)(a) and (2)(a), the
1481 court shall hold a judicial review hearing within 90 days after
1482 a youth's 17th birthday and shall continue to hold timely
1483 judicial review hearings. In addition, the court may review the
1484 status of the child more frequently during the year prior to the
1485 youth's 18th birthday if necessary. At each review held under
1486 this subsection, in addition to any information or report
1487 provided to the court, the foster parent, legal custodian,
1488 guardian ad litem, and the child shall be given the opportunity
1489 to address the court with any information relevant to the
1490 child's best interests, particularly as it relates to
1491 independent living transition services. In addition to any
1492 information or report provided to the court, the department
1493 shall include in its judicial review social study report written
1494 verification that the child:
1495 1. Has been provided with a current Medicaid card and has
1496 been provided all necessary information concerning the Medicaid
1497 program sufficient to prepare the youth to apply for coverage
1498 upon reaching age 18, if such application would be appropriate.

1499 2. Has been provided with a certified copy of his or her
1500 birth certificate and, if the child does not have a valid
1501 driver's license, a Florida identification card issued under s.
1502 322.051.
1503 3. Has been provided information relating to Social
1504 Security Insurance benefits if the child is eligible for these
1505 benefits. If the child has received these benefits and they are
1506 being held in trust for the child, a full accounting of those
1507 funds must be provided and the child must be informed about how
1508 to access those funds.
1509 4. Has been provided with information and training related
1510 to budgeting skills, interviewing skills, and parenting skills.
1511 5. Has been provided with all relevant information related
1512 to the Road-to-Independence Program ~~Scholarship~~, including, but
1513 not limited to, eligibility requirements, forms necessary to
1514 apply, and assistance in completing the forms. The child shall
1515 also be informed that, if he or she is eligible for the Road-to-
1516 Independence ~~Scholarship~~ Program, he or she may reside with the
1517 licensed foster family or group care provider with whom the
1518 child was residing at the time of attaining his or her 18th
1519 birthday or may reside in another licensed foster home or with a
1520 group care provider arranged by the department.
1521 6. Has an open bank account, or has identification
1522 necessary to open an account, and has been provided with
1523 essential banking skills.
1524 7. Has been provided with information on public assistance
1525 and how to apply.

1526 8. Has been provided a clear understanding of where he or
1527 she will be living on his or her 18th birthday, how living
1528 expenses will be paid, and what educational program or school he
1529 or she will be enrolled in.
1530 9. Has been provided with notice of the youth's right to
1531 petition for the court's continuing jurisdiction for 1 year
1532 after the youth's 18th birthday as specified in s. 39.013(2) and
1533 with information on how to obtain access to the court.
1534 10. Has been encouraged to attend all judicial review
1535 hearings occurring after his or her 17th birthday.
1536 Section 13. Paragraph (c) of subsection (2) of section
1537 1009.25, Florida Statutes, is amended to read:
1538 1009.25 Fee exemptions.--
1539 (2) The following students are exempt from the payment of
1540 tuition and fees, including lab fees, at a school district that
1541 provides postsecondary career programs, community college, or
1542 state university:
1543 (c) A student who ~~the state has determined is eligible for~~
1544 ~~the Road to Independence Scholarship, regardless of whether an~~
1545 ~~award is issued or not, or a student who~~ is or was at the time
1546 he or she reached 18 years of age in the custody of the
1547 Department of Children and Family Services or a relative under
1548 s. 39.5085, ~~or~~ who is adopted from the Department of Children
1549 and Family Services after May 5, 1997, or who, after spending at
1550 least 6 months in the custody of the department after reaching
1551 16 years of age, was placed in a guardianship by the court. Such
1552 exemption includes fees associated with enrollment in career-
1553 preparatory instruction and completion of the college-level

1554 communication and computation skills testing program. Such an
1555 exemption is available to any student who was in the custody of
1556 a relative under s. 39.5085 at the time he or she reached 18
1557 years of age or was adopted from the Department of Children and
1558 Family Services after May 5, 1997; however, the exemption
1559 remains valid for no more than 4 years after the date of
1560 graduation from high school.
1561 Section 14. The sum of $11.4 million in recurring funds is
1562 appropriated from the General Revenue Fund to the Ounce of
1563 Prevention Fund of Florida for the 2006-2007 fiscal year to fund
1564 the expansion and enhancement of the Healthy Families Florida
1565 program statewide. Of that amount, $4.3 million shall be used
1566 for cost-of-living increases to retain home visiting staff, $3.1
1567 million shall be used to serve the 14 counties that are not
1568 presently served, and $4 million shall be used to add high-risk
1569 specialists to the core staffing model for each Healthy Families
1570 Florida project.
1571 Section 15. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7181 PCB STA 06-02 State Planning & Budgeting
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee	8 Y, 0 N	Belcher	Belcher
1) Fiscal Council		Overton	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Last year the Legislature adopted Senate Joint Resolution 2144 (SJR) which proposes to amend Section 19 of Article III of the State Constitution relating to state planning and budgeting. The SJR establishes the Joint Legislative Budget Commission (commission) in the Florida Constitution, directs the commission to issue a long-range financial outlook setting out fiscal strategies for the state, and creates the Government Efficiency Task Force.

The bill implements the SJR by revising statutes relating to the Legislative Budget Commission. The commission will continue to operate essentially as it does now. Membership remains at 7 Senators and 7 Representatives. The chair of the commission will be appointed in alternate years by the President of the Senate and the vice chair appointed by the Speaker of the House of Representatives (instead of the chairs of the appropriations committees serving as chair and vice chair); in alternate years, appointing authority is reversed.

The bill directs the commission to develop a long-range 3-year financial outlook which will be updated each year with the assistance of each state agency providing information to support the commission's development and updates of the long-range financial outlook. The bill prescribes a plan to ensure an integrated state planning and budget process to assure consistency between the agency's long-range plan and the agency's legislative budget request.

The bill also creates a Government Efficiency Task Force in 2007, and every 4 years thereafter, composed of legislators and private sector appointees, to make recommendations to improve government and reduce costs.

The bill clarifies that the Financial Estimating Conference is subject to the legislative rules of notice and openness to the public.

The bill takes effect upon the effective date of the amendment to the State Constitution contained in Senate Joint Resolution 2144, or a similar constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill implements the SJR which creates the Joint Legislative Budget Commission and the Government Efficiency Task Force.

B. EFFECT OF PROPOSED CHANGES:

The Legislative Budget Commission (commission) was created in 2000 primarily to consider budget amendments proposed by the Governor and to conduct zero-based budget reviews of state agencies. Its authority has been expanded since then to encompass a number of actions that require legislative review during the interim between sessions. The most significant expansion of the commission's authority occurred in 2001 when it was required to consider more budget amendments, including those amendments increasing or transferring trust fund budget authority in excess of $1 million.

Currently, the commission is not charged with the responsibility or duty to issue a long-range financial outlook setting out fiscal strategies for the state and its departments and agencies to assist the legislature in making policy and budget decisions.

This bill conforms current statutes concerning the commission to the provisions of Senate Joint Resolution 2144.

The commission will continue to operate essentially as it does now. Membership remains at 7 Senators and 7 Representatives. The chairperson of the commission will be appointed by the President of the Senate and the vice chairperson appointed by the Speaker of the House of Representatives (instead of the chairs of the appropriations committees); in alternate years, the chairperson of the commission will be appointed by the Speaker of the House of Representatives and the vice chairperson appointed by the President of the Senate. The commission will convene at the call of the presiding officers (instead of the chair and vice chair). A quorum will continue to be a majority of the members from each house plus one additional member of either house. The commission will be staffed by legislative staff (instead of appropriations committee staff).

The commission will have the power and duty to:

- review and approve budget amendments proposed by the Governor or the Chief Justice of the Supreme Court as provided in Chapter 216, F.S.;
- develop the long-range financial outlook required by the Senate Joint Resolution; and
- exercise all other powers and perform any other duties prescribed by the Legislature.

The bill creates the Government Efficiency Task Force. The task force will convene no later than January of 2007, and each fourth year thereafter. The task force will be composed of 15 members. Five members each will be appointed by the President of the Senate, Speaker of the House of Representatives, and Governor. Members of the task force may include private sector representatives. The joint task force will elect a chair from among its members. The joint task force will meet at least quarterly at the call of the chair and may conduct its meetings through teleconferences or other similar means. Task force staff will be assigned by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force will develop recommendations for improving governmental operations and reducing costs and complete its work within one year. The task force may submit all or part of its recommendations at any time during the year but a final report summarizing its recommendations must be submitted at the completion of its work to the chair and vice-chair of the Legislative Budget Commission, the Governor, and the Chief Justice of the Supreme Court.

The bill amends s. 29.0095, F.S., to require the legislative appropriations committees, instead of the commission, to set the format for budget expenditure reports.

The bill amends s. 100.371, F.S., to clarify that the Financial Estimating Conference is a part of the legislative branch and, as such, is subject to the legislative rules of notice and openness to the public.

The bill amends s. 216.011, F.S., to narrow the definition of "consultation" with the Governor to include only fiscal matters. In addition "long-range financial outlook" is defined consistent with the requirements of the Senate Joint Resolution as a document issued by the commission based on a 3-year forecast of revenues and expenditures.

The bill amends s. 216.012, F.S., to require the commission to develop the long-range financial outlook and update the outlook each year. The commission will issue the final financial outlook by September 15 but may provide any additions or adjustments based on information not previously available.

The bill amends s. 216.023, F.S., to require that the legislative budget instructions provide for consistency between agency long-range plans and agency legislative budget requests.

The bill amends s. 216.065, F.S., to require that the commission and legislative appropriations committees be provided a fiscal impact statement that details the effect of any action taken by the Governor, Governor and Cabinet, state agency, or statutorily authorized entity, that will affect revenues, require a request for an increased or new appropriation in the following 3 fiscal years, or transfer current years funds, before such action is taken.

The bill amends s. 216.162, F.S., to require that the Governor's recommended budget be furnished to the Legislature at least 30 days before the scheduled annual legislative session or such later date as is requested by the Governor and approved in writing by the President of the Senate and the Speaker of the House of Representatives.

The bill amends s.216.178, F.S., to extend the time for the production of the final budget report to 120 days after the beginning of the fiscal year. The final budget report reflects net appropriations for each budget item, as well as expenditures, revenues, and cash balances for the prior two years and estimated expenditures, revenues, and cash balances for the current year.

C. SECTION DIRECTORY:

Section 1: Amends s. 11.90, F.S., membership, rules, powers, and duties of the Legislative Budget Commission.

Section 2: Creates s. 11.91, F.S., creating the Government Efficiency Task Force.

Section 3: Amends s. 2.0095, F.S., to provide the appropriations committees of the Senate and the House shall prescribe the format of the report required by the section instead of the LBC.

Section 4: Amends s. 100.371, F.S., as amended by s. 28 of ch. 2005-278, Laws of Florida, to clarify that the Financial Estimating Conference is a part of the legislative branch.

Section 5: Amends s. 216.011, F.S., to amend the definition of "consultation" and to provide the definition of "long-range financial outlook."

Section 6: Creates s. 216.012, F.S., to provide the duties of the LBC and the agencies in creating the long-range financial outlook.

Section 7: Amends s. 216.023, F.S., to provide requirements for legislative budget requests and legislative budget request instructions.

Section 8: Amends s. 216.065, F.S., to provide requirements for fiscal impact statements on actions affecting the budget.

Section 9: Amends s. 216.162, F.S., to provide the time the Governor's recommended balanced budget for the state shall be submitted to the legislature.

Section 10: Amends s.216.178, F.S., to extend the time for the production of the final budget report to 120 days after the beginning of the fiscal year.

Section 11: Provides that the bill will take effect on the effective date of Senate Joint Resolution 2005-2144.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There will be indeterminate costs associated with meetings of the Government Efficiency Task Force for member travel and per diem.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to state planning and budgeting; amending
3 s. 11.90, F.S.; revising the membership of the Legislative
4 Budget Commission; providing for the appointment of
5 presiding officers; revising requirements for meetings and
6 a quorum; revising requirements for appointing the staff
7 of the commission; requiring the commission to review
8 budget amendments recommended by the Governor or Chief
9 Justice; authorizing the commission to perform other
10 duties prescribed by the Legislature; creating s. 11.91,
11 F.S.; creating the Government Efficiency Task Force for
12 the purpose of recommending improvements to governmental
13 operations and cost reductions; providing for the
14 Governor, the President of the Senate, and the Speaker of
15 the House of Representatives to appoint its members;
16 requiring that the task force meet at 4-year intervals
17 beginning on a specified date; authorizing the task force
18 to conduct meetings through teleconferences; providing for
19 members to be reimbursed for per diem and travel expenses;
20 requiring the task force to complete its work within 1
21 year and report to the Legislative Budget Commission, the
22 Governor, and the Chief Justice of the Supreme Court;
23 amending s. 29.0095, F.S.; requiring the legislative
24 appropriations committees to prescribe the format of
25 budget expenditure reports; amending s. 100.371, F.S.;
26 specifying that the Financial Impact Estimating Conference
27 is within the legislative branch of government and under
28 the direction of the President of the Senate and the

29 Speaker of the House of Representatives; revising
30 provisions governing public meetings of the conference;
31 amending s. 216.011, F.S.; redefining the term
32 "consultation" and defining the term "long-range financial
33 outlook" for purposes of state fiscal affairs; creating s.
34 216.012, F.S.; providing requirements for the long-range
35 financial outlook prepared by the Legislative Budget
36 Commission; requiring state agencies to provide certain
37 information; prescribing authority of the commission with
38 respect to such information; specifying timeframes for the
39 commission in completing the long-range financial outlook;
40 amending s. 216.023, F.S.; clarifying certain requirements
41 for legislative budget instructions; amending s. 216.065,
42 F.S.; requiring that fiscal impact statements be provided
43 to the Legislative Budget Commission in addition to the
44 legislative appropriations committees; requiring that such
45 statements contain information concerning subsequent
46 fiscal years; amending s. 216.162, F.S.; revising the date
47 for the Governor's recommended budget to be furnished to
48 the Legislature; authorizing the presiding officers of the
49 Legislature to approve submission of the Governor's
50 recommended budget at a later date than otherwise
51 required; amending s. 216.178, F.S.; extending the
52 deadline for production of the final budget; providing a
53 contingent effective date.
54
55 Be It Enacted by the Legislature of the State of Florida:
56

57 Section 1. Section 11.90, Florida Statutes, is amended to
58 read:
59 11.90 Legislative Budget Commission.--
60 (1) There is created the Legislative Budget Commission,
61 which is the joint Legislative Budget Commission created in s.
62 19, Art. III of the State Constitution, composed of seven
63 members of the Senate appointed by the President of the Senate
64 and seven members of the House of Representatives appointed by
65 the Speaker of the House of Representatives. Each member shall
66 serve at the pleasure of the officer who appointed the member. A
67 vacancy on the commission shall be filled in the same manner as
68 the original appointment. From November of each odd-numbered
69 year through October of each even-numbered year, the chairperson
70 of the commission shall be appointed by the President of the
71 Senate and the vice chairperson of the commission shall be
72 appointed by the Speaker of the House of Representatives. From
73 November of each even-numbered year through October of each odd-
74 numbered year, the chairperson of the commission shall be
75 appointed by the Speaker of the House of Representatives and the
76 vice chairperson of the commission shall be appointed by the
77 President of the Senate. ~~There is created a standing joint~~
78 ~~committee of the Legislature designated the Legislative Budget~~
79 ~~Commission, composed of 14 members as follows: seven members of~~
80 ~~the Senate appointed by the President of the Senate, to include~~
81 ~~the chair of the Senate Budget Committee or its successor, and~~
82 ~~seven members of the House of Representatives appointed by the~~
83 ~~Speaker of the House of Representatives, to include the chair of~~
84 ~~the Fiscal Responsibility Council or its successor.~~ The terms of

85 members shall be for 2 years and shall run from the organization
86 of one Legislature to the organization of the next Legislature.
87 ~~Vacancies occurring during the interim period shall be filled in~~
88 ~~the same manner as the original appointment. During even-~~
89 ~~numbered years, the chair of the commission shall be the chair~~
90 ~~of the Senate Budget Committee or its successor, and the vice~~
91 ~~chair of the commission shall be the chair of the House Fiscal~~
92 ~~Responsibility Council or its successor. During odd numbered~~
93 ~~years, the chair of the commission shall be the chair of the~~
94 ~~House Fiscal Responsibility Council or its successor, and the~~
95 ~~vice chair of the commission shall be the chair of the Senate~~
96 ~~Budget Committee or its successor.~~
97 (2) The Legislative Budget Commission shall be governed by
98 joint rules of the Senate and the House of Representatives which
99 shall remain in effect until repealed or amended by concurrent
100 resolution.
101 (3) The commission shall convene at the call of the
102 President of the Senate and the Speaker of the House of
103 Representatives at least quarterly. A majority of the commission
104 members of each house plus one additional member from either
105 house constitutes a quorum. ~~The commission shall meet at least~~
106 ~~quarterly and more frequently at the direction of the presiding~~
107 ~~officers or upon call of the chair. A quorum shall consist of a~~
108 ~~majority of members from each house, plus one additional member~~
109 ~~from either house.~~ Action by the commission requires a majority
110 vote of the members present of each house.
111 (4) The commission may conduct its meetings through
112 teleconferences or other similar means.

113 (5) The commission shall be staffed by legislative staff
114 members, as assigned by the President of the Senate and the
115 Speaker of the House of Representatives. ~~The commission will be~~
116 ~~jointly staffed by the appropriations committees of the House of~~
117 ~~Representatives and the Senate. During even numbered years, the~~
118 ~~Senate will serve as lead staff, and during odd numbered years,~~
119 ~~the House of Representatives will serve as lead staff.~~
120 (6) The commission shall have the power and duty to:
121 (a) Review and approve or disapprove budget amendments
122 recommended by the Governor or the Chief Justice of the Supreme
123 Court as provided in chapter 216. ~~Annually review the amount of~~
124 ~~state debt outstanding and submit to the President of the Senate~~
125 ~~and the Speaker of the House of Representatives an estimate of~~
126 ~~the maximum amount of additional state tax supported debt that~~
127 ~~prudently may be authorized during the current fiscal year. The~~
128 ~~estimate shall be advisory and shall in no way bind the~~
129 ~~Legislature.~~
130 (b) Develop the long-range financial outlook described in
131 s. 19, Art. III of the State Constitution. ~~Promptly after~~
132 ~~receiving the report required by s. 215.98(2)(c), the commission~~
133 ~~shall submit to the President of the Senate and the Speaker of~~
134 ~~the House of Representatives the commission's estimate of tax-~~
135 ~~supported debt which prudently may be authorized for the next~~
136 ~~fiscal year, together with a report explaining the basis for the~~
137 ~~estimate.~~
138
139 In addition to the powers and duties specified in this
140 subsection, the commission shall exercise all other powers and

141 perform any other duties prescribed by the Legislature.
142 (7) The commission shall review information resources
143 management needs identified in agency long-range program plans
144 for consistency with the State Annual Report on Enterprise
145 Resource Planning and Management and statewide policies adopted
146 by the State Technology Office. The commission shall also review
147 proposed budget amendments associated with information
148 technology that involve more than one agency, that have an
149 outcome that impacts another agency, or that exceed $500,000 in
150 total cost over a 1-year period.
151 Section 2. Section 11.91, Florida Statutes, is created to
152 read:
153 11.91 Government Efficiency Task Force.--
154 (1) There is created the Government Efficiency Task Force.
155 The task force shall convene no later than January 2007, and
156 each 4th year thereafter. The task force shall be composed of 15
157 members. Five members shall be appointed by the President of the
158 Senate, five members shall be appointed by the Speaker of the
159 House of Representatives, and five members shall be appointed by
160 the Governor. Members of the task force may include
161 representatives from the private sector, as designated by the
162 President of the Senate, the Speaker of the House of
163 Representatives, and the Governor. Each member shall serve at
164 the pleasure of the officer who appointed the member. A vacancy
165 on the task force shall be filled in the same manner as the
166 original appointment. The terms of the members shall be for 1
167 year.
168 (2) The task force shall elect a chair from among its

169 members.
170 (3) The task force shall meet as necessary, but at least
171 quarterly, at the call of the chair and at the time and place
172 designated by him or her. The task force may conduct its
173 meetings through teleconferences or other similar means.
174 (4) Members of the task force are entitled to receive
175 reimbursement for per diem and travel expenses pursuant to s.
176 112.061.
177 (5) The task force shall develop recommendations for
178 improving governmental operations and reducing costs. Staff to
179 assist the task force in performing its duties shall be assigned
180 by the President of the Senate, the Speaker of the House of
181 Representatives, and the Governor. The task force shall consider
182 reports issued by the Auditor General, the Office of Program
183 Policy Analysis and Government Accountability, and agency
184 inspectors general in developing its recommendations.
185 (6) The task force shall complete its work within 1 year
186 and submit its recommendations to the chairperson and vice
187 chairperson of the Legislative Budget Commission, the Governor,
188 and the Chief Justice of the Supreme Court. The task force may
189 submit all or part of its recommendations at any time during the
190 year, but a final report summarizing its recommendations must be
191 submitted at the completion of its work.
192 Section 3. Subsection (4) of section 29.0095, Florida
193 Statutes, is amended to read:
194 29.0095 Budget expenditure reports.--
195 (4) The appropriations committees of the Senate and the
196 House of Representatives ~~Legislative Budget Commission~~ shall

197 prescribe the format of the report required by this section in
198 consultation with the Chief Justice and the Justice
199 Administrative Commission.
200 Section 4. Subsection (5) of section 100.371, Florida
201 Statutes, as amended by section 28 of chapter 2005-278, Laws of
202 Florida, is amended to read:
203 100.371 Initiatives; procedure for placement on ballot.--
204 (5)(a) Within 45 days after receipt of a proposed revision
205 or amendment to the State Constitution by initiative petition
206 from the Secretary of State, the Financial Impact Estimating
207 Conference shall complete an analysis and financial impact
208 statement to be placed on the ballot of the estimated increase
209 or decrease in any revenues or costs to state or local
210 governments resulting from the proposed initiative. The
211 Financial Impact Estimating Conference shall submit the
212 financial impact statement to the Attorney General and Secretary
213 of State.
214 (b)~~1.~~ The Financial Impact Estimating Conference shall
215 provide an opportunity for any proponents or opponents of the
216 initiative to submit information and may solicit information or
217 analysis from any other entities or agencies, including the
218 Office of Economic and Demographic Research.
219 (c) All meetings of the Financial Impact Estimating
220 Conference shall be open to the public ~~as provided in chapter~~
221 ~~286~~. The President of the Senate and the Speaker of the House of
222 Representatives, jointly, shall be the sole judge for the
223 interpretation, implementation, and enforcement of this
224 subsection.

225 1.~~2.~~ The Financial Impact Estimating Conference is
226 established to review, analyze, and estimate the financial
227 impact of amendments to or revisions of the State Constitution
228 proposed by initiative. The Financial Impact Estimating
229 Conference shall consist of four principals: one person from the
230 Executive Office of the Governor; the coordinator of the Office
231 of Economic and Demographic Research, or his or her designee;
232 one person from the professional staff of the Senate; and one
233 person from the professional staff of the House of
234 Representatives. Each principal shall have appropriate fiscal
235 expertise in the subject matter of the initiative. A Financial
236 Impact Estimating Conference may be appointed for each
237 initiative.
238 2.~~3.~~ Principals of the Financial Impact Estimating
239 Conference shall reach a consensus or majority concurrence on a
240 clear and unambiguous financial impact statement, no more than
241 75 words in length, and immediately submit the statement to the
242 Attorney General. Nothing in this subsection prohibits the
243 Financial Impact Estimating Conference from setting forth a
244 range of potential impacts in the financial impact statement.
245 Any financial impact statement that a court finds not to be in
246 accordance with this section shall be remanded solely to the
247 Financial Impact Estimating Conference for redrafting. The
248 Financial Impact Estimating Conference shall redraft the
249 financial impact statement within 15 days.
250 3.~~4.~~ If the members of the Financial Impact Estimating
251 Conference are unable to agree on the statement required by this
252 subsection, or if the Supreme Court has rejected the initial

253 submission by the Financial Impact Estimating Conference and no
254 redraft has been approved by the Supreme Court by 5 p.m. on the
255 75th day before the election, the following statement shall
256 appear on the ballot pursuant to s. 101.161(1): "The financial
257 impact of this measure, if any, cannot be reasonably determined
258 at this time."
259 (d) ~~(c)~~ The financial impact statement must be separately
260 contained and be set forth after the ballot summary as required
261 in s. 101.161(1).
262 (e) ~~(d)~~1. Any financial impact statement that the Supreme
263 Court finds not to be in accordance with this subsection shall
264 be remanded solely to the Financial Impact Estimating Conference
265 for redrafting, provided the court's advisory opinion is
266 rendered at least 75 days before the election at which the
267 question of ratifying the amendment will be presented. The
268 Financial Impact Estimating Conference shall prepare and adopt a
269 revised financial impact statement no later than 5 p.m. on the
270 15th day after the date of the court's opinion.
271 2. If, by 5 p.m. on the 75th day before the election, the
272 Supreme Court has not issued an advisory opinion on the initial
273 financial impact statement prepared by the Financial Impact
274 Estimating Conference for an initiative amendment that otherwise
275 meets the legal requirements for ballot placement, the financial
276 impact statement shall be deemed approved for placement on the
277 ballot.
278 3. In addition to the financial impact statement required
279 by this subsection, the Financial Impact Estimating Conference
280 shall draft an initiative financial information statement. The

281 initiative financial information statement should describe in
282 greater detail than the financial impact statement any projected
283 increase or decrease in revenues or costs that the state or
284 local governments would likely experience if the ballot measure
285 were approved. If appropriate, the initiative financial
286 information statement may include both estimated dollar amounts
287 and a description placing the estimated dollar amounts into
288 context. The initiative financial information statement must
289 include both a summary of not more than 500 words and additional
290 detailed information that includes the assumptions that were
291 made to develop the financial impacts, workpapers, and any other
292 information deemed relevant by the Financial Impact Estimating
293 Conference.
294 4. The Department of State shall have printed, and shall
295 furnish to each supervisor of elections, a copy of the summary
296 from the initiative financial information statements. The
297 supervisors shall have the summary from the initiative financial
298 information statements available at each polling place and at
299 the main office of the supervisor of elections upon request.
300 5. The Secretary of State and the Office of Economic and
301 Demographic Research shall make available on the Internet each
302 initiative financial information statement in its entirety. In
303 addition, each supervisor of elections whose office has a
304 website shall post the summary from each initiative financial
305 information statement on the website. Each supervisor shall
306 include the Internet addresses for the information statements on
307 the Secretary of State's and the Office of Economic and

308 Demographic Research's websites in the publication or mailing
309 required by s. 101.20.
310 Section 5. Paragraph (h) of subsection (1) of section
311 216.011, Florida Statutes, is amended, and paragraph (tt) is
312 added to that subsection, to read:
313 216.011 Definitions.--
314 (1) For the purpose of fiscal affairs of the state,
315 appropriations acts, legislative budgets, and approved budgets,
316 each of the following terms has the meaning indicated:
317 (h) "Consultation" means communication to allow government
318 officials and agencies to deliberate and to seek and provide
319 advice in an open and forthright manner ~~with the full committee,~~
320 ~~a subcommittee thereof, the chair, or the staff as deemed~~
321 ~~appropriate by the chair of the respective appropriations~~
322 ~~committee~~.
323 (tt) "Long-range financial outlook" means a document
324 issued by the Legislative Budget Commission based on a 3-year
325 forecast of revenues and expenditures.
326 Section 6. Section 216.012, Florida Statutes, is created
327 to read:
328 216.012 Long-range financial outlook.--
329 (1) The commission shall develop a long-range 3-year
330 financial outlook and shall update that outlook each year.
331 (2) Each state agency shall provide information to the
332 commission, based on the commission's direction, which supports
333 the commission's development and updates of the long-range
334 financial outlook. The commission has the authority to accept,
335 modify, or direct the agency to modify any information received

336 from an agency.
337 (3) By September 15 of each year, the commission shall
338 complete the long-range financial outlook. The commission may
339 subsequently provide any additions or adjustments to the outlook
340 based on information not previously available.
341 Section 7. Subsection (12) of section 216.023, Florida
342 Statutes, is amended to read:
343 216.023 Legislative budget requests to be furnished to
344 Legislature by agencies.--
345 (12) In order to ensure an integrated state planning and
346 budgeting process, the agency long-range plan should be reviewed
347 by the Legislature. The legislative budget request instructions
348 must provide for consistency between the agency's long-range
349 plan and the agency's legislative budget request.
350 Section 8. Section 216.065, Florida Statutes, is amended
351 to read:
352 216.065 Fiscal impact statements on actions affecting the
353 budget.--In addition to the applicable requirements of chapter
354 120, before the Governor, or Governor and Cabinet as a body,
355 performing any constitutional or statutory duty, or before any
356 state agency or statutorily authorized entity takes any final
357 action that will affect revenues, require a request for an
358 increased or new appropriation in the following 3 fiscal years
359 ~~year~~, or transfer current year funds, it shall first provide the
360 joint Legislative Budget Commission and the legislative
361 appropriations committees with a fiscal impact statement that
362 details the effects of such action on the budget. The fiscal
363 impact statement must specify the estimated budget and revenue

364 impacts for the current year and the 2 subsequent fiscal years
365 at the same level of detail required to support a legislative
366 budget request, including amounts by appropriation category and
367 fund.
368 Section 9. Subsection (1) of section 216.162, Florida
369 Statutes, is amended to read:
370 216.162 Governor's recommended budget to be furnished
371 Legislature; copies to members.--
372 (1) At least 30 days before the scheduled annual
373 legislative session, or at a later date if requested by the
374 Governor and approved in writing by the President of the Senate
375 and the Speaker of the House of Representatives, the Governor
376 shall furnish each senator and representative a copy of his or
377 her recommended balanced budget for the state, based on the
378 Governor's own conclusions and judgment~~; however, in his or her~~
379 ~~first year in office a new Governor may request, subject to~~
380 ~~approval of the President of the Senate and the Speaker of the~~
381 ~~House of Representatives, that his or her recommended balanced~~
382 ~~budget be submitted at a later time prior to the Governor's~~
383 ~~first regular legislative session~~.
384 Section 10. Subsection (2) of section 216.178, Florida
385 Statutes, is amended to read:
386 216.178 General Appropriations Act; format; procedure.--
387 (2) The Office of Planning and Budgeting shall develop a
388 final budget report that reflects the net appropriations for
389 each budget item. The report shall reflect actual expenditures
390 for each of the 2 preceding fiscal years and the estimated
391 expenditures for the current fiscal year. In addition, the

392 report must contain the actual revenues and cash balances for
393 the preceding 2 fiscal years and the estimated revenues and cash
394 balances for the current fiscal year. The report may also
395 contain expenditure data, program objectives, and program
396 measures for each state agency program. The report must be
397 produced by the 120th day of ~~October 15~~ each fiscal year. A copy
398 of the report must be made available to each member of the
399 Legislature, to the head of each state agency, to the Auditor
400 General, to the director of the Office of Program Policy
401 Analysis and Government Accountability, and to the public.
402 Section 11. This act shall take effect upon the effective
403 date of the amendment to the State Constitution contained in
404 2005 Senate Joint Resolution No. 2144, or a similar
405 constitutional amendment, relating to the state budgeting,
406 planning, and appropriations processes.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7189 PCB FT 06-06 State Financial Matters
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	9 Y, 0 N	Levin	Diez-Arguelles
1) Fiscal Council		Hawkins	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill makes a number of changes to the planning and budgeting process, particularly provisions relating to the state's financial accounting policies.

The bill has an effective date of July 1, 2006 unless otherwise indicated.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Planning, Budgeting and Financial Accounting Laws:

Chapter 216, Florida Statutes, the planning and budgeting law, provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations. Chapter 215, Florida Statutes, provides guidelines for the Chief Financial Officer for state financial accounting procedures.

Legislative Budget Requests:

Section 216.023, F.S., outlines the processes each agency must follow in developing its legislative budget request. No later than July 15th of each year, the legislative budget instructions (jointly developed by the Legislature and the Governor's Office) shall be submitted to each state agency and the judicial branch.

Agencies and the judicial branch submit measures with their legislative budget request (LBR) on October 15. Measures are reviewed during the development of the house and senate budgets and then approved by the Legislature with the passage of the General Appropriation Act (GAA). Under the current process all agencies must submit revisions to measures and standards by June 30th following passage of the GAA to reflect changes.

The law requires the legislative budget request to include, among other items, information on expenditures for 3 fiscal years, details on trust funds and fees, and issue narrative justifying changes in amounts and positions requested. In addition, each agency must submit an inventory of all litigation in which the agency is involved that may require additional appropriations.

No later than October 15, the agency head must submit the agency's request to the Legislature and the Governor in the form and manner prescribed in the budget instructions. The request must be based on the agency's independent assessment of need. The judicial branch and the Division of Administrative Hearings must submit the requests directly to the Legislature, with a copy to the Governor, no later than October 15.

The Governor or the chairs of the appropriations committees may request agencies to address major issues. The request regarding such issues must be submitted to the agencies no later than July 30. The Governor or the chairs also may request the agencies to submit "target budgets". The target budget may require the agencies to prioritize budget issues and may include requests for multiple options for the budget issues.

Governor's Recommended Budget:

At least 30 days prior to the Regular Session of the Legislature, the Governor is required to submit a recommended balanced budget for the state, based on the Governor's own conclusions and judgment.

However, s. 216.081, F.S., requires the Governor to include data submitted by the legislative and judicial branches to be included in the Governor's recommended budget without modification by the Governor.

Section 216.167, F.S., requires the Governor's recommended budget to include a financial schedule of the recommended recurring revenues available in, and the recurring and nonrecurring expenditures from, the Budget Stabilization Fund and the General Revenue Fund.

Section 216.168, F.S., allows the Governor to amend the recommended budget at any time. However, if the Governor determines that the recommendations are no longer supported by the official estimate of revenues, the Governor must bring his recommended budget into balance.

Budget Amendments:

Section 216.181, F.S., provides that the General Appropriations Act and other acts containing appropriations shall be considered the approved operating budget for operational and fixed capital outlay expenditures. The approved operating budget may be modified under certain circumstances.

Section 216.181, F.S., delegates to the Governor, for the executive branch, and the Chief Justice, for the judicial branch, the authority to increase trust fund budget authority by up to $1 million. The law delegates to the Legislative Budget Commission the authority to approve, upon the recommendation of the Governor or Chief Justice, an increase in trust fund budget authority in excess of $1 million.

Section 216.292, F.S., delegates to the agency heads the authority to transfer funds within the approved operating budget in certain instances. So long as no category is changed by more than 5 percent of the original approved budget, or $250,000, whichever is greater, an agency head is permitted to transfer budget authority (a) between appropriation categories within the same budget entity, and (b) between budget entities within identical categories. The agency head is also permitted to transfer funds within programs identified within the General Appropriations Act from identical funding sources between specific appropriation categories as long as the transfer does not result in an increase to the total recurring general revenue or trust fund cost of the agency in the next fiscal year.

Section 216.292, F.S., delegates to the Legislative Budget Commission the authority to approve, upon the recommendation of the Governor or Chief Justice, a transfer of general revenue funds within a state agency or the judicial branch and a transfer of trust fund budget authority in excess of the agency head's discretion.

Notice of budget amendments must be provided to the chair and vice chair of the Legislative Budget Commission at least 14 days prior to the action or at least 3 days prior to a release of funds. The chair and vice chair of the Legislative Budget Commission or the presiding officers of the Legislature may void a budget action if notice is provided in writing to the Governor, for the executive branch, or the Chief Justice, for the judicial branch, that such action exceeds delegated authority or is contrary to legislative policy and intent. If such notice is given, the Governor or Chief Justice must void such budget action until the Legislative Budget Commission or Legislature addresses the issue.

Certified Forwards:

Section 216.301, F.S., requires each agency head to certify to the Executive Office of the Governor on or before August 1 of each year the balance of any appropriation for operations not disbursed but expended. Funds remaining undisbursed on September 30 revert to the fund from which appropriated.

The unexpended balance of any appropriation for fixed capital outlay subject to, but not under the terms of, a binding contract by February 1 after the date of certification, or the next February 1 if the project is an educational facility or a construction project for a university, shall revert and be available for reappropriation.

Consensus Estimating Conferences:

Section 216.136, F.S., creates consensus estimating conferences. These conferences develop official estimates of revenues, workload, expenditures, and other information related to budgeting. Executive agencies are required to use the conferences' official information for budgeting purposes.

Salary Rate:

Section 216.181, F.S., defines "salary rate" as the monetary compensation authorized to be paid a position on an annualized basis. In short, rate represents purely salary and does not include moneys authorized for benefits associated with the position.

Salary rate is the mechanism used in Florida to control overall salary expenditures and avoid unanticipated costs to annualize agency personnel actions, especially those actions occurring late in the fiscal year. Absent a control on salary rate, agencies would be limited only to the total level of salaries and benefits budget for purposes of implementing personnel decisions. This would allow agencies to implement position upgrades or pay raises late in the fiscal year, when the budget impact is small enough to be absorbed within the agency's total budget for the year. However, the annual impact of those decisions would not be covered automatically in the next year's budget, thus creating an immediate salary deficit.

See the Section Directory for the changes made by HB 7189.

C. SECTION DIRECTORY:

Section 1. Amends s. 11.243, F.S., to require proceeds from the sale of Florida Statutes be deposited into the Grants and Donations Trust Fund within the Legislature.

Section 2. Amends s. 11.513, F. S., to clarify the application of the section to the judicial branch of government. It requires additional data be included in the plans for monitoring major programs of state agencies and in the reviews of those programs and provides for the Office of Program Policy Analysis and Government Accountability to review agency performance standards and report to the Governor, the Legislature, and the Legislative Budget Commission. Conforms language to changes made in s. 216.1827, F.S.

Section 3. Amends s. 20.435, F.S., and changes the term "certified" pertaining to the certification forward of unspent budget authority to "carry forward" to conform to changes in s. 216.301, F.S.

Section 4. Amends s. 215.18, F.S., and provides for notice and review pursuant to s. 216.177, F.S., for temporary trust fund transfers from funds authorized to cover deficits.

Section 5. Amends s. 215.3206, F.S., and allows the identification of trust funds to be established pursuant to legislative budget instructions for purposes of review by the Governor, Chief Justices and agencies.

Section 6. Amends s. 215.3208, F.S., and allows the identification of trust funds to be established pursuant to legislative budget instructions for purposes of legislative review of trust funds.

Section 7. Amends s. 215.35, F.S., and requires the Chief Financial Officer to uniquely identify all warrants for purposes of audit and reconciliation. Removes language that contains specific requirements to number warrants by fiscal year and to include the voucher number on the warrant.

Section 8. Amends s. 215.422, F.S., and revises the current prompt payment process to facilitate transition to a new accounting system to provide the ability for the Chief Financial Officer to improve federal reporting. It replaces the term "voucher" with "invoice". It clarifies that agencies need to approve the invoice in the state financial system within 20 days. It defines as an error, the failure to submit the proper tax payer identification information documentation by a vendor, and requires the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied.

Section 9. Amends s. 215.97, F.S., to change the method of tracking state financial assistance expenditures in order to accommodate changes to the state's financial system.

Section 10. Amends s. 216.011, F.S., to define "incurred obligation" for purposes of financial matters. It also amends s. 216.013, F.S., and defines Salary Rate Reserve for purposes of managing the approved budget, and it provides that capitalization threshold provisions relating to Operating Capital Outlay are defined pursuant to s. 273.025, F.S.

Section 11. Amends s. 216.013, F.S., to provide for inclusion of performance measures and standards in long-range program plans.

Sections 12. Amends s. 216.023, F.S., to remove references to performance measures and standards from requirements for submission of legislative budget requests by agencies and the judicial branch.

Section 13. Amends s. 216.134, F.S., to include in the general provisions relating to estimating conferences, that the responsibility for presiding over sessions of the estimating conferences shall be rotated among the principals.

Section 14. Amends s. 216.136, F.S., to standardize the composition of each estimating conference.

Section 15. Amends s. 216.177, F.S., to provide for a different period of review, if provided in law, for notice, review and objection procedures.

Section 16. Amends s. 216.178, F.S., and changes the date the Final Budget Report is due from October 15th to October 30th.

Section 17. Amends s. 216.181, F.S., and requires the Executive Office of the Governor or the Chief Justice of the Supreme Court to submit a detailed plan to allocate lump-sum budget categories to the chairs of appropriations committees.

Section 18. Amends s. 216.1811, F.S., and requires the Governor and Chief Financial Officer to make changes to the original approved operating budgets as directed by presiding officers of the Legislature.

Section 19. Amends s. 216.1815, F.S., to make conforming changes

Section 20. Creates s. 216.1827, F.S., which establishes new procedures for maintaining and revising performance measures.

Section 21. Amends s. 216.292, F.S., and revises procedures for 5 percent transfer authority between agency budget categories.

Section 22. Amends s. 216.301, F.S., as amended by Ch. 2005-152, L.O.F., to revise the process relating to the certification forward of unspent budget authority. It also changes the date by which the Governor's Office of Planning and Budgeting must furnish Fixed Capital Outlay budget reversions to the Chief Financial Officer from February 20th to February 28th.

Section 23. Amends s. 252.37, F.S., and clarifies that the Legislative Budget Commission must approve budget amendments which transfer funds from unappropriated surplus funds to provide funding for emergencies.

Section 24. Amends s. 273.02, F.S., and provides that procedures for recording property in the state's financial system for purposes of inventory will be established by rule by the Chief Financial Officer.

Section 25. Creates s. 273.025, F.S. and provides that capitalization requirements for property recorded in the state's financial system will be established by rule by the Chief Financial Officer.

Section 26. Amends s. 273.055, F.S., and transfers the Auditor General's rule making responsibilities relating to state owned tangible personal property to the Chief Financial Officer.

Section 27. Amends s. 274.02, F.S., to provide that the requirements for recording property will be established by rule rather than statute. It transfers responsibility from the Auditor General to the Chief Financial Officer.

Section 28. Amends s. 338.2116, F.S., and changes the date which the Department of Transportation's unspent budget shall be carried forward to September 30th.

Section 29. Amends s. 1011.57, F.S., and changes the term "certified" pertaining to the certification forward of unspent budget authority to "carry forward" to conform to changes in s. 216.301, F.S.

Section 30. Repeals s. 215.29, F.S.

Section 31. Provides that this section takes effect upon becoming law. Also provides an effective date of July 1, 2006 unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision is not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; nor does it reduce the authority that cities or counties have to raise revenues in the aggregate; and it does not reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

Expressly granted to the Chief Financial Officer.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to state financial matters; amending s.
3 11.243, F.S.; providing for the moneys collected from the
4 sale of the Florida Statutes or other publications to be
5 deposited in a specified trust fund; amending s. 11.513,
6 F.S.; requiring the Chief Justice of the Supreme Court to
7 develop program monitoring plans; requiring that
8 additional data be included in the plans for monitoring
9 major programs of state agencies and the judicial branch
10 and in the reviews of those programs; providing for the
11 Office of Program Policy Analysis and Government
12 Accountability to review agency and judicial branch
13 performance standards and report to the Governor, the
14 Legislature, and the Legislative Budget Commission;
15 amending s. 20.435, F.S.; revising a provision relating to
16 certain undisbursed balances of appropriations from the
17 Biomedical Research Trust Fund; amending s. 215.18, F.S.;
18 requiring that the Governor provide prior notice of
19 transfers between certain funds; amending s. 215.3206,
20 F.S.; replacing references to a 6-digit fund code in the
21 Florida Accounting Information Resource Subsystem with a
22 classification scheme consistent with the Department of
23 Financial Services' financial systems; amending s.
24 215.3208, F.S.; revising references to conform; amending
25 s. 215.35, F.S.; revising a provision relating to the
26 numbering of warrants issued by the Chief Financial
27 Officer; amending s. 215.422, F.S.; replacing a reference
28 to certain vouchers with the terms "invoice" or

29 "invoices"; clarifying that agencies or the judicial
30 branch record and approve certain invoices by a specified
31 date; revising provisions relating to the Department of
32 Financial Services' approval of payment of certain
33 invoices; providing that a vendor who does not submit the
34 appropriate federal taxpayer identification documentation
35 to the department will be deemed an error on the part of
36 the vendor; revising references to conform; amending s.
37 215.97, F.S.; removing a reference to the appropriations
38 act in a provision relating to the purposes of the Florida
39 Single Audit Act; amending s. 216.011, F.S.; revising the
40 definition of "operating capital outlay"; defining the
41 terms "incurred obligation" and "salary rate reserve" for
42 purposes of state fiscal affairs, appropriations, and
43 budgets; amending s. 216.013, F.S.; revising requirements
44 for information regarding performance measures to be
45 included in the long-range program plans of state agencies
46 and the judicial branch; revising a provision relating to
47 making adjustments to long-range program plans; amending
48 s. 216.023, F.S.; revising certain requirements for
49 legislative budget requests; deleting a provision
50 requiring agencies to maintain a certain performance
51 accountability system and provide a list of performance
52 measures; deleting a provision relating to adjustments to
53 executive agency performance standards; deleting a
54 provision relating to adjustments to judicial branch
55 performance standards; amending s. 216.134, F.S.;
56 providing for the responsibility of presiding over

57 sessions of consensus estimating conferences; amending s.
58 216.136, F.S.; revising provisions relating to the
59 principals of consensus estimating conferences; revising
60 the duties of certain agencies relating to the Criminal
61 Justice Estimating Conference, the Social Services
62 Estimating Conference, and the Workforce Estimating
63 Conference; amending s. 216.177, F.S.; clarifying the
64 circumstances under which the Executive Office of the
65 Governor and the Chief Justice of the Supreme Court are
66 required to provide notice to the chair and vice chair of
67 the Legislative Budget Commission; amending s. 216.178,
68 F.S.; revising the date by which the Office of Planning
69 and Budgeting must produce a final budget report; amending
70 s. 216.181, F.S.; providing that amendments to certain
71 approved operating budgets are subject to objection
72 procedures; requiring that state agencies submit to the
73 chair and vice chair of the Legislative Budget Commission
74 a plan for allocating any lump-sum appropriation in a
75 budget amendment; creating s. 216.1811, F.S.; providing
76 requirements for the Governor and the Chief Financial
77 Officer relating to certain approved operating budgets for
78 the legislative branch and appropriations made to the
79 legislative branch; amending s. 216.1815, F.S.; revising
80 certain requirements for the performance standards
81 included in an amended operating budget plan and request
82 submitted to the Legislative Budget Commission; creating
83 s. 216.1827, F.S.; requiring that each state agency and
84 the judicial branch maintain a performance accountability

85 system; requiring agencies and the judicial branch to
86 submit specified information to the Executive Office of
87 the Governor and the Legislature or the Office of Program
88 Policy Analysis and Government Accountability for review;
89 providing guidelines for requests to delete or amend
90 existing approved performance measures and standards;
91 specifying authority of the Legislature relating to agency
92 and judicial branch performance measures and standards;
93 amending s. 216.292, F.S.; requiring that notice of
94 changed conditions necessitating the budget action be
95 provided to the Executive Office of the Governor and the
96 legislative appropriations committees when funds are
97 transferred between categories of appropriations or budget
98 entities; requiring that such transfers be consistent with
99 legislative policy and intent; providing that certain
100 transfers between budget entities are subject to objection
101 procedures; clarifying provisions authorizing certain
102 transfers of appropriations from trust funds; providing
103 that requirements of specified provisions relating to
104 appropriations being nontransferable do not apply to
105 legislative branch budgets; amending s. 216.301, F.S.;
106 revising the requirements for undisbursed balances of
107 appropriations; revising a procedure for identifying and
108 paying incurred obligations; removing a provision relating
109 to notification to retain certain balances from
110 legislative budget entities; amending s. 252.37, F.S.;
111 providing that a transfer of moneys with a budget
112 amendment following a state of emergency is subject to

113 approval by the Legislative Budget Commission; amending s.
114 273.02, F.S.; revising a definition; requiring the Chief
115 Financial Officer to establish certain requirements by
116 rule relating to the recording and inventory of certain
117 state-owned property; creating s. 273.025, F.S.; requiring
118 the Chief Financial Officer to establish by rule certain
119 requirements relating to the capitalization of certain
120 property; amending s. 273.055, F.S.; revising
121 responsibility for rules relating to maintaining records
122 as to disposition of state-owned tangible personal
123 property; revising a provision relating to use of moneys
124 received from the disposition of state-owned tangible
125 personal property; amending s. 274.02, F.S.; revising a
126 definition; requiring the Chief Financial Officer to
127 establish by rule requirements relating to the recording
128 and inventory of certain property owned by local
129 governments; amending s. 338.2216, F.S.; revising
130 requirements relating to unexpended funds appropriated or
131 provided for the Florida Turnpike Enterprise; amending s.
132 1011.57, F.S.; revising requirements relating to
133 unexpended funds appropriated to the Florida School for
134 the Deaf and the Blind; repealing s. 215.29, F.S.,
135 relating to the classification of Chief Financial
136 Officer's warrants; providing effective dates.
137
138 Be It Enacted by the Legislature of the State of Florida:
139
140 Section 1. Subsection (3) of section 11.243, Florida

141 Statutes, is amended to read:
142 11.243 Publishing Florida Statutes; price, sale.--
143 (3) All moneys collected from the sale of the Florida
144 Statutes or other publications shall be deposited in the Grants
145 and Donations Trust Fund within the Legislature ~~State Treasury~~
146 ~~and credited to the appropriation for legislative expense~~.
147 Section 2. Subsections (2) and (3) of section 11.513,
148 Florida Statutes, are amended, present subsections (5) and (6)
149 of that section are renumbered as subsections (6) and (7),
150 respectively, and a new subsection (5) is added to that section,
151 to read:
152 11.513 Program evaluation and justification review.--
153 (2) A state agency's inspector general, internal auditor,
154 or other person designated by the agency head or the Chief
155 Justice of the Supreme Court shall develop, in consultation with
156 the Office of Program Policy Analysis and Government
157 Accountability, a plan for monitoring and reviewing the state
158 agency's or the judicial branch's major programs to ensure that
159 performance measures and standards, as well as baseline and
160 previous-year performance data, are maintained and supported by
161 agency records.
162 (3) The program evaluation and justification review shall
163 be conducted on major programs, but may include other programs.
164 The review shall be comprehensive in its scope but, at a
165 minimum, must be conducted in such a manner as to specifically
166 determine the following, and to consider and determine what
167 changes, if any, are needed with respect thereto:
168 (a) The identifiable cost of each program.

169 (b) The specific purpose of each program, as well as the
170 specific public benefit derived therefrom.
171 (c) Progress toward achieving the outputs and outcomes
172 associated with each program.
173 (d) An explanation of circumstances contributing to the
174 state agency's ability to achieve, not achieve, or exceed its
175 projected outputs and outcomes, as defined in s. 216.011,
176 associated with each program.
177 (e) Alternate courses of action that would result in
178 administration of the same program in a more efficient or
179 effective manner. The courses of action to be considered must
180 include, but are not limited to:
181 1. Whether the program could be organized in a more
182 efficient and effective manner, whether the program's mission,
183 goals, or objectives should be redefined, or, when the state
184 agency cannot demonstrate that its efforts have had a positive
185 effect, whether the program should be reduced in size or
186 eliminated.
187 2. Whether the program could be administered more
188 efficiently or effectively to avoid duplication of activities
189 and ensure that activities are adequately coordinated.
190 3. Whether the program could be performed more efficiently
191 or more effectively by another unit of government or a private
192 entity, or whether a program performed by a private entity could
193 be performed more efficiently and effectively by a state agency.
194 4. When compared to costs, whether effectiveness warrants
195 elimination of the program or, if the program serves a limited
196 interest, whether it should be redesigned to require users to

197 finance program costs.
198 5. Whether the cost to administer the program exceeds
199 license and other fee revenues paid by those being regulated.
200 6. Whether other changes could improve the efficiency and
201 effectiveness of the program.
202 (f) The consequences of discontinuing such program. If any
203 discontinuation is recommended, such recommendation must be
204 accompanied by a description of alternatives to implement such
205 recommendation, including an implementation schedule for
206 discontinuation and recommended procedures for assisting state
207 agency employees affected by the discontinuation.
208 (g) Determination as to public policy, which may include
209 recommendations as to whether it would be sound public policy to
210 continue or discontinue funding the program, either in whole or
211 in part, in the existing manner.
212 (h) Whether current performance measures and standards
213 should be reviewed or amended to assist agencies' and the
214 judicial branch's efforts in achieving outputs and outcome
215 measures.
216 (i) ~~(h)~~ Whether the information reported as part of the
217 state's performance-based program budgeting system has relevance
218 and utility for the evaluation of each program.
219 (j) ~~(i)~~ Whether state agency management has established
220 control systems sufficient to ensure that performance data are
221 maintained and supported by state agency records and accurately
222 presented in state agency performance reports.
223 (5) The Office of Program Policy Analysis and Government
224 Accountability may perform evaluation and justification reviews

225 when necessary and as directed by the Legislature in order to
226 determine whether current agency and judicial branch performance
227 measures and standards are adequate. Reports concerning the
228 evaluation and review of agency performance measures and
229 standards shall be submitted to the Executive Office of the
230 Governor, the President of the Senate, the Speaker of the House
231 of Representatives, and the chair and vice chair of the
232 Legislative Budget Commission.
233 Section 3. Paragraph (h) of subsection (1) of section
234 20.435, Florida Statutes, is amended to read:
235 20.435 Department of Health; trust funds.--
236 (1) The following trust funds are hereby created, to be
237 administered by the Department of Health:
238 (h) Biomedical Research Trust Fund.
239 1. Funds to be credited to the trust fund shall consist of
240 funds deposited pursuant to s. 215.5601. Funds shall be used for
241 the purposes of the James and Esther King Biomedical Research
242 Program as specified in ss. 215.5602 and 288.955. The trust fund
243 is exempt from the service charges imposed by s. 215.20.
244 2. Notwithstanding the provisions of s. 216.301 and
245 pursuant to s. 216.351, any balance in the trust fund at the end
246 of any fiscal year shall remain in the trust fund at the end of
247 the year and shall be available for carrying out the purposes of
248 the trust fund. The department may invest these funds
249 independently through the Chief Financial Officer or may
250 negotiate a trust agreement with the State Board of
251 Administration for the investment management of any balance in
252 the trust fund.

253 3. Notwithstanding s. 216.301 and pursuant to s. 216.351,
254 any balance of any appropriation from the Biomedical Research
255 Trust Fund which is not disbursed but which is obligated
256 pursuant to contract or committed to be expended may be carried
257 forward ~~certified by the Governor~~ for up to 3 years following
258 the effective date of the original appropriation.
259 4. The trust fund shall, unless terminated sooner, be
260 terminated on July 1, 2008.
261 Section 4. Section 215.18, Florida Statutes, is amended to
262 read:
263 215.18 Transfers between funds; limitation.--Whenever
264 there exists in any fund provided for by s. 215.32 a deficiency
265 which would render such fund insufficient to meet its just
266 requirements, and there shall exist in the other funds in the
267 State Treasury moneys which are for the time being or otherwise
268 in excess of the amounts necessary to meet the just requirements
269 of such last-mentioned funds, the Governor may order a temporary
270 transfer of moneys from one fund to another in order to meet
271 temporary deficiencies in a particular fund without resorting to
272 the necessity of borrowing money and paying interest thereon.
273 Any action proposed under this section is subject to the notice
274 and objection procedures set forth in s. 216.177, and the
275 Governor shall provide notice of such action at least 7 days
276 prior to the effective date of the transfer of funds.
277 (1) Except as otherwise provided in s. 216.222(1)(a)2.,
278 the fund from which any money is temporarily transferred shall
279 be repaid the amount transferred from it not later than the end
280 of the fiscal year in which such transfer is made, the date of

281 repayment to be specified in the order of the Governor.
282 (2) Notwithstanding subsection (1) and for the 2005-2006
283 fiscal year only, the repayment period for funds temporarily
284 transferred in fiscal year 2004-2005 to meet deficiencies
285 resulting from hurricanes striking this state in 2004 may be
286 extended until grants awarded by the Federal Emergency
287 Management Agency for FEMA Disaster Declarations 1539-DR-FL,
288 1545-DR-FL, 1551-DR-FL, and 1561-DR-FL are received. This
289 subsection expires July 1, 2006.
290 Section 5. Subsections (2) and (4) of section 215.3206,
291 Florida Statutes, are amended to read:
292 215.3206 Trust funds; termination or re-creation.--
293 (2) If the trust fund is terminated and not immediately
294 re-created, all cash balances and income of the trust fund shall
295 be deposited into the General Revenue Fund. The agency or Chief
296 Justice shall pay any outstanding debts of the trust fund as
297 soon as practicable, and the Chief Financial Officer shall close
298 out and remove the trust fund from the various state financial
299 ~~accounting~~ systems, using generally accepted accounting
300 practices concerning warrants outstanding, assets, and
301 liabilities. No appropriation or budget amendment shall be
302 construed to authorize any encumbrance of funds from a trust
303 fund after the date on which the trust fund is terminated or is
304 judicially determined to be invalid.
305 (4) For the purposes of this section, the Governor, Chief
306 Justice, and agencies shall review the trust funds as they are
307 identified by a classification scheme set out in the legislative
308 budget request instructions pursuant to s. 216.023 consistent

309 with the Department of Financial Services' financial systems ~~by~~
310 ~~a unique 6-digit code in the Florida Accounting Information~~
311 ~~Resource Subsystem at a level composed of the 2-digit~~
312 ~~organization level 1, the 1-digit state fund type 2, and the~~
313 ~~first three digits of the fund identifier~~. The Governor, Chief
314 Justice, and agencies may also conduct their review and make
315 recommendations concerning accounts within such trust funds.
316 Section 6. Subsection (1) and paragraph (a) of subsection
317 (2) of section 215.3208, Florida Statutes, are amended to read:
318 215.3208 Trust funds; legislative review.--
319 (1) In order to implement s. 19(f), Art. III of the State
320 Constitution, for the purpose of reviewing trust funds prior to
321 their automatic termination pursuant to the provisions of s.
322 19(f)(2), Art. III of the State Constitution, the Legislature
323 shall review all state trust funds at least once every 4 years.
324 The schedule for such review may be included in the legislative
325 budget instructions developed pursuant to the requirements of s.
326 216.023. The Legislature shall review trust funds as they are
327 identified by a classification scheme set out in the legislative
328 budget request instructions pursuant to s. 216.023 consistent
329 with the Department of Financial Services' financial systems ~~by~~
330 ~~a unique 6-digit code in the Florida Accounting Information~~
331 ~~Resource Subsystem at a level composed of the 2-digit~~
332 ~~organization level 1, the 1-digit state fund type 2, and the~~
333 ~~first three digits of the fund identifier~~. When a statutorily
334 created trust fund that was in existence on November 4, 1992,
335 has more than one fund ~~6-digit~~ code in the financial systems,
336 the Legislature may treat it as a single trust fund for the

337 purposes of this section. The Legislature may also conduct its
338 review concerning accounts within such trust funds.
339 (2)(a) When the Legislature terminates a trust fund, the
340 agency or branch of state government that administers the trust
341 fund shall pay any outstanding debts or obligations of the trust
342 fund as soon as practicable, and the Chief Financial Officer
343 shall close out and remove the trust fund from the various state
344 financial ~~accounting~~ systems, using generally accepted
345 accounting principles concerning assets, liabilities, and
346 warrants outstanding.
347 Section 7. Section 215.35, Florida Statutes, is amended to
348 read:
349 215.35 State funds; warrants and their issuance.--All
350 warrants issued by the Chief Financial Officer shall be numbered
351 in a manner that uniquely identifies each warrant for audit and
352 reconciliation purposes ~~chronological order commencing with~~
353 ~~number one in each fiscal year and each warrant shall refer to~~
354 ~~the Chief Financial Officer's voucher by the number thereof,~~
355 ~~which voucher shall also be numbered as above set forth~~. Each
356 warrant shall state the name of the payee thereof and the amount
357 allowed, and said warrant shall be stated in words at length. No
358 warrant shall issue until same has been authorized by an
359 appropriation made by law but such warrant need not state or set
360 forth such authorization. The Chief Financial Officer shall
361 register and maintain a record of each warrant in his or her
362 office. The record shall show the funds, accounts, purposes, and
363 departments involved in the issuance of each warrant. In those
364 instances where the expenditure of funds of regulatory boards or

365 commissions has been provided for by laws other than the annual
366 appropriations bill, warrants shall be issued upon requisition
367 to the Chief Financial Officer by the governing body of such
368 board or commission.
369 Section 8. Subsections (1) and (2), paragraphs (a) and (b)
370 of subsection (3), and subsection (6) of section 215.422,
371 Florida Statutes, are amended to read:
372 215.422 Payments, warrants~~, vouchers,~~ and invoices;
373 processing time limits; dispute resolution; agency or judicial
374 branch compliance.--
375 (1) ~~The voucher authorizing payment of~~ An invoice
376 submitted to an agency of the state or the judicial branch,
377 required by law to be filed with the Chief Financial Officer,
378 shall be recorded in the financial systems of the state,
379 approved for payment by the agency or the judicial branch, and
380 filed with the Chief Financial Officer not later than 20 days
381 after receipt of the invoice and receipt, inspection, and
382 approval of the goods or services, except that in the case of a
383 bona fide dispute the invoice recorded in the financial systems
384 of the state ~~voucher~~ shall contain a statement of the dispute
385 and authorize payment only in the amount not disputed. The Chief
386 Financial Officer may establish dollar thresholds and other
387 criteria for all invoices and may delegate to a state agency or
388 the judicial branch responsibility for maintaining the official
389 invoices ~~vouchers~~ and documents for invoices which do not exceed
390 the thresholds or which meet the established criteria. Such
391 records shall be maintained in accordance with the requirements
392 established by the Secretary of State. The transmission of an

393 approved invoice recorded in the financial systems of the state
394 ~~electronic payment request transmission~~ to the Chief Financial
395 Officer shall constitute filing of a request ~~voucher~~ for payment
396 of invoices for which the Chief Financial Officer has delegated
397 to an agency custody of official records. Approval and
398 inspection of goods or services shall take no longer than 5
399 working days unless the bid specifications, purchase order, or
400 contract specifies otherwise. If an invoice ~~a voucher~~ filed
401 within the 20-day period is returned by the Department of
402 Financial Services because of an error, it shall nevertheless be
403 deemed timely filed. The 20-day filing requirement may be waived
404 in whole or in part by the Department of Financial Services on a
405 showing of exceptional circumstances in accordance with rules
406 and regulations of the department. For the purposes of
407 determining the receipt of invoice date, the agency or the
408 judicial branch is deemed to receive an invoice on the date on
409 which a proper invoice is first received at the place designated
410 by the agency or the judicial branch. The agency or the judicial
411 branch is deemed to receive an invoice on the date of the
412 invoice if the agency or the judicial branch has failed to
413 annotate the invoice with the date of receipt at the time the
414 agency or the judicial branch actually received the invoice or
415 failed at the time the order is placed or contract made to
416 designate a specific location to which the invoice must be
417 delivered.
418 (2) The Department of Financial Services shall approve
419 payment of an invoice no later than 10 days after the agency's
420 filing of the approved invoice ~~The warrant in payment of an~~

421 ~~invoice submitted to an agency of the state or the judicial~~
422 ~~branch shall be issued not later than 10 days after filing of~~
423 ~~the voucher authorizing payment~~. However, this requirement may
424 be waived in whole or in part by the Department of Financial
425 Services on a showing of exceptional circumstances in accordance
426 with rules and regulations of the department. If the 10-day
427 period contains fewer than 6 working days, the Department of
428 Financial Services shall be deemed in compliance with this
429 subsection if the payment is approved ~~warrant is issued~~ within 6
430 working days without regard to the actual number of calendar
431 days. ~~For purposes of this section, a payment is deemed to be~~
432 ~~issued on the first working day that payment is available for~~
433 ~~delivery or mailing to the vendor.~~
434 (3)(a) Each agency of the state or the judicial branch
435 which is required by law to file invoices ~~vouchers~~ with the
436 Chief Financial Officer shall keep a record of the date of
437 receipt of the invoice; dates of receipt, inspection, and
438 approval of the goods or services; date of filing of the
439 approved invoice ~~voucher~~; and date of issuance of the warrant in
440 payment thereof. If the invoice ~~voucher~~ is not filed or the
441 warrant is not issued within the time required, an explanation
442 in writing by the agency head or the Chief Justice shall be
443 submitted to the Department of Financial Services in a manner
444 prescribed by it. Agencies and the judicial branch shall
445 continue to deliver or mail state payments promptly.
446 (b) If a warrant in payment of an invoice is not issued
447 within 40 days after receipt of the invoice and receipt,
448 inspection, and approval of the goods and services, the agency

449 or judicial branch shall pay to the vendor, in addition to the
450 amount of the invoice, interest at a rate as established
451 pursuant to s. 55.03(1) on the unpaid balance from the
452 expiration of such 40-day period until such time as the warrant
453 is issued to the vendor. Such interest shall be added to the
454 invoice at the time of submission to the Chief Financial Officer
455 for payment whenever possible. If addition of the interest
456 penalty is not possible, the agency or judicial branch shall pay
457 the interest penalty payment within 15 days after issuing the
458 warrant. The provisions of this paragraph apply only to
459 undisputed amounts for which payment has been authorized.
460 Disputes shall be resolved in accordance with rules developed
461 and adopted by the Chief Justice for the judicial branch, and
462 rules adopted by the Department of Financial Services or in a
463 formal administrative proceeding before an administrative law
464 judge of the Division of Administrative Hearings for state
465 agencies, provided that, for the purposes of ss. 120.569 and
466 120.57(1), no party to a dispute involving less than $1,000 in
467 interest penalties shall be deemed to be substantially affected
468 by the dispute or to have a substantial interest in the decision
469 resolving the dispute. In the case of an error on the part of
470 the vendor, the 40-day period shall begin to run upon receipt by
471 the agency or the judicial branch of a corrected invoice or
472 other remedy of the error. <u>For purposes of this section, the</u>
473 <u>non-submittal of the appropriate federal taxpayer identification</u>
474 <u>documentation to the Department of Financial Services by the</u>
475 <u>vendor will be deemed an error on the part of the vendor and the</u>
476 <u>vendor will be required to submit the appropriate federal</u>

477 taxpayer documentation in order to remedy the error. The
478 provisions of this paragraph do not apply when the filing
479 requirement under subsection (1) or subsection (2) has been
480 waived in whole by the Department of Financial Services. The
481 various state agencies and the judicial branch shall be
482 responsible for initiating the penalty payments required by this
483 subsection and shall use this subsection as authority to make
484 such payments. The budget request submitted to the Legislature
485 shall specifically disclose the amount of any interest paid by
486 any agency or the judicial branch pursuant to this subsection.
487 The temporary unavailability of funds to make a timely payment
488 due for goods or services does not relieve an agency or the
489 judicial branch from the obligation to pay interest penalties
490 under this section.
491 (6) The Department of Financial Services shall monitor
492 each agency's and the judicial branch's compliance with the time
493 limits and interest penalty provisions of this section. The
494 department shall provide a report to an agency or to the
495 judicial branch if the department determines that the agency or
496 the judicial branch has failed to maintain an acceptable rate of
497 compliance with the time limits and interest penalty provisions
498 of this section. The department shall establish criteria for
499 determining acceptable rates of compliance. The report shall
500 also include a list of late invoices ~~vouchers~~ or payments, the
501 amount of interest owed or paid, and any corrective actions
502 recommended. The department shall perform monitoring
503 responsibilities, pursuant to this section, using the Department
504 of Financial Services' financial systems ~~Management Services and~~

505 ~~Purchasing Subsystem or the Florida Accounting Information~~
506 ~~Resource Subsystem~~ provided in s. 215.94. Each agency and the
507 judicial branch shall be responsible for the accuracy of
508 information entered into the Department of Management Services'
509 procurement system ~~Management Services and Purchasing Subsystem~~
510 and the Department of Financial Services' financial systems
511 ~~Florida Accounting Information Resource Subsystem~~ for use in
512 this monitoring.
513 Section 9. Paragraph (d) of subsection (1) of section
514 215.97, Florida Statutes, is amended to read:
515 215.97 Florida Single Audit Act.--
516 (1) The purposes of the section are to:
517 (d) Provide for identification of state financial
518 assistance transactions in the ~~appropriations act,~~ state
519 accounting records~~,~~ and recipient organization records.
520 Section 10. Effective upon this act becoming a law,
521 paragraph (bb) of subsection (1) of section 216.011, Florida
522 Statutes, is amended, and paragraphs (tt) and (uu) are added to
523 that subsection, to read:
524 216.011 Definitions.--
525 (1) For the purpose of fiscal affairs of the state,
526 appropriations acts, legislative budgets, and approved budgets,
527 each of the following terms has the meaning indicated:
528 (bb) "Operating capital outlay" means the appropriation
529 category used to fund equipment, fixtures, and other tangible
530 personal property of a nonconsumable and nonexpendable nature
531 under s. 273.025~~, according to the value or cost specified in s.~~
532 ~~273.02~~.

533 (tt) "Incurred obligation" means a legal obligation for
534 goods or services that have been contracted for, referred to as
535 an encumbrance in the state's financial system, or received or
536 incurred by the state and referred to as a payable in the
537 state's financial system.
538 (uu) "Salary rate reserve" means the withholding of a
539 portion of the annual salary rate for a specific purpose.
540 Section 11. Paragraphs (h) through (k) are added to
541 subsection (1) of section 216.013, Florida Statutes, and
542 subsection (5) of that section is amended, to read:
543 216.013 Long-range program plan.--State agencies and the
544 judicial branch shall develop long-range program plans to
545 achieve state goals using an interagency planning process that
546 includes the development of integrated agency program service
547 outcomes. The plans shall be policy based, priority driven,
548 accountable, and developed through careful examination and
549 justification of all agency and judicial branch programs.
550 (1) Long-range program plans shall provide the framework
551 for the development of budget requests and shall identify or
552 update:
553 (h) Legislatively approved output and outcome performance
554 measures.
555 (i) Performance standards for each performance measure and
556 justification for the standards and the sources of data to be
557 used for measurement.
558 (j) Prior-year performance data on approved performance
559 measures and an explanation of deviation from expected
560 performance. Performance data must be assessed for reliability

561 in accordance with s. 20.055.
562 (k) Proposed performance incentives and disincentives.
563 (5) ~~Following the adoption of the annual General~~
564 ~~Appropriations Act,~~ The state agencies and the judicial branch
565 shall make appropriate adjustments to their long-range program
566 plans, excluding adjustments to performance measures and
567 standards, to be consistent with the appropriations ~~and~~
568 ~~performance measures~~ in the General Appropriations Act and
569 legislation implementing the General Appropriations Act.
570 Agencies and the judicial branch have 30 days subsequent to the
571 effective date of the General Appropriations Act and
572 implementing legislation ~~until June 30~~ to make adjustments to
573 their plans as posted on their Internet websites.
574 Section 12. Paragraph (a) of subsection (4) and
575 subsections (5), (6), and (8) of section 216.023, Florida
576 Statutes, are amended, and subsections (7), (9), (10), (11), and
577 (12) are renumbered as subsections (5), (6), (7), (8), and (9),
578 respectively, to read:
579 216.023 Legislative budget requests to be furnished to
580 Legislature by agencies.--
581 (4)(a) The legislative budget request must contain for
582 each program:
583 1. The constitutional or statutory authority for a
584 program, a brief purpose statement, and approved program
585 components.
586 2. Information on expenditures for 3 fiscal years (actual
587 prior-year expenditures, current-year estimated expenditures,
588 and agency budget requested expenditures for the next fiscal

589 year) by appropriation category.
590 3. Details on trust funds and fees.
591 4. The total number of positions (authorized, fixed, and
592 requested).
593 5. An issue narrative describing and justifying changes in
594 amounts and positions requested for current and proposed
595 programs for the next fiscal year.
596 6. Information resource requests.
597 ~~7. Legislatively approved Output and outcome performance~~
598 ~~measures and any proposed revisions to measures.~~
599 ~~8. Proposed performance standards for each performance~~
600 ~~measure and justification for the standards and the sources of~~
601 ~~data to be used for measurement.~~
602 ~~9. Prior year performance data on approved performance~~
603 ~~measures and an explanation of deviation from expected~~
604 ~~performance. Performance data must be assessed for reliability~~
605 ~~in accordance with s. 20.055.~~
606 ~~10. Proposed performance incentives and disincentives.~~
607 7.~~11.~~ Supporting information, including applicable cost-
608 benefit analyses, business case analyses, performance
609 contracting procedures, service comparisons, and impacts on
610 performance standards for any request to outsource or privatize
611 agency functions.
612 8.~~12.~~ An evaluation of any major outsourcing and
613 privatization initiatives undertaken during the last 5 fiscal
614 years having aggregate expenditures exceeding $10 million during
615 the term of the contract. The evaluation shall include an
616 assessment of contractor performance, a comparison of

617 anticipated service levels to actual service levels, and a
618 comparison of estimated savings to actual savings achieved.
619 Consolidated reports issued by the Department of Management
620 Services may be used to satisfy this requirement.
621 ~~(5) Agencies must maintain a comprehensive performance~~
622 ~~accountability system and provide a list of performance measures~~
623 ~~maintained by the agency which are in addition to the measures~~
624 ~~approved by the Legislature.~~
625 ~~(6) Annually, by June 30, executive agencies shall submit~~
626 ~~to the Executive Office of the Governor adjustments to their~~
627 ~~performance standards based on the amounts appropriated for each~~
628 ~~program by the Legislature. When such an adjustment is made, all~~
629 ~~performance standards, including any adjustments made, shall be~~
630 ~~reviewed and revised as necessary by the Executive Office of the~~
631 ~~Governor and, upon approval, submitted to the Legislature~~
632 ~~pursuant to the review and approval process provided in s.~~
633 ~~216.177. The Senate and the House of Representatives~~
634 ~~appropriations committees shall advise Senate substantive~~
635 ~~committees and House of Representatives substantive committees,~~
636 ~~respectively, of all adjustments made to performance standards~~
637 ~~or measures. The Executive Office of the Governor shall maintain~~
638 ~~the official record of adjustments to the performance standards.~~
639 ~~As used in this section, the term "official record" means the~~
640 ~~official compilation of information about state agency~~
641 ~~performance based programs and measures, including approved~~
642 ~~programs, approved outputs and outcomes, baseline data, approved~~
643 ~~standards for each performance measure and any approved~~
644 ~~adjustments thereto, as well as actual agency performance for~~

645 ~~each measure.~~
646 ~~(8) Annually, by June 30, the judicial branch shall make~~
647 ~~adjustments to any performance standards for approved programs~~
648 ~~based on the amount appropriated for each program, which shall~~
649 ~~be submitted to the Legislature pursuant to the notice and~~
650 ~~review process provided in s. 216.177. The Senate and the House~~
651 ~~of Representatives appropriations committees shall advise Senate~~
652 ~~substantive committees and House substantive committees,~~
653 ~~respectively, of all adjustments made to performance standards~~
654 ~~or measures.~~
655 Section 13. Paragraph (a) of subsection (4) of section
656 216.134, Florida Statutes, is amended to read:
657 216.134 Consensus estimating conferences; general
658 provisions.--
659 (4) Consensus estimating conferences are within the
660 legislative branch. The membership of each consensus estimating
661 conference consists of principals and participants.
662 (a) A person designated by law as a principal may preside
663 over conference sessions, convene conference sessions, request
664 information, specify topics to be included on the conference
665 agenda, agree or withhold agreement on whether information is to
666 be official information of the conference, release official
667 information of the conference, interpret official information of
668 the conference, and monitor errors in official information of
669 the conference. <u>The responsibility of presiding over sessions of</u>
670 <u>the conference shall be rotated among the principals.</u>
671 Section 14. Paragraph (b) of subsection (1), paragraph (b)
672 of subsection (2), paragraph (b) of subsection (3), paragraph

673 (c) of subsection (4), subsections (5) through (7), paragraph
674 (b) of subsection (8), paragraph (b) of subsection (9), and
675 paragraph (b) of subsection (10) of section 216.136, Florida
676 Statutes, are amended to read:
677 216.136 Consensus estimating conferences; duties and
678 principals.--
679 (1) ECONOMIC ESTIMATING CONFERENCE.--
680 (b) Principals.--The Executive Office of the Governor, the
681 coordinator of the Office of Economic and Demographic Research,
682 and professional staff of the Senate and House of
683 Representatives who have forecasting expertise, or their
684 designees, are the principals of the Economic Estimating
685 Conference. ~~The responsibility of presiding over sessions of the~~
686 ~~conference shall be rotated among the principals.~~
687 (2) DEMOGRAPHIC ESTIMATING CONFERENCE.--
688 (b) Principals.--The Executive Office of the Governor, the
689 coordinator of the Office of Economic and Demographic Research,
690 and professional staff of the Senate and House of
691 Representatives who have forecasting expertise, or their
692 designees, are the principals of the Demographic Estimating
693 Conference. ~~The responsibility of presiding over sessions of the~~
694 ~~conference shall be rotated among the principals.~~
695 (3) REVENUE ESTIMATING CONFERENCE.--
696 (b) Principals.--The Executive Office of the Governor, the
697 coordinator of the Office of Economic and Demographic Research,
698 and professional staff of the Senate and House of
699 Representatives who have forecasting expertise, or their
700 designees, are the principals of the Revenue Estimating

701 Conference. ~~The responsibility of presiding over sessions of the~~
702 ~~conference shall be rotated among the principals.~~
703 (4) EDUCATION ESTIMATING CONFERENCE.--
704 (c) Principals.--The ~~Commissioner of Education, the~~
705 Executive Office of the Governor, the coordinator of the Office
706 of Economic and Demographic Research, and professional staff of
707 the Senate and House of Representatives who have forecasting
708 expertise, or their designees, are the principals of the
709 Education Estimating Conference. ~~The Commissioner of Education~~
710 ~~or his or her designee shall preside over sessions of the~~
711 ~~conference.~~
712 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.--
713 (a) Duties.--The Criminal Justice Estimating Conference
714 shall:
715 1. Develop such official information relating to the
716 criminal justice system, including forecasts of prison
717 admissions and population and of supervised felony offender
718 admissions and population, as the conference determines is
719 needed for the state planning and budgeting system.
720 2. Develop such official information relating to the
721 number of eligible discharges and the projected number of civil
722 commitments for determining space needs pursuant to the civil
723 proceedings provided under part V of chapter 394.
724 3. Develop official information relating to the number of
725 sexual offenders and sexual predators who are required by law to
726 be placed on community control, probation, or conditional
727 release who are subject to electronic monitoring. ~~In addition,~~
728 ~~the Office of Economic and Demographic Research shall study the~~

729 ~~factors relating to the sentencing of sex offenders from the~~
730 ~~point of arrest through the imposition of sanctions by the~~
731 ~~sentencing court, including original charges, plea negotiations,~~
732 ~~trial dispositions, and sanctions. The Department of~~
733 ~~Corrections, the Office of the State Courts Administrator, the~~
734 ~~Florida Department of Law Enforcement, and the state attorneys~~
735 ~~shall provide information deemed necessary for the study. The~~
736 ~~final report shall be provided to the President of the Senate~~
737 ~~and the Speaker of the House of Representatives by March 1,~~
738 ~~2006.~~
739 (b) Principals.--The Executive Office of the Governor, the
740 coordinator of the Office of Economic and Demographic Research,
741 and professional staff of~~, who have forecasting expertise, from~~
742 the Senate and~~, the~~ House of Representatives who have
743 forecasting expertise, ~~and the Supreme Court,~~ or their
744 designees, are the principals of the Criminal Justice Estimating
745 Conference. ~~The principal representing the Executive Office of~~
746 ~~the Governor shall preside over sessions of the conference.~~
747 (6) SOCIAL SERVICES ESTIMATING CONFERENCE.--
748 (a) Duties.--
749 1. The Social Services Estimating Conference shall develop
750 such official information relating to the social services system
751 of the state, including forecasts of social services caseloads,
752 utilization, and expenditures, as the conference determines is
753 needed for the state planning and budgeting system. Such
754 official information shall include, but not be limited to, cash
755 assistance and Medicaid caseloads.
756 2. The Social Services Estimating Conference shall develop

757 information relating to the Florida Kidcare program, including,
758 but not limited to, outreach impacts, enrollment, caseload,
759 utilization, and expenditure information that the conference
760 determines is needed to plan for and project future budgets and
761 the drawdown of federal matching funds. ~~The agencies required to~~
762 ~~collect and analyze Florida Kidcare program data under s.~~
763 ~~409.8134 shall be participants in the Social Services Estimating~~
764 ~~Conference for purposes of developing information relating to~~
765 ~~the Florida Kidcare program.~~
766 (b) Principals.--The Executive Office of the Governor, the
767 coordinator of the Office of Economic and Demographic Research,
768 and professional staff of ~~who have forecasting expertise from~~
769 ~~the Department of Children and Family Services, the Agency for~~
770 ~~Health Care Administration,~~ the Senate~~,~~ and ~~the~~ House of
771 Representatives who have forecasting expertise, or their
772 designees, are the principals of the Social Services Estimating
773 Conference. ~~The principal representing the Executive Office of~~
774 ~~the Governor shall preside over sessions of the conference.~~
775 (7) WORKFORCE ESTIMATING CONFERENCE.--
776 (a) Duties.--
777 1. The Workforce Estimating Conference shall develop such
778 official information on the workforce development system
779 planning process as it relates to the personnel needs of
780 current, new, and emerging industries as the conference
781 determines is needed by the state planning and budgeting system.
782 Such information, using quantitative and qualitative research
783 methods, must include at least: short-term and long-term
784 forecasts of employment demand for jobs by occupation and

785 industry; entry and average wage forecasts among those
786 occupations; and estimates of the supply of trained and
787 qualified individuals available or potentially available for
788 employment in those occupations, with special focus upon those
789 occupations and industries which require high skills and have
790 high entry wages and experienced wage levels. In the development
791 of workforce estimates, the conference shall use, to the fullest
792 extent possible, local occupational and workforce forecasts and
793 estimates.
794 2. The Workforce Estimating Conference shall review data
795 concerning the local and regional demands for short-term and
796 long-term employment in High-Skills/High-Wage Program jobs, as
797 well as other jobs, which data is generated through surveys
798 conducted as part of the state's Internet-based job matching and
799 labor market information system authorized under s. 445.011. The
800 conference shall consider such data in developing its forecasts
801 for statewide employment demand, including reviewing the local
802 and regional data for common trends and conditions among
803 localities or regions which may warrant inclusion of a
804 particular occupation on the statewide occupational forecasting
805 list developed by the conference. Based upon its review of such
806 survey data, the conference shall also make recommendations
807 semiannually to Workforce Florida, Inc., on additions or
808 deletions to lists of locally targeted occupations approved by
809 Workforce Florida, Inc.
810 ~~3. During each legislative session, and at other times if~~
811 ~~necessary, the Workforce Estimating Conference shall meet as the~~
812 ~~Workforce Impact Conference for the purpose of determining the~~

813 ~~effects of legislation related to the state's workforce and~~
814 ~~economic development efforts introduced prior to and during such~~
815 ~~legislative session. In addition to the designated principals of~~
816 ~~the impact conference, nonprincipal participants of the impact~~
817 ~~conference shall include a representative of the Florida Chamber~~
818 ~~of Commerce and other interested parties. The impact conference~~
819 ~~shall use both quantitative and qualitative research methods to~~
820 ~~determine the impact of introduced legislation related to~~
821 ~~workforce and economic development issues.~~
822 3.~~4.~~ ~~Notwithstanding subparagraph 3.,~~ The Workforce
823 Estimating Conference, for the purposes described in
824 subparagraph 1., shall meet no less than 2 times in a calendar
825 year. The first meeting shall be held in February, and the
826 second meeting shall be held in August. Other meetings may be
827 scheduled as needed.
828 (b) Principals.--The ~~Commissioner of Education, the~~
829 Executive Office of the Governor, ~~the director of the Office of~~
830 ~~Tourism, Trade, and Economic Development, the director of the~~
831 ~~Agency for Workforce Innovation, the executive director of the~~
832 ~~Commission for Independent Education, the Chancellor of the~~
833 ~~State University System, the chair of Workforce Florida, Inc.,~~
834 the coordinator of the Office of Economic and Demographic
835 Research, ~~or their designees,~~ and professional staff of ~~from~~ the
836 Senate and ~~the~~ House of Representatives who have forecasting ~~and~~
837 ~~substantive~~ expertise, or their designees, are the principals of
838 the Workforce Estimating Conference. ~~In addition to the~~
839 ~~designated principals of the conference, nonprincipal~~
840 ~~participants of the conference shall include a representative of~~

841 ~~the Florida Chamber of Commerce and other interested parties.~~
842 ~~The principal representing the Executive Office of the Governor~~
843 ~~shall preside over the sessions of the conference.~~
844 (8) EARLY LEARNING PROGRAMS ESTIMATING CONFERENCE.--
845 (b) Principals.--The Executive Office of the Governor, the
846 coordinator ~~Director~~ of the Office of Economic and Demographic
847 Research, and professional staff of ~~who have forecasting~~
848 ~~expertise from the Agency for Workforce Innovation, the~~
849 ~~Department of Children and Family Services, the Department of~~
850 ~~Education,~~ the Senate~~,~~ and ~~the~~ House of Representatives who have
851 forecasting expertise, or their designees, are the principals of
852 the Early Learning Programs Estimating Conference. ~~The principal~~
853 ~~representing the Executive Office of the Governor shall preside~~
854 ~~over sessions of the conference.~~
855 (9) SELF-INSURANCE ESTIMATING CONFERENCE.--
856 (b) Principals.--The Executive Office of the Governor, the
857 coordinator of the Office of Economic and Demographic Research,
858 and professional staff of the Senate and ~~the~~ House of
859 Representatives who have forecasting expertise ~~and substantive~~
860 ~~experience~~, or their designees, are the principals of the Self-
861 Insurance Estimating Conference. ~~The responsibility of presiding~~
862 ~~over sessions of the conference shall be rotated among the~~
863 ~~principals.~~
864 (10) FLORIDA RETIREMENT SYSTEM ACTUARIAL ASSUMPTION
865 CONFERENCE.--
866 (b) Principals.--The Executive Office of the Governor, the
867 coordinator of the Office of Economic and Demographic Research,
868 and professional staff of the Senate and House of

869 Representatives who have forecasting ~~and substantive~~ expertise,
870 or their designees, are the principals of the Florida Retirement
871 System Actuarial Assumption Conference. ~~The Executive Office of~~
872 ~~the Governor shall have the responsibility of presiding over the~~
873 ~~sessions of the conference. The State Board of Administration~~
874 ~~and the Division of Retirement shall be participants in the~~
875 ~~conference.~~
876 Section 15. Paragraph (a) of subsection (2) of section
877 216.177, Florida Statutes, is amended to read:
878 216.177 Appropriations acts, statement of intent,
879 violation, notice, review and objection procedures.--
880 (2)(a) Whenever notice of action to be taken by the
881 Executive Office of the Governor or the Chief Justice of the
882 Supreme Court is required by law ~~this chapter~~, such notice shall
883 be given to the chair and vice chair of the Legislative Budget
884 Commission in writing, and shall be delivered at least 14 days
885 prior to the action referred to, unless a shorter period is
886 approved in writing by the chair and vice chair or a different
887 period is specified by law. If the action is solely for the
888 release of funds appropriated by the Legislature, the notice
889 shall be delivered at least 3 days before the effective date of
890 the action. Action shall not be taken on any budget item for
891 which this chapter requires notice to the Legislative Budget
892 Commission or the appropriations committees without such notice
893 having been provided, even though there may be good cause for
894 considering such item.
895 Section 16. Subsection (2) of section 216.178, Florida
896 Statutes, is amended to read:

897 216.178 General Appropriations Act; format; procedure.--
898 (2) The Office of Planning and Budgeting shall develop a
899 final budget report that reflects the net appropriations for
900 each budget item. The report shall reflect actual expenditures
901 for each of the 2 preceding fiscal years and the estimated
902 expenditures for the current fiscal year. In addition, the
903 report must contain the actual revenues and cash balances for
904 the preceding 2 fiscal years and the estimated revenues and cash
905 balances for the current fiscal year. The report may also
906 contain expenditure data, program objectives, and program
907 measures for each state agency program. The report must be
908 produced by October 30 ~~15~~ each year. A copy of the report must
909 be made available to each member of the Legislature, to the head
910 of each state agency, to the Auditor General, to the director of
911 the Office of Program Policy Analysis and Government
912 Accountability, and to the public.
913 Section 17. Subsections (3), (5), (6), and (11) of section
914 216.181, Florida Statutes, are amended to read:
915 216.181 Approved budgets for operations and fixed capital
916 outlay.--
917 (3) All amendments to original approved operating budgets,
918 regardless of funding source, are subject to the notice and
919 objection ~~review~~ procedures set forth in s. 216.177.
920 (5) An amendment to the original operating budget for an
921 information technology project or initiative that involves more
922 than one agency, has an outcome that impacts another agency, or
923 exceeds $500,000 in total cost over a 1-year period, except for
924 those projects that are a continuation of hardware or software

925 maintenance or software licensing agreements, or that are for
926 desktop replacement that is similar to the technology currently
927 in use must be reviewed by the Technology Review Workgroup
928 pursuant to s. 216.0446 and approved by the Executive Office of
929 the Governor for the executive branch or by the Chief Justice
930 for the judicial branch, and shall be subject to the notice and
931 objection ~~review~~ procedures set forth in s. 216.177.
932 (6)(a) A detailed plan allocating a lump-sum appropriation
933 to traditional appropriations categories shall be submitted by
934 the affected agency to the Executive Office of the Governor or
935 the Chief Justice of the Supreme Court. The Executive Office of
936 the Governor and the Chief Justice of the Supreme Court shall
937 submit such plan to the chair and vice chair of the Legislative
938 Budget Commission either before or concurrent with the
939 submission of any budget amendment that recommends the transfer
940 and release of ~~may require the submission of a detailed plan~~
941 ~~from the agency or entity of the judicial branch affected,~~
942 ~~consistent with the General Appropriations Act, special~~
943 ~~appropriations acts, and statements of intent before~~
944 ~~transferring and releasing~~ the balance of a lump-sum
945 appropriation.
946 (b) The Executive Office of the Governor and the Chief
947 Justice of the Supreme Court may amend, without approval of the
948 Legislative Budget Commission, state agency and judicial branch
949 entity budgets, respectively, to reflect the transferred funds
950 and to provide the associated increased salary rate based on the
951 approved plans for lump-sum appropriations. Any action proposed
952 pursuant to this paragraph is subject to the procedures set

953 forth in s. 216.177.
954
955 The Executive Office of the Governor shall transmit to each
956 state agency and the Chief Financial Officer, and the Chief
957 Justice shall transmit to each judicial branch component and the
958 Chief Financial Officer, any approved amendments to the approved
959 operating budgets.
960 (8) As part of the approved operating budget, the
961 Executive Office of the Governor shall furnish to each state
962 agency, and the Chief Justice of the Supreme Court shall furnish
963 to the entity of the judicial branch, an approved annual salary
964 rate for each budget entity containing a salary appropriation.
965 This rate shall be based upon the actual salary rate and shall
966 be consistent with the General Appropriations Act or special
967 appropriations acts. The annual salary rate shall be:
968 (a) Determined by the salary rate specified in the General
969 Appropriations Act and adjusted for reorganizations authorized
970 by law, for any other appropriations made by law, and, subject
971 to s. 216.177, for distributions of lump-sum appropriations and
972 administered funds <u>and for actions that require authorization of</u>
973 <u>salary rate from salary rate reserve and placement of salary</u>
974 <u>rate in salary rate reserve</u>.
975 (10)(a) The Legislative Budget Commission may authorize
976 increases or decreases in the approved salary rate<u>, except as</u>
977 <u>authorized in s. 216.181(8)(a),</u> for positions pursuant to the
978 request of the agency filed with the Executive Office of the
979 Governor or pursuant to the request of an entity of the judicial
980 branch filed with the Chief Justice of the Supreme Court, if

981 deemed necessary and in the best interest of the state and
982 consistent with legislative policy and intent.
983 (11) The Executive Office of the Governor and the Chief
984 Justice of the Supreme Court may approve changes in the amounts
985 appropriated from state trust funds in excess of those in the
986 approved operating budget up to $1 million only pursuant to the
987 federal funds provisions of s. 216.212, when grants and
988 donations are received after April 1, or when deemed necessary
989 due to a set of conditions that were unforeseen at the time the
990 General Appropriations Act was adopted and that are essential to
991 correct in order to continue the operation of government.
992 Changes in the amounts appropriated from state trust funds in
993 excess of those in the approved operating budget which are in
994 excess of $1 million may be approved only by the Legislative
995 Budget Commission pursuant to the request of a state agency
996 filed with the Executive Office of the Governor or pursuant to
997 the request of an entity of the judicial branch filed with the
998 Chief Justice of the Supreme Court. The provisions of this
999 subsection are subject to the notice~~, review,~~ and objection
1000 procedures set forth in s. 216.177.
1001 Section 18. Section 216.1811, Florida Statutes, is created
1002 to read:
1003 216.1811 Approved operating budgets and appropriations for
1004 the legislative branch.--
1005 (1) The Governor and the Chief Financial Officer shall
1006 each make changes to the original approved operating budgets for
1007 operational and fixed capital expenditures relating to the
1008 legislative branch as directed by the presiding officers of the

1009 legislative branch.
1010 (2) The Governor and the Chief Financial Officer shall
1011 each ensure that any balances of appropriations made to the
1012 legislative branch are carried forward as directed by the
1013 presiding officers of the legislative branch.
1014 Section 19. Paragraph (e) of subsection (2) of section
1015 216.1815, Florida Statutes, is amended to read:
1016 216.1815 Agency incentive and savings program.--
1017 (2) To be eligible to retain funds, an agency or the Chief
1018 Justice of the Supreme Court must submit a plan and an
1019 associated request to amend its approved operating budget to the
1020 Legislative Budget Commission specifying:
1021 (e) How the agency or the judicial branch will meet
1022 performance standards, including ~~established by the Legislature~~
1023 ~~and~~ those in its long-range program plan; and
1024 Section 20. Section 216.1827, Florida Statutes, is created
1025 to read:
1026 216.1827 Requirements for performance measures and
1027 standards.--
1028 (1) Agencies and the judicial branch shall maintain a
1029 comprehensive performance accountability system containing, at a
1030 minimum, a list of performance measures and standards that are
1031 adopted by the Legislature and subsequently amended pursuant to
1032 this section.
1033 (2)(a) Agencies and the judicial branch shall submit
1034 output and outcome measures and standards, as well as historical
1035 baseline and performance data, to the Executive Office of the
1036 Governor and the Legislature, under s. 216.013.

1037 (b) Agencies and the judicial branch shall also submit
1038 performance data, measures, and standards to the Office of
1039 Program Policy Analysis and Government Accountability upon
1040 request for review of the adequacy of the legislatively approved
1041 measures and standards.
1042 (3)(a) An agency may submit requests to delete or amend
1043 its existing approved performance measures and standards or
1044 submit requests to create additional performance measures and
1045 standards to the Executive Office of the Governor for review and
1046 approval. The request shall document the justification for the
1047 change and ensure that the revision, deletion, or addition is
1048 consistent with legislative intent. Revisions or deletions to,
1049 or additions of performance measures and standards approved by
1050 the Executive Office of the Governor are subject to the review
1051 and objection procedure set forth in s. 216.177.
1052 (b) The Chief Justice of the Supreme Court may submit
1053 deletions or amendments of the judicial branch's existing
1054 approved performance measures and standards or may submit
1055 additional performance measures and standards to the Executive
1056 Office of the Governor accompanied with justification for the
1057 change and ensure that the revision, deletion, or addition is
1058 consistent with legislative intent. Revisions or deletions to,
1059 or additions of performance measures and standards submitted by
1060 the Chief Justice of the Supreme Court are subject to the review
1061 and objection procedure set forth in s. 216.177.
1062 (4)(a) The Legislature may create, amend, and delete
1063 performance measures and standards. The Legislature may confer
1064 with the Executive Office of the Governor for state agencies and

1065 the Chief Justice of the Supreme Court for the judicial branch
1066 prior to any such action.
1067 (b) The Legislature may require state agencies to submit
1068 requests for revisions, additions, or deletions to approved
1069 performance measures and standards to the Executive Office of
1070 the Governor for review and approval, subject to the review and
1071 objection procedure set forth in s. 216.177.
1072 (c) The Legislature may require the judicial branch to
1073 submit revisions, additions, or deletions to approved
1074 performance measures and standards to the Executive Office of
1075 The Governor, subject to the review and objection procedure set
1076 forth in s. 216.177.
1077 (d) Any new agency created by the Legislature is subject
1078 to the initial performance measures and standards established by
1079 the Legislature. The Legislature may require state agencies and
1080 the judicial branch to provide any information necessary to
1081 create initial performance measures and standards.
1082 Section 21. Paragraph (a) of subsection (2), subsection
1083 (3), paragraph (b) of subsection (4), and subsection (5) of
1084 section 216.292, Florida Statutes, are amended, and subsection
1085 (7) is added to that section, to read:
1086 216.292 Appropriations nontransferable; exceptions.--
1087 (2) The following transfers are authorized to be made by
1088 the head of each department or the Chief Justice of the Supreme
1089 Court whenever it is deemed necessary by reason of changed
1090 conditions:
1091 (a) The transfer of appropriations funded from identical
1092 funding sources, except appropriations for fixed capital outlay,

1093 and the transfer of amounts included within the total original
1094 approved budget and plans of releases of appropriations as
1095 furnished pursuant to ss. 216.181 and 216.192, as follows:
1096 1. Between categories of appropriations within a budget
1097 entity, if no category of appropriation is increased or
1098 decreased by more than 5 percent of the original approved budget
1099 or $250,000, whichever is greater, by all action taken under
1100 this subsection.
1101 2. Between budget entities within identical categories of
1102 appropriations, if no category of appropriation is increased or
1103 decreased by more than 5 percent of the original approved budget
1104 or $250,000, whichever is greater, by all action taken under
1105 this subsection.
1106 3. Any agency exceeding salary rate established pursuant
1107 to s. 216.181(8) on June 30th of any fiscal year shall not be
1108 authorized to make transfers pursuant to subparagraphs 1. and 2.
1109 in the subsequent fiscal year.
1110 4. Notice of proposed transfers under subparagraphs 1. and
1111 2. and notice of the specific changed conditions necessitating
1112 the action shall be provided to the Executive Office of the
1113 Governor and the chairs of the legislative appropriations
1114 committees at least 3 working days prior to agency
1115 implementation in order to provide an opportunity for review and
1116 objection. Such transfers must be consistent with legislative
1117 policy and intent and may not adversely affect achievement of
1118 approved performance outcomes or outputs in any program. ~~The~~
1119 ~~review shall be limited to ensuring that the transfer is in~~
1120 ~~compliance with the requirements of this paragraph.~~

1121 (3) The following transfers are authorized with the
1122 approval of the Executive Office of the Governor for the
1123 executive branch or the Chief Justice for the judicial branch,
1124 subject to the notice and objection ~~review~~ provisions of s.
1125 216.177:
1126 (a) The transfer of appropriations for operations from
1127 trust funds in excess of those provided in subsection (2), up to
1128 $1 million.
1129 (b) The transfer of positions between budget entities.
1130 (4) The following transfers are authorized with the
1131 approval of the Legislative Budget Commission. Unless waived by
1132 the chair and vice chair of the commission, notice of such
1133 transfers must be provided 14 days before the commission
1134 meeting:
1135 (b) The transfer of appropriations for operations from
1136 trust funds in excess of those authorized ~~provided~~ in subsection
1137 (2) or subsection (3) ~~this section that exceed the greater of 5~~
1138 ~~percent of the original approved budget or $1 million~~, as
1139 recommended by the Executive Office of the Governor or the Chief
1140 Justice of the Supreme Court.
1141 (5) A transfer of funds may not result in the initiation
1142 of a fixed capital outlay project that has not received a
1143 specific legislative appropriation, except that federal funds
1144 for fixed capital outlay projects for the Department of Military
1145 Affairs, which do not carry a continuing commitment on future
1146 appropriations by the Legislature, may be approved by the
1147 Executive Office of the Governor for the purpose received,
1148 subject to the notice~~, review,~~ and objection procedures set

1149 forth in s. 216.177.
1150 (7) The provisions of this section do not apply to the
1151 budgets for the legislative branch.
1152 Section 22. Effective upon this act becoming a law,
1153 subsections (1) and (3) and paragraph (a) of subsection (2) of
1154 section 216.301, Florida Statutes, as amended by section 40 of
1155 chapter 2005-152, Laws of Florida, are amended to read:
1156 216.301 Appropriations; undisbursed balances.--
1157 (1)(a) As of June 30th of each year, for appropriations
1158 for operations only, each department and the judicial branch
1159 shall identify in the state's financial system any incurred
1160 obligation which has not been disbursed, showing in detail the
1161 commitment or to whom obligated and the amounts of such
1162 commitments or obligations. Any appropriation not identified as
1163 an incurred obligation effective June 30th shall revert to the
1164 fund from which it was appropriated and shall be available for
1165 reappropriation by the Legislature.
1166 (b) The undisbursed release balance of any authorized
1167 appropriation, except an appropriation for fixed capital outlay,
1168 for any given fiscal year remaining on June 30 of the fiscal
1169 year shall be carried forward in an amount equal to the incurred
1170 obligations identified in paragraph (a). Any such incurred
1171 obligations remaining undisbursed on September 30 shall revert
1172 to the fund from which appropriated and shall be available for
1173 reappropriation by the Legislature. The Chief Financial Officer
1174 will monitor changes made to incurred obligations prior to the
1175 September 30 reversion to ensure generally accepted accounting
1176 procedures and legislative intent are followed.

1177 (c) In the event an appropriate identification of an
1178 incurred obligation is not made and an incurred obligation is
1179 proven to be legal, due, and unpaid, then the incurred
1180 obligation shall be paid and charged to the appropriation for
1181 the current fiscal year of the state agency or the legislative
1182 or judicial branch affected.
1183 ~~(1)(a) Any balance of any appropriation, except an~~
1184 ~~appropriation for fixed capital outlay, which is not disbursed~~
1185 ~~but which is expended shall, at the end of each fiscal year, be~~
1186 ~~certified by the head of the affected state agency or the~~
1187 ~~judicial or legislative branches, on or before August 1 of each~~
1188 ~~year, to the Executive Office of the Governor, showing in detail~~
1189 ~~the obligees to whom obligated and the amounts of such~~
1190 ~~obligations. Any such encumbered balance remaining undisbursed~~
1191 ~~on September 30 of the same calendar year in which such~~
1192 ~~certification was made shall revert to the fund from which~~
1193 ~~appropriated, except as provided in subsection (3), and shall be~~
1194 ~~available for reappropriation by the Legislature. In the event~~
1195 ~~such certification is not made and an obligation is proven to be~~
1196 ~~legal, due, and unpaid, then the obligation shall be paid and~~
1197 ~~charged to the appropriation for the current fiscal year of the~~
1198 ~~state agency or the legislative or judicial branch affected.~~
1199 ~~(b) Any balance of any appropriation, except an~~
1200 ~~appropriation for fixed capital outlay, for any given fiscal~~
1201 ~~year remaining after charging against it any lawful expenditure~~
1202 ~~shall revert to the fund from which appropriated and shall be~~
1203 ~~available for reappropriation by the Legislature.~~
1204 (d) ~~(c)~~ Each department and the judicial branch shall

1205 maintain the integrity of the General Revenue Fund.
1206 Appropriations from the General Revenue Fund contained in the
1207 original approved budget may be transferred to the proper trust
1208 fund for disbursement. Any reversion of appropriation balances
1209 from programs which receive funding from the General Revenue
1210 Fund and trust funds shall be transferred to the General Revenue
1211 Fund within 15 days after such reversion, unless otherwise
1212 provided by federal or state law, including the General
1213 Appropriations Act. The Executive Office of the Governor or the
1214 Chief Justice of the Supreme Court shall determine the state
1215 agency or judicial branch programs which are subject to this
1216 paragraph. This determination shall be subject to the
1217 legislative consultation and objection process in this chapter.
1218 The Education Enhancement Trust Fund shall not be subject to the
1219 provisions of this section.
1220 (2)(a) The balance of any appropriation for fixed capital
1221 outlay which is not disbursed but expended, contracted, or
1222 committed to be expended prior to February 1 of the second
1223 fiscal year of the appropriation, or the third fiscal year if it
1224 is for an educational facility as defined in chapter 1013 or for
1225 a construction project of a state university, shall be certified
1226 by the head of the affected state agency or the legislative or
1227 judicial branch on February 1 to the Executive Office of the
1228 Governor, showing in detail the commitment or to whom obligated
1229 and the amount of the commitment or obligation. The Executive
1230 Office of the Governor for the executive branch and the Chief
1231 Justice for the judicial branch shall review and approve or
1232 disapprove, consistent with criteria jointly developed by the

1233 Executive Office of the Governor and the legislative
1234 appropriations committees, the continuation of such unexpended
1235 balances. The Executive Office of the Governor shall, no later
1236 than February 28 ~~20~~ of each year, furnish the Chief Financial
1237 Officer, the legislative appropriations committees, and the
1238 Auditor General a report listing in detail the items and amounts
1239 reverting under the authority of this subsection, including the
1240 fund to which reverted and the agency affected.
1241 ~~(3) The President of the Senate and the Speaker of the~~
1242 ~~House of Representatives may notify the Executive Office of the~~
1243 ~~Governor to retain certified forward balances from legislative~~
1244 ~~budget entities until June 30 of the following fiscal year.~~
1245 Section 23. Subsection (2) of section 252.37, Florida
1246 Statutes, is amended to read:
1247 252.37 Financing.--
1248 (2) It is the legislative intent that the first recourse
1249 be made to funds regularly appropriated to state and local
1250 agencies. If the Governor finds that the demands placed upon
1251 these funds in coping with a particular disaster declared by the
1252 Governor as a state of emergency are unreasonably great, she or
1253 he may make funds available by transferring and expending moneys
1254 appropriated for other purposes, by transferring and expending
1255 moneys out of any unappropriated surplus funds, or from the
1256 Budget Stabilization Fund. Following the expiration or
1257 termination of the state of emergency, the Governor may transfer
1258 moneys with a budget amendment, subject to approval by the
1259 Legislative Budget Commission, ~~process a budget amendment under~~
1260 ~~the notice and review procedures set forth in s. 216.177 to~~

1261 ~~transfer moneys~~ to satisfy the budget authority granted for such
1262 emergency.
1263 Section 24. Section 273.02, Florida Statutes, is amended
1264 to read:
1265 273.02 Record and inventory of certain property.--The word
1266 "property" as used in this section means equipment, fixtures,
1267 and other tangible personal property of a nonconsumable and
1268 nonexpendable nature. The Chief Financial Officer shall
1269 establish by rule the requirements for the recording of property
1270 in the state's financial systems and for the periodic review of
1271 property for inventory purposes.~~, the value or cost of which is~~
1272 ~~$1,000 or more and the normal expected life of which is 1 year~~
1273 ~~or more, and hardback covered bound books that are circulated to~~
1274 ~~students or the general public, the value or cost of which is~~
1275 ~~$25 or more, and hardback covered bound books, the value or cost~~
1276 ~~of which is $250 or more. Each item of property which it is~~
1277 ~~practicable to identify by marking shall be marked in the manner~~
1278 ~~required by the Auditor General. Each custodian shall maintain~~
1279 ~~an adequate record of property in his or her custody, which~~
1280 ~~record shall contain such information as shall be required by~~
1281 ~~the Auditor General. Once each year, on July 1 or as soon~~
1282 ~~thereafter as is practicable, and whenever there is a change of~~
1283 ~~custodian, each custodian shall take an inventory of property in~~
1284 ~~his or her custody. The inventory shall be compared with the~~
1285 ~~property record, and all discrepancies shall be traced and~~
1286 ~~reconciled. All publicly supported libraries shall be exempt~~
1287 ~~from marking hardback covered bound books, as required by this~~
1288 ~~section. The catalog and inventory control records maintained by~~

1289 ~~each publicly supported library shall constitute the property~~
1290 ~~record of hardback covered bound books with a value or cost of~~
1291 ~~$25 or more included in each publicly supported library~~
1292 ~~collection and shall serve as a perpetual inventory in lieu of~~
1293 ~~an annual physical inventory. All books identified by these~~
1294 ~~records as missing shall be traced and reconciled, and the~~
1295 ~~library inventory shall be adjusted accordingly.~~
1296 Section 25. Section 273.025, Florida Statutes, is created
1297 to read:
1298 273.025 Financial reporting for recorded property.--The
1299 Chief Financial Officer shall establish by rule the requirements
1300 for the capitalization of property that has been recorded in the
1301 state's financial systems.
1302 Section 26. Subsections (2) and (5) of section 273.055,
1303 Florida Statutes, are amended to read:
1304 273.055 Disposition of state-owned tangible personal
1305 property.--
1306 (2) Custodians shall maintain records to identify each
1307 property item as to disposition. Such records shall comply with
1308 rules issued by the Chief Financial Officer ~~Auditor General~~.
1309 (5) All moneys received from the disposition of state-
1310 owned tangible personal property or from any agreement entered
1311 into under this chapter must be retained by the custodian and
1312 may be disbursed for the acquisition of exchange and surplus
1313 property and for all necessary operating expenditures~~, and are~~
1314 ~~appropriated for those purposes~~. The custodian shall maintain
1315 records of the accounts into which the money is deposited.
1316 Section 27. Section 274.02, Florida Statutes, is amended

1317 to read:
1318 274.02 Record and inventory of certain property.--
1319 (1) The word "property" as used in this section means
1320 fixtures and other tangible personal property of a nonconsumable
1321 nature ~~the value of which is $1,000 or more and the normal~~
1322 ~~expected life of which is 1 year or more~~.
1323 (2) The Chief Financial Officer shall establish by rule
1324 the requirements for the recording of property and for the
1325 periodic review of property for inventory purposes. ~~Each item of~~
1326 ~~property which it is practicable to identify by marking shall be~~
1327 ~~marked in the manner required by the Auditor General. Each~~
1328 ~~governmental unit shall maintain an adequate record of its~~
1329 ~~property, which record shall contain such information as shall~~
1330 ~~be required by the Auditor General. Each governmental unit shall~~
1331 ~~take an inventory of its property in the custody of a custodian~~
1332 ~~whenever there is a change in such custodian. A complete~~
1333 ~~physical inventory of all property shall be taken annually, and~~
1334 ~~the date inventoried shall be entered on the property record.~~
1335 ~~The inventory shall be compared with the property record, and~~
1336 ~~all discrepancies shall be traced and reconciled.~~
1337 Section 28. Paragraph (b) of subsection (3) of section
1338 338.2216, Florida Statutes, is amended to read:
1339 338.2216 Florida Turnpike Enterprise; powers and
1340 authority.--
1341 (3)
1342 (b) Notwithstanding the provisions of s. 216.301 to the
1343 contrary and in accordance with s. 216.351, the Executive Office
1344 of the Governor shall, on July 1 of each year, certify forward

1345 all unexpended funds appropriated or provided pursuant to this
1346 section for the turnpike enterprise. Of the unexpended funds
1347 certified forward, any unencumbered amounts shall be carried
1348 forward. Such funds carried forward shall not exceed 5 percent
1349 of the original approved ~~total~~ operating budget as defined in s.
1350 216.181(1) of the turnpike enterprise. Funds carried forward
1351 pursuant to this section may be used for any lawful purpose,
1352 including, but not limited to, promotional and market
1353 activities, technology, and training. Any certified forward
1354 funds remaining undisbursed on September 30 ~~December 31~~ of each
1355 year shall be carried forward.
1356 Section 29. Subsection (4) of section 1011.57, Florida
1357 Statutes, is amended to read:
1358 1011.57 Florida School for the Deaf and the Blind; board
1359 of trustees; management flexibility.--
1360 (4) Notwithstanding the provisions of s. 216.301 to the
1361 contrary, ~~the Executive Office of the Governor shall, on July 1~~
1362 ~~of each year, certify forward~~ all unexpended funds appropriated
1363 for the Florida School for the Deaf and the Blind~~. The~~
1364 ~~unexpended amounts in any fund~~ shall be carried forward and
1365 included as the balance forward for that fund in the approved
1366 operating budget for the following year.
1367 Section 30. Section 215.29, Florida Statutes, is repealed.
1368 Section 31. Except as otherwise expressly provided in this
1369 act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7197 PCB STA 06-03 Governmental Operations/Regulatory Fees
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee	8 Y, 0 N	Belcher	Belcher
1) Fiscal Council		Belcher	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates section 216.0236, F.S., to require that state agencies review the fees charged for providing regulatory services or regulating businesses and professions. The bill also requires each agency, as part of its legislative budget request, to provide to the Governor and Legislature alternatives for realigning revenues and/or costs to make the regulatory service or program totally self-sufficient or provide justification for a subsidy from other state funds. The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least once every 5 years.

The bill has no fiscal impact; however, mandated reviews could result in cost savings or fee adjustments at a future date which could impact state regulatory fee revenues and program costs. Fee adjustments as a result of the review process would impact state-regulated businesses and professions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED FUNDING:

BACKGROUND

To promote public health, safety, and welfare, the Legislature has authorized programs to regulate various professions, businesses, and products. These programs generally set standards for goods and services, license individuals and businesses that offer them, conduct inspections, and take enforcement actions to ensure compliance with state standards.

Regulatory Program Funding

In December 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report No. 05-57, *Legislature Should Consider Uniform Process to Determine Appropriate Regulatory Program Funding Levels*. The report noted that currently, Florida administers 190 regulatory programs. Of the $677 million in total funding for these programs in Fiscal Year 2004-05, general revenue provided $29 million. The report provided the following background information:

- Funding for regulatory programs is derived from three major sources—user charges, federal funds, and general revenue.
- Several factors should be considered in determining how regulatory programs should be funded, including the distribution of benefits, the feasibility of collecting user fees, and the impact of various types of fees on regulated entities.
- In general, user charges should be the primary source of funding for the state's regulatory programs and should be sufficient to cover all of the associated direct and indirect costs, as it helps reduce demands for general revenue funding, recognizes the benefits that regulation provides to regulated entities, and increases accountability because regulated entities help to monitor agency activities to ensure that the services they are funding are cost-effective.

OPPAGA's findings included:

- There is no overall policy for determining appropriate regulatory program funding sources and that most regulatory programs [in Florida] are not currently required to be self-supporting. Less than half (81, or 43%) of the state's 190 regulatory programs are statutorily required to be supported solely by user fees and/or federal funds and, in some cases, programs that are required to be self-supporting nonetheless receive general revenue.
- Current state accounting methods hinder determining appropriate funding levels for regulatory programs as the state's accounting system does not identify the total direct costs for all regulatory programs and agencies are using different methodologies to calculate the indirect costs of these programs.

OPPAGA's report identified several policy options for consideration by the legislature, including:

- Establishing a uniform policy governing regulatory program funding.
- Eliminating statutory caps on the amount of regulatory fees as these limits can become outdated if not updated over time to reflect inflation.

- Revising the legislative budget request instructions to require agencies to provide written justification when requesting general revenue for a regulatory program, which would assist in the determination as to whether the program provides sufficient broad public benefits to justify general revenue funding.
- Revising the legislative budget request instructions to establish a uniform methodology for calculating the cost of regulatory programs.

Regulatory Fee Structure

In December 2002, Senate Interim Project Report No. 2003-139, titled *Fee Equity – Examining the Fairness of Florida's Regulatory Fee Structure* was issued. The report noted that within the State annual budget are scores of separate revenue raising and spending streams. The report provided the following background issues:

- Regulatory fees pose unique sets of issues for the institutions and persons affected by government action through its police power or commerce regulating functions.
- Fees charged for services and for regulation of businesses and professions are set in statute either as a flat fee, a fee cap, or authorization is given to an agency or board to charge a fee to "cover the cost of such service."
- Many fees are capped and require legislation to change the cap.
- Recently some fees charged have been inadequate to cover the true cost of regulation.
- Concerns have been raised when the fees collected do not completely cover the cost of the benefits provided and with the seemingly disparate treatment among those regulated.

The Interim Project report included the following key findings:

- The corresponding costs of providing the regulation of service should be identifiable and relate back to the agency function.
- Generally, the fees set forth in the statute are to pay for certain costs accrued for the regulation of a profession or provision of a service. Because of policy considerations, the fees may not entirely cover the cost of regulating the profession or providing the service.
- Prescribing that all costs of providing a service or of regulating professions be covered requires that all costs be defined and allocated.
- The language for cost recovery varies in the statutes between agencies.
- State agencies perform a broad spectrum of services that can directly benefit a particular entity and at the same time benefit the public as a whole.

The Interim Report made the following recommendations:

- Fee structures should be reviewed to insure consistency with stated policy. Further, with the concept of cost recovery, the appropriateness of fee caps should be reviewed to make sure these upper limits are sufficient to cover all included costs.
- Any review should be tied to an existing systematic and periodic review process. The review should consider all costs of providing a service for which a fee is charged and of regulating professionals. This would assure that all costs are borne solely by those receiving the service or regulation. Sharing the cost among broader sources would have to be justified.

CHANGES PROPOSED BY THE BILL

The bill creates section 216.0236, Florida Statutes, to require each state agency to examine fees charged to regulate and oversee businesses or professions. It also requires that if an agency determines that the fees charged are not adequate to cover program costs and that an appropriation

from other state funds is necessary to supplement the direct or indirect costs for providing regulation and oversight, the agency will present alternatives for realigning revenues and/or costs to make the regulatory service or programs totally self-sufficient or demonstrate that the service or programs provides substantial benefits to the public which justify a subsidy from state funds. The bill requires the agency to present the alternatives to the Governor and the Legislature during the annual submission of their Legislative Budget Request. The bill requires the Legislature to review the alternatives during the next regular session after submission.

The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least every 5 year. The schedule for such review may be included in the legislative budget instructions that are developed pursuant to the requirements of s. 216.023, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 216.0236, F.S., to provide Legislative intent for funding the regulation of businesses and professions; to require agencies to review regulatory fees and costs annually and provide change alternatives to the Governor and Legislature if fees are not adequate to cover program costs; to require to Legislature to review the regulatory fee structure of all businesses and professions at least once every 5 years.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See D. Fiscal Comments

2. Expenditures:

   See D. Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could result in fee increases that will affect some consumers of the various goods or services provided by regulatory programs that are not currently self-supporting.

D. FISCAL COMMENTS:

It is expected that the review of regulatory fees and costs could impact both state revenues and expenditures at a future date. This is dependent on the results of the reviews and the actions taken by future Legislatures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to governmental operations; creating s.
3 216.0236, F.S.; providing legislative intent that all
4 costs of providing a regulatory service or regulating a
5 profession or business be borne solely by those who
6 receive the service or who are subject to regulation;
7 requiring each state agency to annually examine the fees
8 it charges for providing regulatory services and oversight
9 to businesses or professions; providing criteria for the
10 examination; requiring, under specified circumstances,
11 that each agency, as part of its legislative budget
12 request, provide to the Governor and the Legislature
13 alternatives to make a regulatory service or program self-
14 sufficient or provide justification for a partial subsidy
15 from other state funds; requiring periodic review of
16 regulatory fees by the Legislature; providing an effective
17 date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 216.0236, Florida Statutes, is created
22 to read:
23 216.0236 Agency fees for regulatory services or oversight;
24 criteria.--
25 (1) It is the intent of the Legislature that all costs of
26 providing a regulatory service or regulating a profession or
27 business be borne solely by those who receive the service or who
28 are subject to regulation. It is also the intent of the

29 Legislature that the fees charged for providing a regulatory
30 service or regulating a profession or business be reasonable and
31 take into account the differences between the types of
32 professions or businesses being regulated. Moreover, it is the
33 intent of the Legislature that state agencies operate as
34 efficiently as possible and regularly report to the Legislature
35 additional methods by which to streamline their operational
36 costs.
37 (2) In accordance with the instructions for legislative
38 budget requests, each state agency shall annually examine the
39 fees it charges for providing regulatory services and oversight
40 to businesses or professions. The annual examination shall
41 determine whether operational efficiencies can be achieved in
42 the regulatory program under examination, whether the regulatory
43 activity is an appropriate function that the agency should
44 continue at its current level, and whether the fees charged for
45 each regulatory program are:
46 (a) Based on revenue projections that are prepared using
47 generally accepted governmental accounting procedures or
48 official estimates by the Revenue Estimating Conference, if
49 applicable.
50 (b) Adequate to cover both the direct and indirect costs
51 of providing the regulatory service or oversight.
52 (c) Reasonable and take into account differences between
53 the types of professions or businesses that are regulated.
54 (3) If the agency determines that the fees charged for
55 regulatory services or oversight to businesses or professions
56 are not adequate to cover program costs and that an

57 appropriation from other state funds is necessary to supplement
58 the direct or indirect costs of providing a regulatory service
59 or program, the agency shall present to the Governor and the
60 Legislature as part of its legislative budget request
61 information regarding alternatives for realigning revenues and
62 costs to make the regulatory service or program totally self-
63 sufficient or shall demonstrate that the service or program
64 provides substantial benefits to the public that justify a
65 partial subsidy from other state funds. The Legislature shall
66 review the alternatives during the next regular session of the
67 Legislature.
68 (4) The Legislature shall review the regulatory fee
69 structure for all businesses and professions at least once every
70 5 years. The schedule for such review may be included in the
71 legislative budget instructions developed pursuant to the
72 requirements of s. 216.023.
73 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7207 PCB AGEA 06-01 Relating to Water Management Districts
SPONSOR(S): Agriculture & Environment Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture & Environment Appropriations Committee	10 Y, 0 N	Dixon	Dixon
1) State Resources Council	9 Y, 0 N	Lotspeich	Hamby
2) Fiscal Council		Dixon	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends current law to require the legislature to annually review the authorized millage rate for each water management district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by Chapter 373, F.S. However, the maximum millage rate for each district cannot exceed the rate established in subsection 373.503(3), F.S.

The bill revises the fiscal year for the water management districts from October 1 through September 30 to July 1 through June 30, and revises the water management district budget review process accordingly.

The bill has no fiscal impact.

This bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The legislature will review the water management districts' millage rates each year and set the amount of revenue each can raise.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Water Management District Millage Rates

Article VII, Section 9(b) of the Florida Constitution provides that ad valorem taxes may be levied for water management purposes in amounts no greater than 0.05 mills for the northwest portion of the state and no greater than 1.0 mill for the remainder of the state.

The legislature has created five water management districts.[1] The legislature has declared that the millage authorized for water management purposes by the state constitution shall only be levied by the five water management districts.[2] The districts may levy ad valorem taxes on property within the district solely for the purposes of water management as set forth by the legislature.[3]

The legislature has authorized millage rates for the districts that are equal to or less than the maximum allowed by the state constitution.[4] The current maximum total millage rate for each district is:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.
5. South Florida Water Management District: 0.80 mill.

The water management districts are special taxing districts.[5] A special taxing district may not be created with general taxing authority, and may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.[6]

The legislature has determined that the ad valorem taxes which the water management districts are authorized to levy are in proportion to the benefits to be derived by the real estate within the districts.[7]

Water Management District Budget Review

Background

The process for the adoption of water management district budgets originated in 1949 with the creation of flood control districts under Chapter 378, F.S.[8] Under that process, the fiscal year for the flood

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[1] Section 373.069, F.S.
[2] Paragraph 373.503(2)(a), F.S.
[3] Paragraph 373.503(3)(a), F.S.
[4] Id.
[5] Paragraph 189.403(6), F.S.
[6] Crowder v. Phillips, 146 Fla. 440, 1 So. 2d 629 (1941); State ex rel. City of Gainesville v. St. Johns River Water Management Dist., 408 So. 2d 1067 (Fla. Dist. Ct. App. 1st Dist. 1982).
[7] Subsection 373.503(4), F.S.
[8] s. 28, ch. 25209, 1949 Laws of Florida

control districts was July 1 through June 30. No executive or legislative branch review of the budgets was provided for in statute. In 1972, the Water Resources Act of 1972 created the five water management districts and incorporated the budget review provisions of Chapter 378, F.S., into Part V of Chapter 373, F.S., creating section 373.536, F.S.[9] No change was made to the fiscal year or to the review process.

As part of an omnibus finance and taxation bill in 1974 addressing numerous issues relating to ad valorem taxation, the fiscal year for the water management districts was changed to October 1 through September 30.[10]

In 1991, subsection (5) was added to s. 373.536, F.S., to require that all water management district "tentative" budgets be submitted to the Department of Environmental Regulation (the predecessor agency to the current Department of Environmental Protection) by August 5 of each year.[11] The DER was to review the budgets and submit comments to the governing board and to the Governor by September 5. Prior to December 15, the DER was to file with the Governor and the legislature a report summarizing "the expenditures of the districts by program area."

Paragraph 373.536(5)(a), F.S., was amended in 1993 to require that the tentative budgets also be submitted to the Governor's Office and the chairs of the appropriations committees in the Senate and House by August 5.[12] Paragraph 373.536(5)(b), F.S., was also amended in order to allow the Governor's Office and the appropriations chairs to submit comments to the district governing boards by September 5.

In 1994, the legislature created the Water Management District Review Commission to perform a comprehensive review of Florida's water management system including consideration of ways to improve financial and programmatic accountability of districts and potential revision of the districts' budget development and adoption procedures.[13] The Commission made several recommendations including:

- The Governor should approve or reject the annual budget of each water management district.
- The Executive Office of the Governor should establish permanent position(s) to review the financial and programmatic activities of Florida's five water management districts. The position(s) should further serve as Executive Branch liaison to, and coordinate appropriate review deadlines and notices with, the legislative committees having substantive and appropriation jurisdiction over water management districts.
- Each district should provide a copy of its proposed budget, the past year's expenditures, and its annual in-house financial audit to the Governor, the President of the Senate, the Speaker of the House, the chairs of all legislative committees and sub-committees with substantive or appropriation jurisdiction over water management districts, the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district ("the entities"). The district should [shall] respond in writing to each comment received from any of the entities, and should [shall] furnish copies of those comments and written responses to all entities.

The Commission had a 1996 legislative package to implement its recommendations. While the bulk of the recommendations failed to pass, s. 373.536, F.S., was amended in 1996 to authorize the Governor to "approve or disapprove, in whole or in part, the budget of each water management district."[14] The

[9] s. 25, ch. 72-299, Laws of Florida
[10] s. 18, ch. 74-234, Laws of Florida
[11] s. 9, ch. 91-288, Laws of Florida
[12] s. 24, ch. 93-213, Laws of Florida
[13] ch. 94-270, Laws of Florida
[14] s. 5, ch. 96-339, Laws of Florida

Governor was also required to "develop a process to facilitate review and communication regarding water management district budgets."

The stakeholders involved with the work of the Water Management District Review Commission continued to work on the concepts and language during the 1996-97 interim. This work resulted in legislation in 1997. The 1997 legislation further amended s. 373.536, F.S., to require that the tentative budgets be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees, as well as to the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district.[15]

Current Law

Under current law, the fiscal year for the water management districts is from October 1 through September 30.[16] In this fiscal year cycle, the first step is for the budget officer of each water management district to submit to the governing board of the district by July 15 a tentative budget for the fiscal year beginning October 1.[17]

By August 1, a copy of the tentative budget is to be provided by the district to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees.[18] The House and Senate appropriations chairs may submit comments and objections on the proposed budgets to the districts by September 5.[19] In its adoption of the final budget, the governing board must include a written response to any comments or objections of the appropriation chairs. The record of the governing board meeting adopting the final budget is required to be transmitted to the Governor, and the chairs of the appropriation committees.[20]

Before December 15, the Governor's Office is required to file with the legislature a report that summarizes its review of the tentative budgets.[21]

EFFECT OF PROPOSED CHANGES

Millage Rates

The bill provides that in order to insure that the taxes authorized by Chapter 373, F.S., continue to be in proportion to the benefits derived of real estate within the districts, the legislature is required to annually review the authorized millage rate for each district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by Chapter 373, F.S. However, the maximum millage rate for each district cannot exceed the rate currently established in subsection 373.503(3), F.S.

Should the legislature not set the revenue in any year by July 1, the bill contains a contingency provision allowing the districts to raise revenues equal to those authorized in the preceding fiscal year with an adjustment for the percentage change in the Consumer Price Index for the preceding fiscal year.

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[15] s. 16, ch. 97-160, Laws of Florida
[16] Subsection 373.536(1), F.S.
[17] Subsection 373.536(2), F.S.
[18] Paragraph 373.536(5)(c), F.S.
[19] Paragraph 373.536(5)(e), F.S.
[20] Id.
[21] Paragraph 373.536(5)(f), F.S.

Budget Review

In order to facilitate the legislature's annual review of the millage rate, the bill revises the water management district fiscal year to have it run concurrent with the state fiscal year; that is, from July 1 through June 30.

The bill removes the current requirement that the tentative budget be submitted to the governing board by July 15, and changes from August 1 to February 1 the date by which the tentative budgets are to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees.

The bill also changes the date by which the Governor's Office must submit its report summarizing the district budgets from December 15 to September 15.

C. SECTION DIRECTORY:

Section 1. Amends section 373.503, F.S., relating to water management districts millage rates.

Section 2. Amends section 373.536, F.S., relating to the fiscal year of the water management districts.

Section 3. Provides that each district should begin planning for the change in fiscal year.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill provides for the legislature to annually review the millage rates and set the amount of revenue the five water management districts can raise. This could have the impact of lowering property taxes or raising property taxes within the water management districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to water management districts; amending s.
3 373.503, F.S.; providing that a water management
4 district's millage rate is subject to annual authorization
5 by the Legislature; requiring the Legislature to annually
6 review a district's millage rate; requiring the
7 Legislature to annually set the amount of revenue
8 authorized to be raised by a district from ad valorem
9 taxes; providing for the amount of authorized revenue to
10 be raised by a district if the Legislature does not set
11 the amount by a specified date; amending s. 373.536, F.S.;
12 revising the beginning and ending dates of a district's
13 fiscal year; revising the date by which a district must
14 submit a tentative budget to the Governor and the
15 Legislature; eliminating the authorization for the
16 Legislature to comment on such budgets; eliminating the
17 requirement for districts to respond to such comments and
18 to forward such responses to the Governor and Legislature;
19 revising the date by which the Executive Office of the
20 Governor must file a specified report with the
21 Legislature; directing districts to implement conforming
22 measures; providing an effective date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Paragraph (a) of subsection (3) of section
27 373.503, Florida Statutes, is amended, subsection (5) is

28 renumbered as subsection (6), and a new subsection (5) is added
29 to that section, to read:
30 373.503 Manner of taxation.--
31 (3)(a) Subject to annual authorization by the Legislature
32 to levy ad valorem taxes under subsection (5), the districts may
33 levy ad valorem taxes on property within the district solely for
34 the purposes of this chapter and of chapter 25270, 1949, Laws of
35 Florida, as amended, and chapter 61-691, Laws of Florida, as
36 amended. The authority to levy ad valorem taxes as provided in
37 this act shall commence with the year 1977. However, the taxes
38 levied for 1977 by the governing boards pursuant to this section
39 shall be prorated to ensure that no such taxes will be levied
40 for the first 4 days of the tax year, which days will fall prior
41 to the effective date of the amendment to s. 9(b), Art. VII of
42 the State Constitution, which was approved March 9, 1976. When
43 appropriate, taxes levied by each governing board may be
44 separated by the governing board into a millage necessary for
45 the purposes of the district and a millage necessary for
46 financing basin functions specified in s. 373.0695. ~~Beginning~~
47 ~~with the taxing year 1977, and~~ Notwithstanding the provisions of
48 any other general or special law to the contrary and subject to
49 annual authorization by the Legislature to levy ad valorem taxes
50 under subsection (5), the maximum total millage rate for
51 district and basin purposes shall be:
52 1. Northwest Florida Water Management District: 0.05 mill.
53 2. Suwannee River Water Management District: 0.75 mill.
54 3. St. Johns River Water Management District: 0.6 mill.
55 4. Southwest Florida Water Management District: 1.0 mill.

56 5. South Florida Water Management District: 0.80 mill.
57 (5) To ensure that the taxes authorized by this chapter
58 continue to be in proportion to the benefits derived by the
59 several parcels of real estate within the districts, the
60 Legislature shall annually review the authorized millage rate
61 for each district and annually set the amount of revenue
62 authorized to be raised by each district from the taxes
63 authorized by this chapter. However, if the annual amount of
64 revenue authorized to be raised by each district is not set by
65 the Legislature on or before July 1 of each year, each district
66 is authorized to raise the amount of revenue authorized by the
67 Legislature in the preceding fiscal year and adjusted by the
68 percentage change in the Consumer Price Index for the preceding
69 fiscal year.
70 Section 2. Subsections (1) and (2) and paragraphs (c),
71 (e), and (f) of subsection (5) of section 373.536, Florida
72 Statutes, are amended to read:
73 373.536 District budget and hearing thereon.--
74 (1) FISCAL YEAR.--The fiscal year of districts created
75 under the provisions of this chapter shall extend from July
76 ~~October~~ 1 of one year through June ~~September~~ 30 of the following
77 year.
78 (2) BUDGET SUBMITTAL.--The budget officer of the district
79 shall~~, on or before July 15 of each year,~~ submit for
80 consideration by the governing board of the district a tentative
81 budget for the district covering its proposed operations and
82 funding requirements for the ensuing fiscal year.

83 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND
84 APPROVAL.--
85 (c) Each water management district shall, by February
86 ~~August~~ 1 of each year, submit for review a tentative budget to
87 the Governor, the President of the Senate, the Speaker of the
88 House of Representatives, the chairs of all legislative
89 committees and subcommittees with substantive or fiscal
90 jurisdiction over water management districts, as determined by
91 the President of the Senate or the Speaker of the House of
92 Representatives as applicable, the secretary of the department,
93 and the governing body of each county in which the district has
94 jurisdiction or derives any funds for the operations of the
95 district.
96 ~~(e) By September 5 of the year in which the budget is~~
97 ~~submitted, the House and Senate appropriations chairs may~~
98 ~~transmit to each district comments and objections to the~~
99 ~~proposed budgets. Each district governing board shall include a~~
100 ~~response to such comments and objections in the record of the~~
101 ~~governing board meeting where final adoption of the budget takes~~
102 ~~place, and the record of this meeting shall be transmitted to~~
103 ~~the Executive Office of the Governor, the department, and the~~
104 ~~chairs of the House and Senate appropriations committees.~~
105 (e) ~~(f)~~ The Executive Office of the Governor shall
106 annually, on or before September ~~December~~ 15, file with the
107 Legislature a report that summarizes its review of the water
108 management districts' tentative budgets and displays the adopted
109 budget allocations by program area. The report must identify the
110 districts that are not in compliance with the reporting

111 requirements of this section. State funds shall be withheld from
112 a water management district that fails to comply with these
113 reporting requirements.
114 Section 3. For the 2006-2007 and 2007-2008 fiscal years,
115 notwithstanding any law to the contrary, the water management
116 districts are directed to budget and plan for their fiscal
117 management to conform to the provisions of this act.
118 Section 4. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7213 PCB TEDA 06-01 Quick Action Closing
SPONSOR(S): Transportation & Economic Development Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation & Economic Development Appropriations Committee	15 Y, 0 N	McAuliffe	Gordon
1) Economic Development, Trade & Banking Committee	10 Y, 0 N	Carlson	Carlson
2) Fiscal Council		McAuliffe	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill provides new eligibility criteria for projects funded by the Quick Action Closing Fund. The new criteria requires eligible projects to:

- Be in a targeted high-growth and high-wage industry.
- Have a positive return on investment of at least five to one.
- Be an inducement for expansion or location in Florida.
- Pay an annual wage at least 125 percent of the private sector average wage.
- Be supported by the local community.

The bill provides that Enterprise Florida Inc. (EFI), shall determine the eligibility of each project based on the new criteria; however, EFI, in consultation with the Office of Tourism Trade and Economic Development may waive the criteria based on extraordinary circumstances when the project would significantly benefit the local or regional economy.

The bill also requires the Governor to consult directly with the Speaker of the House of Representatives and the President of the Senate before giving approval for a project.

The bill provides an appropriation of $50 million in general revenue to the Quick Action Closing Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – The bill increases eligibility criteria for projects funded by the Quick Action Closing Fund and provides an increased appropriation to the fund over prior fiscal years.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The 1999 Legislature created the Quick Action Closing Fund (s. 288.1088, F.S.) within the Office of Tourism, Trade and Economic Development (OTTED) for the purpose of helping Florida to compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities. Enterprise Florida, Inc. (EFI), evaluates proposals for the use of the Quick Action Closing Fund (QACF), makes recommendations to OTTED, and describes the nature of the business and its products or services, the number of jobs to be created and the annual average wages of the jobs, the cumulative amount of investment, the impacts of the business at the regional or state level or upon the state's universities and community colleges, and what role the incentive is expected to play in the business's decision to locate or expand in the state, or for a private investor to provide critical rural infrastructure.

Currently, eligibility criteria for projects funded by QACF are not provided in statute, but the criteria used by EFI require a project to:

- Be in a targeted industry as referenced in s. 288.106, F.S.;
- Have a positive payback ratio;
- Create 10 new jobs, and if an expansion, must expand jobs by at least 10 percent; and
- Pay an average annual wage at least 115 percent of the area or statewide private sector average wage.

Once EFI makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions that the project must meet to obtain the incentive funds.

The Governor must consult with the President of the Senate and the Speaker of the House of Representatives before giving final approval for using the QACF for the project and must recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S.

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions for the payment of moneys from the QACF. Conditions in the contract include those factors identified by EFI in its request to OTTED and also include sanctions for failure to meet performance conditions. EFI is responsible for validating the performance of the contract and reporting to the Governor and the Legislature within 6 months after contract completion.

According to EFI's 2005 Incentives Report, the QACF assisted seven businesses with locating or expanding in Florida. These businesses are creating and retaining 2,818 high quality jobs in Florida at an average expected wage of $45,273. In fiscal year 2005-2006, the QACF was appropriated $10 million.

Effect of Proposed Changes:

This bill provides new eligibility criteria for projects funded by the Quick Action Closing Fund. The new criteria requires eligible projects to:

- Be in a targeted high-growth and high-wage industry.
- Have a positive return on investment of at least five to one.
- Be an inducement for expansion or location in Florida.
- Pay an annual wage at least 125 percent of the private sector average wage.
- Be supported by the local community.

The bill provides that EFI shall determine the eligibility of each project based on the new criteria; however, EFI, in consultation with the Office of Tourism Trade and Economic Development may waive the criteria based on extraordinary circumstances when the project would significantly benefit the local or regional economy. The bill also requires the Governor to consult directly with the House Speaker and the Senate President before giving approval for a project.

The bill provides an appropriation of $50 million in general revenue to the QACF.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.1088, F.S., providing new criteria for eligibility for the QACF.

Section 2. Provides a $50 million appropriation.

Section 3. Provides this bill will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides an appropriation of $50 million in general revenue to the QACF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that qualify for funding through the QACF will benefit from state funding for locating or expanding their company in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 34 of the bill uses the term "extraordinary circumstances" to describe the condition under which OTTED and EFI may waive eligibility criteria for an award under QACF. This term is not defined and may not provide sufficient guidance as to what constitutes the proper conditions for waiver.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the Quick Action Closing Fund; amending
3 s. 288.1088, F.S.; providing eligibility criteria for
4 receipt of funds; requiring Enterprise Florida, Inc., to
5 determine eligibility using specified criteria; providing
6 for waiver of eligibility criteria under certain
7 circumstances; requiring the Governor to provide
8 evaluations of certain projects to the President of the
9 Senate and the Speaker of the House of Representatives;
10 providing an appropriation; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (2) and paragraphs (a) and (b) of
15 subsection (3) of section 288.1088, Florida Statutes, are
16 amended to read:
17 288.1088 Quick Action Closing Fund.--
18 (2) There is created within the Office of Tourism, Trade,
19 and Economic Development the Quick Action Closing Fund. Projects
20 eligible for receipt of funds from the Quick Action Closing Fund
21 shall:
22 (a) Be in a targeted industry as referenced in s. 288.106.
23 (b) Have a positive payback ratio of at least 5 to 1.
24 (c) Be an inducement to the project's location or
25 expansion in the state.
26 (d) Pay an average annual wage of at least 125 percent of
27 the areawide or statewide private-sector average wage.

28 (e) Be supported by the local community in which the
29 project is to be located.
30 (3)(a) Enterprise Florida, Inc., shall determine
31 eligibility of each project consistent with the criteria in
32 subsection (2). Enterprise Florida, Inc., in consultation with
33 the Office of Tourism, Trade, and Economic Development, may
34 waive these criteria based on extraordinary circumstances when
35 the project would significantly benefit the local or regional
36 economy. Enterprise Florida, Inc., shall evaluate individual
37 proposals for high-impact business facilities and forward
38 recommendations regarding the use of moneys in the fund for such
39 facilities to the director of the Office of Tourism, Trade, and
40 Economic Development. Such evaluation and recommendation must
41 include, but need not be limited to:
42 1. A description of the type of facility or
43 infrastructure, its operations, and the associated product or
44 service associated with the facility.
45 2. The number of full-time-equivalent jobs that will be
46 created by the facility and the total estimated average annual
47 wages of those jobs or, in the case of privately developed rural
48 infrastructure, the types of business activities and jobs
49 stimulated by the investment.
50 3. The cumulative amount of investment to be dedicated to
51 the facility within a specified period.
52 4. A statement of any special impacts the facility is
53 expected to stimulate in a particular business sector in the
54 state or regional economy or in the state's universities and
55 community colleges.

56 5. A statement of the role the incentive is expected to
57 play in the decision of the applicant business to locate or
58 expand in this state or for the private investor to provide
59 critical rural infrastructure.
60 (b) Upon receipt of the evaluation and recommendation from
61 Enterprise Florida, Inc., the director shall recommend approval
62 or disapproval of a project for receipt of funds from the Quick
63 Action Closing Fund to the Governor. In recommending a project,
64 the director shall include proposed performance conditions that
65 the project must meet to obtain incentive funds. The Governor
66 shall provide the evaluations of projects recommended for
67 approval to the President of the Senate and the Speaker of the
68 House of Representatives and consult directly with the President
69 of the Senate and the Speaker of the House of Representatives
70 before giving final approval for a project. The Executive Office
71 of the Governor shall recommend approval of a project and the
72 release of funds pursuant to the legislative consultation and
73 review requirements set forth in s. 216.177. The recommendation
74 must include proposed performance conditions that the project
75 must meet in order to obtain funds.
76 Section 2. There is appropriated $50 million from
77 nonrecurring funds from the General Revenue Fund in fiscal year
78 2006-2007 to the Quick Action Closing Fund for the 2006-2007
79 fiscal year.
80 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7235 PCB JA 06-01 Continuing Implementation of Constitutional Revision 7 to Article V
SPONSOR(S): Judiciary Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Appropriations Committee	4 Y, 0 N, w/CS	Brazzell	DeBeaugrine
1) Fiscal Council		Brazzell	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 "allocates state court system funding among the state, counties, and users of courts." Revision 7 was to be "fully effectuated" by July 1, 2004.

The bill addresses a variety of issues with budgetary impacts related to the implementation of Revision 7 to Article V of the state constitution. The bill:

- Clarifies that parents of juveniles involved in delinquency proceedings are responsible for payment of costs of prosecution and representation under certain circumstances;
- Revises the budgeting and reporting procedures for clerks of court;
- Amends the procedure for identifying counties which do not budget sufficient funds to fulfill their responsibilities for court funding under s. 29.008(1), F.S., and for rectifying such situations;
- Provides additional requirements for disclosure by clerks when individuals are posting bond monies that may be used to pay for the detainee's other outstanding court obligations;
- Requires the allocation of a payment by a misdemeanant probationer among that individual's outstanding obligations;
- Redirects the $2.00 court technology fee currently paid to counties for funding their court-related technology obligations to a trust fund for distribution to counties as grants-in-aid under certain conditions and revises the process for spending those funds;
- Clarifies counties' reporting responsibilities regarding their use of funds generated by surcharges imposed to fund state court facilities; and
- Moves certain provisions of law relating to court costs into chapter 938, F.S.

The bill appears to have a fiscal impact on state government and counties. See "Fiscal Analysis and Economic Impact Statement."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill reduces the duties of the Department of Revenue regarding the review of county budgets for funding court-related responsibilities and institutes a new process for this review involving the Administration Commission. The bill establishes new advisory boards in each judicial circuit.

B. EFFECT OF PROPOSED CHANGES:

Payment of Fees for Representation and Prosecution

Present Situation

Currently, certain sections of Florida law provide for the repayment of the costs of prosecution and representation by certain persons in certain proceedings; however, some have interpreted these sections as not applying to juveniles in certain delinquency proceedings.

Proposed Changes

The bill amends ss. 27.52 and 938.27, F.S., to clarify that parents of adjudicated juveniles are responsible for certain costs, including costs of representation and the costs of prosecution, respectively. It amends ss. 28.35 and 938.27, F.S., to allow enrollment of such parents in payment plans to repay these costs under certain conditions.

Clerks of Court Court-Related Budget Process

Present Situation

Currently, s. 28.35, F.S., establishes the Florida Clerks of Court Operations Corporation (corporation) and, among other provisions, assigns it various duties relating to reviewing and certifying clerks' proposed court-related budgets. Section 28.36, F.S., provides the process to be used in setting clerks' court-related budgets. This process uses formulae to determine the maximum annual budget amount allowed a clerk, though under certain conditions the Legislative Budget Commission may approve increases to individual clerks' budgets. Any unspent revenues are to be provided to the General Revenue Fund. Outside of these general limitations, however, each clerk has significant autonomy in how he or she expends state funds. This has allowed some clerks to make spending decisions that have been questioned and has resulted in less revenue being provided to the General Revenue Fund. The corporation did not respond to requests for information on one such incident because of the perception that providing this information was outside the scope of its duties and responsibilities.

Proposed Changes

The bill amends ss. 28.25 and 28.36, F.S to provide for more detailed reporting by clerks about their specific proposed and actual expenditures and requires the corporation's approval for a clerk's certified budget to be amended except in those situations when the Legislative Budget Commission's approval is required. The PCB also adds the responsibility of responding to Legislative inquiries regarding clerk budgets to the corporation's statutory duties and responsibilities.

Department of Revenue Oversight of County Article V Budgets

Present Situation

Currently s. 29.008(4), F.S., provides a process for the Department of Revenue (DOR) to review whether counties are budgeting sufficient funding for certain court-related responsibilities under s. 29.008(1), F.S. The statute provides a formula that dictates the minimum amount a county must budget, requires the submission of budget documents to the DOR, and, if the DOR finds that the county is not meeting its requirement to budget sufficient funds, requires the DOR to withhold other funds that would otherwise be remitted to a county and instead pay the county's unbudgeted court-related funding obligations. The DOR reviewed this process, and in its report *Reporting and Oversight of County Court-Related Funding Obligations: Review and Recommendations* (November 15, 2005), highlighted problems with the current process. Among other recommended changes, DOR suggests that the agency be relieved of its obligation to determine county compliance with their budgeting responsibilities, in part because the agency believes the review duplicates another required to be conducted by the Chief Financial Officer (CFO) and that the duty falls within the core competency of the Department of Financial Services.

Proposed Changes

The bill adopts the DOR's recommendation to end the DOR's responsibility to determine county compliance with their budgeting responsibilities by replacing DOR review of county budgets with a process similar to that provided in s. 30.49, F.S., for sheriffs to appeal what they believe to be inadequate county funding. The new process requires the chief judge of the circuit to detail the deficiencies expected to result from the lack of funding and the funding required to correct them and provide this to the board of county commissioners (board). If the board does not respond to the chief judge's satisfaction, the chief judge may appeal to the Administration Commission, whose decision is final.

Payment of Outstanding Obligations from Posted Bond

Present Situation

Currently s. 903.286, F.S., requires the clerk of court to withhold outstanding court fees, court costs, and criminal penalties from a cash bond posted by someone other than a bail bond agent. Thus the person posting bond may not be returned the full amount of the bond if outstanding court fees, court costs, and criminal penalties exist. However, the section does not require the clerk to provide notice to the person posting the bond that such obligations may be withheld.

Proposed Changes

The bill requires clerks of court to inform persons posting bond that outstanding court fees, court costs, and criminal penalties may be withheld and to provide an itemized listing of these amounts so that persons posting bond are aware of the total that would be withheld from the posted bond. The PCB also specifies that the clerk may only withhold these monies from bonds posted after June 30, 2005, as July 1, 2005, was the effective date of the statute allowing the withholding of these monies.

Article V Technology Funding

Present Situation

Section 29.008(1), F.S., provides that "Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems . . ." Section 29.008(f)2., F.S., defines "communication services" to include "all

computer networks, systems and equipment, including computer hardware and software, modems printers, wiring, network connections, maintenance, support staff or services. . . training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, and the offices of the clerks of the circuit and county courts and the capability to connect those entities . . . " Section 29.008(h), F.S., defines "existing multiagency criminal justice information systems."

Section 28.24(12)(e)1., F.S., provides for $2.00 of a $4.00 per page service charge for certain documents filed with the clerk of court to be distributed to the board of county commissioners to be used for court-related technology and court technology needs as defined in s. 29.008(1)(f)2. and (h), F.S. According to the Florida Association of Court Clerks and Comptrollers, in calendar year 2005, this fee generated $85.4 million for counties.

Section 29.0086, F.S., establishes the Article V Technology Board. Section 29.0086(5)(c), F.S., required the Article V Technology Board to issue a report by January 15, 2006, which, among other requirements, was to "propose an operational governance structure to achieve and maintain the necessary level of integration among system users at both the state and judicial circuit levels . . ." Accordingly, the Article V Technology Board's report recommended the establishment of a statewide governing board and judicial circuit governing boards. The report also recommended that the $2.00 fee administered at the county level be administered on a judicial circuit level by a joint committee composed of the chief judge, state attorney, and public defender.

Proposed Changes

The bill extends the term of the Article V Technology Board through December 31, 2006. The bill also requires the establishment of Judicial Circuit Article V Technology Advisory Councils (advisory councils) in each circuit chaired by the chief judge or his or her designee and including as members the public defender, state attorney, Florida Bar representative, sheriff, clerk, and a county representative. The primary responsibilities of the advisory councils are to develop an initial strategic plan and subsequent updated strategic plans to address court-related technology and court technology needs as defined in s. 29.008(1)(f)2 and (h), F.S., and to promote data integration and access among the stakeholders in the court system. The bill increases and redirects the $2.00 per page fee currently provided to the boards of county commissioners to the Court Technology Trust Fund and provides that the fee may be disbursed as grants-in-aid to counties which agree to use these funds to implement the strategic plan developed by the advisory councils and approved by the chief judge.

Reporting on County-Imposed Surcharges

Present Situation

Currently, the clerks of court are required to report quarterly on the amount of funds collected by counties pursuant to s. 318.18(13)(a) and (b), F.S.

Proposed Changes

The bill amends s. 318.18(13), F.S., to provide that the county, rather than the clerk of court, report on the funds collected by the county. The bill also requires additional reporting by the county on the amount of funds expended and the uses of the funds.

Payment of Obligations by Misdemeanant Probationers

Present Situation

Currently, counties handle in a variety of ways the collection of certain court-related obligations from the misdemeanant probationers they supervise either using county staff or via a contract with another

entity. These obligations include fees for supervision as well as restitution, fines, fees, and court costs. In at least one county, during the period of supervision only the supervision fee is being collected, delaying the collection of payments for the probationer's other obligations.

Proposed Changes

The bill amends s. 948.15, F.S., to provide that entities providing probation services for offenders sentenced by the county court shall establish a process to collect outstanding obligations, including fines, fees, and court costs, restitution, and the cost of supervision. It also provides that if any payment made by a misdemeanant probationer is insufficient to cover the amount of the obligations then due, the payment will be allocated proportionally among the probationer's obligations.

Transfer and Renumbering of Court Cost-related Statutory Provisions

The bill also transfers and renumbers s. 775.083(2), F.S., relating to court costs collected to fund county crime prevention programs, to chapter 938, F.S., and renumbers s. 939.185, F.S., regarding county-authorized court costs to fund various court-related programs, also to place it in chapter 938, F.S. Chapter 938, F.S., addresses court costs.

C. SECTION DIRECTORY:

Section 1 amends s. 27.52, F.S., providing for liability for fees, costs, and charges of representation in delinquency proceedings.

Section 2 amends s. 27.561, F.S., to require defendant-recipients or parents defaulting on payment of attorney's fees or costs to enroll in a payment plan under certain circumstances

Section 3 amends s. 28.35, F.S., creating additional duties of the Florida Clerks of Court Operations Corporation.

Section 4 amends s. 28.36, F.S., regarding the clerks of court budget process.

Section 5 amends s. 29.008, F.S., to revise the process for determining and compelling county compliance with their Article V funding responsibilities.

Section 6 amends s. 903.286, F.S., to provide additional notice requirements for persons posting cash bonds.

Section 7 amends s. 28.24, F.S., regarding the distribution and use of the $2.00 fee directed to counties for funding court-related technology and court technology needs.

Section 8 amends s. 29.0086, F.S., repealing the Article V Technology Board effective January 1, 2007.

Section 9 creates s. 29.0087, F.S., to establish in each judicial circuit a Judicial Circuit Article V Technology Advisory Council and provide for membership, purposes, and duties.

Section 10 amends s. 318.18, F.S., to require counties rather than clerks of court to report information regarding their collection and use of surcharges to fund court facilities.

Section 11 amends s. 938.27, F.S., to require parents of adjudicated juveniles to enroll in payment plans to pay certain costs of prosecution.

Section 12 amends s. 938.29, F.S., to require defendants found to have committed a delinquent act who have received the assistance of the public defender's office or a court-appointed attorney to be liable for payment of attorney's fees and costs.

Section 13 amends s. 948.15, F.S., regarding the collection of obligations from misdemeanant county probationers.

Section 14 renumbers s. 939.185, F.S., as s. 938.195, F.S.

Section 15 transfers, renumbers, and amends s. 775.083 (2), F.S., as s. 938.065, F.S.

Section 16 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state may realize additional revenue from payments by certain parents of juveniles involved in delinquency proceedings for costs of prosecution and representation.

   The state will also receive proceeds from the $2.05 recording fee which will be deposited into the Court Technology Trust Fund. In calendar year 2005, when set at $2.00, this fee generated $85.4 million.

   Collection of court costs and fines may increase due to the change in the collections procedure.

2. Expenditures:

   The extension of the Article V Technology Board through December 31, 2006, is estimated to require $250,000 in General Revenue.

   The bill also provides for state financial assistance to counties from the Court Technology Trust Fund. At current levels of collections, expenditures from the trust fund would be approximately $85 million per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill changes the distribution of the $2.00 technology fee that is currently provided directly to counties to a grant-in-aid to be paid upon the counties' compliance with certain requirements. If counties choose not to comply with these requirements, they could experience a reduction in revenues.

   The bill modifies the process for finding that counties are not in compliance with their responsibilities for funding certain court-related items such that counties may be less vulnerable to withholding of other revenues by the Department of Revenue to pay for funding such items, since a more detailed process would need to be followed before any withholdings occurred.

   Counties providing misdemeanant probation services may experience delays in receiving the fees for this service from their clients due to the allocation of payments by their clients among all of their court-related obligations.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A larger number of parents of juveniles involved in certain delinquency proceedings may be required to pay for costs of prosecution and representation. The Florida Association of Court Clerks' CCIS system will receive $0.05 less in recording fees per page. In calendar year 2005, when set at $0.10, this fee generated $4.27 million.

Private providers of misdemeanant probation services may experience delays in receiving the fees for this service due to the allocation of payments by their clients among all of the individual client's court-related obligations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to continuing implementation of
3 Constitutional Revision 7 to Article V; amending s. 27.52,
4 F.S.; providing for liability for fees, costs, and charges
5 of representation in delinquency proceedings; expanding a
6 provision imposing a lien; amending s. 27.561, F.S.;
7 deleting authorization for a court to reduce or revoke
8 attorney's fees or costs under certain circumstances;
9 requiring defendant-recipients or parents defaulting on
10 payment of attorney's fees or costs to enroll in a payment
11 plan under certain circumstances; amending s. 28.24, F.S.;
12 decreasing a portion of a fee distributed to the Florida
13 Association of Court Clerks and Comptroller, Inc., used to
14 fund court-related technology needs; increasing a portion
15 of a fee used to fund court-related technology needs and
16 court technology needs and redirecting its distribution
17 from the boards of county commissioners to the Court
18 Technology Trust Fund; specifying additional uses of the
19 fee; providing criteria and requirements for use and
20 distribution of funds in the trust fund; amending s.
21 28.35, F.S.; providing additional duties of the Florida
22 Clerks of Court Operations Corporation; providing
23 requirements for the corporation relating to certain
24 budget amendments; prohibiting a clerk from making certain
25 noncomplying expenditures; amending s. 28.36, F.S.;
26 correcting cross-references; providing expenditure
27 requirements for certain budgets; providing expenditure
28 recording and reporting requirements for clerks; amending

29 s. 29.008, F.S.; specifying methodology, criteria, and
30 procedures for determining noncompliance of counties in
31 funding court-related functions; providing duties of a
32 chief judge, the board of county commissioners, the
33 Executive Office of the Governor, and the Administration
34 Commission; revising provisions for withholding certain
35 revenue sharing receipts by the Department of Revenue;
36 providing a definition; amending s. 29.0086, F.S.;
37 providing an additional reporting requirement of the
38 Article V Technology Board; providing for future repeal of
39 the Article V Technology Board; creating s. 29.0087, F.S.;
40 establishing in each judicial circuit a Judicial Circuit
41 Article V Technology Advisory Council; providing for
42 membership; providing for terms; providing for serving
43 without compensation; providing for per diem and travel
44 expenses; providing for staff for the councils; providing
45 for meetings; providing purposes and duties; amending s.
46 44.103, F.S.; providing additional requirements and
47 procedures for court-ordered nonbinding arbitration
48 proceedings; authorizing courts to assess certain costs
49 against parties requesting de novo trials after
50 arbitration; providing cost assessment criteria; providing
51 a definition; amending s. 218.245, F.S.; revising
52 apportionment criteria for revenue sharing distributions
53 for certain local governments; amending s. 318.18, F.S.;
54 revising reporting requirements for infraction or
55 violation surcharge funds used to finance court
56 facilities; amending s. 903.286, F.S.; revising authority

57 of the clerk of court to withhold funds from return of
58 certain cash bonds for unpaid court fees, court costs, and
59 criminal penalties; providing notice requirements of such
60 withheld funds; amending s. 938.27, F.S.; requiring
61 convicted persons or parents of adjudicated juveniles to
62 enroll in certain prosecution cost-payment plans; deleting
63 certain cost-payment criteria; deleting a requirement for
64 deposit and use of costs collected by the state attorney;
65 amending s. 938.29, F.S.; revising certain provisions for
66 liability for payment of attorney's fees and costs;
67 amending s. 948.15, F.S.; requiring misdemeanor probation
68 service providers to establish a process for collecting
69 certain payments; providing for allocating certain
70 payments among outstanding obligations; renumbering s.
71 939.185, F.S., as s. 938.195, F.S.; creating s. 938.065,
72 F.S., by transferring and amending s. 775.083(2), F.S.;
73 providing for financing county crime prevention programs
74 from certain court costs; amending ss. 938.17, 938.19,
75 948.08, 948.16, and 985.306, F.S.; correcting cross-
76 references; providing an effective date.
77
78 Be It Enacted by the Legislature of the State of Florida:
79
80 Section 1. Subsection (6) of section 27.52, Florida
81 Statutes, is amended to read:
82 27.52 Determination of indigent status.--
83 (6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent
84 parent or legal guardian of an applicant who is a minor or an

85 adult tax-dependent person shall furnish the minor or adult tax-
86 dependent person with the necessary legal services and costs
87 incident to a delinquency proceeding or, upon transfer of such
88 person for criminal prosecution as an adult pursuant to chapter
89 985, a criminal prosecution in which the person has a right to
90 legal counsel under the Constitution of the United States or the
91 Constitution of the State of Florida. The failure of a parent or
92 legal guardian to furnish legal services and costs under this
93 section does not bar the appointment of legal counsel pursuant
94 to this section, s. 27.40, or s. 27.5303. When the public
95 defender, a private court-appointed conflict counsel, or a
96 private attorney is appointed to represent a minor or an adult
97 tax-dependent person in any proceeding in circuit court or in a
98 criminal <u>or delinquency</u> proceeding in any other court, the
99 parents or the legal guardian shall be liable for payment of the
100 fees, charges, and costs of the representation even if the
101 person is a minor being tried as an adult. Liability for the
102 fees, charges, and costs of the representation shall be imposed
103 in the form of a lien against the property of the ~~nonindigent~~
104 parents or legal guardian of the minor or adult tax-dependent
105 person. The lien is enforceable as provided in s. 27.561 or s.
106 938.29.
107 Section 2. Subsection (3) of section 27.561, Florida
108 Statutes, is amended to read:
109 27.561 Effect of nonpayment.--
110 (3) If it appears to the satisfaction of the court that
111 the default in the payment of the attorney's fees or costs is
112 not contempt, the court may enter an order allowing the

113 defendant-recipient or parent additional time for~~, or reducing~~
114 ~~the amount of,~~ payment ~~or revoking the assessed attorney's fees~~
115 ~~or costs, or the unpaid portion thereof, in whole or in part~~. If
116 the court allows additional time for payment, the defendant-
117 recipient or parent shall be enrolled in a payment plan pursuant
118 to s. 28.246(4).
119 Section 3. Paragraph (e) of subsection (12) of section
120 28.24, Florida Statutes, is amended to read:
121 28.24 Service charges by clerk of the circuit court.--The
122 clerk of the circuit court shall charge for services rendered by
123 the clerk's office in recording documents and instruments and in
124 performing the duties enumerated in amounts not to exceed those
125 specified in this section. Notwithstanding any other provision
126 of this section, the clerk of the circuit court shall provide
127 without charge to the state attorney, public defender, guardian
128 ad litem, public guardian, attorney ad litem, and court-
129 appointed counsel paid by the state, and to the authorized staff
130 acting on behalf of each, access to and a copy of any public
131 record, if the requesting party is entitled by law to view the
132 exempt or confidential record, as maintained by and in the
133 custody of the clerk of the circuit court as provided in general
134 law and the Florida Rules of Judicial Administration. The clerk
135 of the circuit court may provide the requested public record in
136 an electronic format in lieu of a paper format when capable of
137 being accessed by the requesting entity.
138
139 Charges
140

141 (12) For recording, indexing, and filing any instrument
142 not more than 14 inches by 81/2 inches, including required
143 notice to property appraiser where applicable:
144 (e) An additional service charge of $4 per page shall be
145 paid to the clerk of the circuit court for each instrument
146 listed in s. 28.222, except judgments received from the courts
147 and notices of lis pendens, recorded in the official records.
148 From the additional $4 service charge collected:
149 1. If the counties maintain legal responsibility for the
150 costs of the court-related technology needs as described ~~defined~~
151 in s. 29.008(1)(f)2. and (h), 5 ~~10~~ cents shall be distributed to
152 the Florida Association of Court Clerks and Comptroller, Inc.,
153 for the cost of development, implementation, operation, and
154 maintenance of the clerks' Comprehensive Case Information
155 System, in which system all clerks shall participate on or
156 before January 1, 2006; $1.90 shall be retained by the clerk to
157 be deposited in the Public Records Modernization Trust Fund and
158 used exclusively for funding court-related technology needs of
159 the clerk as described ~~defined~~ in s. 29.008(1)(f)2. and (h); and
160 $2.05 ~~$2~~ shall be distributed to the Court Technology Trust Fund
161 ~~board of county commissioners~~ to be used to prepare the
162 strategic plan required by s. 29.0087 and provide oversight of
163 court-related technology services provided by the counties and
164 to be disbursed to counties as state financial assistance to
165 offset the costs of providing ~~exclusively to fund~~ court-related
166 technology, and court technology needs as described ~~defined~~ in
167 s. 29.008(1)(f)2. and (h) for the state trial courts, state
168 attorney, and public defender in that county. Counties shall

169 agree to use funds in conformance with the strategic plan
170 required by s. 29.0087 as approved by the chief judge in order
171 to be eligible for state financial assistance from the Court
172 Technology Trust Fund. The amount provided to each county from
173 the Court Technology Trust Fund shall be equal to each county's
174 percentage of total collections of the additional recording fee
175 required by this section applied to the total amount available
176 to be distributed to counties. If a county is not eligible to
177 receive funds from the Court Technology Trust Fund, the funds
178 that would have otherwise been distributed to the county shall
179 remain in the Court Technology Trust Fund to be used as
180 appropriated by the Legislature. If the counties maintain legal
181 responsibility for the costs of the court-related technology
182 needs as described ~~defined~~ in s. 29.008(1)(f)2. and (h),
183 notwithstanding any other provision of law, the county is not
184 required to provide additional funding beyond that provided
185 herein for the court-related technology needs of the clerk as
186 described ~~defined~~ in s. 29.008(1)(f)2. and (h). All court
187 records and official records are the property of the State of
188 Florida, including any records generated as part of the
189 Comprehensive Case Information System funded pursuant to this
190 paragraph and the clerk of court is designated as the custodian
191 of such records, except in a county where the duty of
192 maintaining official records exists in a county office other
193 than the clerk of court or comptroller, such county office is
194 designated the custodian of all official records, and the clerk
195 of court is designated the custodian of all court records. The
196 clerk of court or any entity acting on behalf of the clerk of

197 court, including an association, shall not charge a fee to any
198 agency as defined in s. 119.011, the Legislature, or the State
199 Court System for copies of records generated by the
200 Comprehensive Case Information System or held by the clerk of
201 court or any entity acting on behalf of the clerk of court,
202 including an association.
203 2. If the state becomes legally responsible for the costs
204 of court-related technology needs as described ~~defined~~ in s.
205 29.008(1)(f)2. and (h), whether by operation of general law or
206 by court order, $4 shall be remitted to the Department of
207 Revenue for deposit into the General Revenue Fund.
208 Section 4. Paragraphs (h) and (i) are added to subsection
209 (2) of section 28.35, Florida Statutes, paragraph (e) of that
210 subsection is amended, subsections (4) through (7) of that
211 section are renumbered as subsections (5) through (8),
212 respectively, and a new subsection (4) is added to that section,
213 to read:
214 28.35 Florida Clerks of Court Operations Corporation.--
215 (2) The duties of the corporation shall include the
216 following:
217 (e) Developing and certifying a uniform system of
218 performance measures and applicable performance standards for
219 the functions specified in paragraph (5) ~~(4)~~(a) and clerk
220 performance in meeting the performance standards. These measures
221 and standards shall be designed to facilitate an objective
222 determination of the performance of each clerk in accordance
223 with minimum standards for fiscal management, operational
224 efficiency, and effective collection of fines, fees, service

225 charges, and court costs. When the corporation finds a clerk has
226 not met the performance standards, the corporation shall
227 identify the nature of each deficiency and any corrective action
228 recommended and taken by the affected clerk of the court.
229 (h) Receiving reports from each clerk of court in a format
230 specified by the corporation that allows reconciliation of the
231 expenses of a clerk to the clerk's certified budget.
232 (i) Providing information regarding the budgets and
233 expenditures of clerks and any other fiscal data related to the
234 corporation and performance of court-related clerk duties upon
235 request by a committee of the Legislature, the Governor, or the
236 Office of the State Courts Administrator. Clerks of court shall
237 provide any information requested by the corporation in
238 accordance with this paragraph.
239 (4) Approval of the corporation is required for a
240 certified budget to be amended except as otherwise provided in
241 s. 28.36(6). The corporation shall provide notice to the
242 appropriations committees of the Senate and the House of
243 Representatives of any requested amendment to a certified budget
244 and the resulting action taken by the corporation to approve or
245 disapprove such request. A clerk may not make expenditures that
246 do not comply with the clerk's certified budget.
247 Section 5. Subsections (1) through (5) of section 28.36,
248 Florida Statutes, are amended, and subsection (8) is added to
249 that section, to read:
250 28.36 Budget procedure.--There is hereby established a
251 budget procedure for the court-related functions of the clerks
252 of the court.

253 (1) Only those functions on the standard list developed
254 pursuant to s. 28.35(5) ~~(4)~~(a) may be funded from fees, service
255 charges, court costs, and fines retained by the clerks of the
256 court. No clerk may use fees, service charges, court costs, and
257 fines in excess of the maximum budget amounts as established in
258 subsection (5).
259 (2) For the period July 1, 2004, through September 30,
260 2004, and for each county fiscal year ending September 30
261 thereafter, each clerk of the court shall prepare a budget
262 relating solely to the performance of the standard list of
263 court-related functions pursuant to s. 28.35(5) ~~(4)~~(a).
264 (3) Each proposed budget shall further conform to the
265 following requirements:
266 (a) On or before August 15 for each fiscal year
267 thereafter, the proposed budget shall be prepared, summarized,
268 and submitted by the clerk in each county to the Clerks of Court
269 Operations Corporation in the manner and form prescribed by the
270 corporation. The proposed budget must provide detailed
271 information on the anticipated revenues available and
272 expenditures necessary for the performance of the standard list
273 of court-related functions of the clerk's office developed
274 pursuant to s. 28.35(5) ~~(4)~~(a) for the county fiscal year
275 beginning the following October 1.
276 (b) The proposed budget must be balanced~~,~~ such that the
277 total of the estimated revenues available equals ~~must equal~~ or
278 exceeds ~~exceed~~ the total of the anticipated expenditures. These
279 revenues include the following: cash balances brought forward
280 from the prior fiscal period; revenue projected to be received

281 from fees, service charges, court costs, and fines for court-
282 related functions during the fiscal period covered by the
283 budget; and supplemental revenue that may be requested pursuant
284 to subsection (4). Both proposed and certified budgets shall
285 list expenditures by appropriations categories as defined in s.
286 216.011 and the number of full-time equivalent positions. A
287 budget shall specifically list any nonrecurring expenditures,
288 including, but not limited to, employee bonuses and equipment
289 purchases. The budget shall also specify details of any general
290 changes to salaries and benefits, such as cost-of-living
291 increases in salaries and improvements in benefits. ~~The~~
292 ~~anticipated expenditures must be itemized as required by the~~
293 ~~corporation, pursuant to contract with the Chief Financial~~
294 ~~Officer.~~
295 (c) The proposed budget may include a contingency reserve
296 not to exceed 10 percent of the total budget, provided that,
297 overall, the proposed budget does not exceed the limits
298 prescribed in subsection (5).
299 (4) If a clerk of the court estimates that available funds
300 plus projected revenues from fines, fees, service charges, and
301 costs for court-related services are insufficient to meet the
302 anticipated expenditures for the standard list of court-related
303 functions in s. 28.35(5) ~~(4)~~(a) performed by his or her office,
304 the clerk must report the revenue deficit to the Clerks of Court
305 Operations Corporation in the manner and form prescribed by the
306 corporation pursuant to contract with the Chief Financial
307 Officer. The corporation shall verify that the proposed budget

308 is limited to the standard list of court-related functions in s.
309 28.35(5) ~~(4)~~(a).
310 (a) If the corporation verifies that the proposed budget
311 is limited to the standard list of court-related functions in s.
312 28.35(5) ~~(4)~~(a) and a revenue deficit is projected, a clerk
313 seeking to retain revenues pursuant to this subsection shall
314 increase all fees, service charges, and any other court-related
315 clerk fees and charges to the maximum amounts specified by law
316 or the amount necessary to resolve the deficit, whichever is
317 less. If, after increasing fees, service charges, and any other
318 court-related clerk fees and charges to the maximum amounts
319 specified by law, a revenue deficit is still projected, the
320 corporation shall, pursuant to the terms of the contract with
321 the Chief Financial Officer, certify a revenue deficit and
322 notify the Department of Revenue that the clerk is authorized to
323 retain revenues, in an amount necessary to fully fund the
324 projected revenue deficit, which he or she would otherwise be
325 required to remit to the Department of Revenue for deposit into
326 the Department of Revenue Clerks of the Court Trust Fund
327 pursuant to s. 28.37. If a revenue deficit is projected for that
328 clerk after retaining all of the projected collections from the
329 court-related fines, fees, service charges, and costs, the
330 Department of Revenue shall certify the amount of the revenue
331 deficit amount to the Executive Office of the Governor and
332 request release authority for funds appropriated for this
333 purpose from the Department of Revenue Clerks of the Court Trust
334 Fund. Notwithstanding provisions of s. 216.192 related to the
335 release of funds, the Executive Office of the Governor may

336 approve the release of funds appropriated to resolve projected
337 revenue deficits in accordance with the notice, review, and
338 objection procedures set forth in s. 216.177 and shall provide
339 notice to the Chief Financial Officer. The Department of Revenue
340 is directed to request monthly distributions from the Chief
341 Financial Officer in equal amounts to each clerk certified to
342 have a revenue deficit, in accordance with the releases approved
343 by the Governor.
344 (b) If the Chief Financial Officer finds the court-related
345 budget proposed by a clerk includes functions not included in
346 the standard list of court-related functions in s.
347 28.35(5) ~~(4)~~(a), the Chief Financial Officer shall notify the
348 clerk of the amount of the proposed budget not eligible to be
349 funded from fees, service charges, costs, and fines for court-
350 related functions and shall identify appropriate corrective
351 measures to ensure budget integrity. The clerk shall then
352 immediately discontinue all ineligible expenditures of court-
353 related funds for this purpose and reimburse the Clerks of the
354 Court Trust Fund for any previously ineligible expenditures made
355 for non-court-related functions, and shall implement any
356 corrective actions identified by the Chief Financial Officer.
357 (5)(a) For the county fiscal year October 1, 2004, through
358 September 30, 2005, the maximum annual budget amount for the
359 standard list of court-related functions of the clerks of court
360 in s. 28.35(5) ~~(4)~~(a) that may be funded from fees, service
361 charges, court costs, and fines retained by the clerks of the
362 court shall not exceed:

363 1. One hundred and three percent of the clerk's estimated
364 expenditures for the prior county fiscal year; or
365 2. One hundred and five percent of the clerk's estimated
366 expenditures for the prior county fiscal year for those clerks
367 in counties that for calendar years 1998-2002 experienced an
368 average annual increase of at least 5 percent in both population
369 and case filings for all case types as reported through the
370 Summary Reporting System used by the state courts system.
371 (b) For the county fiscal year 2005-2006, the maximum
372 budget amount for the standard list of court-related functions
373 of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may be funded
374 from fees, service charges, court costs, and fines retained by
375 the clerks of the court shall be the approved budget for county
376 fiscal year 2004-2005 adjusted by the projected percentage
377 change in revenue between the county fiscal years 2004-2005 and
378 2005-2006.
379 (c) For the county fiscal years 2006-2007 and thereafter,
380 the maximum budget amount for the standard list of court-related
381 functions of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may
382 be funded from fees, service charges, court costs, and fines
383 retained by the clerks of the court shall be established by
384 first rebasing the prior fiscal year budget to reflect the
385 actual percentage change in the prior fiscal year revenue and
386 then adjusting the rebased prior fiscal year budget by the
387 projected percentage change in revenue for the proposed budget
388 year. The rebasing calculations and maximum annual budget
389 calculations shall be as follows:

390 1. For county fiscal year 2006-2007, the approved budget
391 for county fiscal year 2004-2005 shall be adjusted for the
392 actual percentage change in revenue between the two 12-month
393 periods ending June 30, 2005, and June 30, 2006. This result is
394 the rebased budget for the county fiscal year 2005-2006. Then
395 the rebased budget for the county fiscal year 2005-2006 shall be
396 adjusted by the projected percentage change in revenue between
397 the county fiscal years 2005-2006 and 2006-2007. This result
398 shall be the maximum annual budget amount for the standard list
399 of court-related functions of the clerks of court in s.
400 28.35(5) ~~(4)~~(a) that may be funded from fees, service charges,
401 court costs, and fines retained by the clerks of the court for
402 each clerk for the county fiscal year 2006-2007.
403 2. For county fiscal year 2007-2008, the rebased budget
404 for county fiscal year 2005-2006 shall be adjusted for the
405 actual percentage change in revenue between the two 12-month
406 periods ending June 30, 2006, and June 30, 2007. This result is
407 the rebased budget for the county fiscal year 2006-2007. The
408 rebased budget for county fiscal year 2006-2007 shall be
409 adjusted by the projected percentage change in revenue between
410 the county fiscal years 2006-2007 and 2007-2008. This result
411 shall be the maximum annual budget amount for the standard list
412 of court-related functions of the clerks of court in s.
413 28.35(5) ~~(4)~~(a) that may be funded from fees, service charges,
414 court costs, and fines retained by the clerks of the court for
415 county fiscal year 2007-2008.
416 3. For county fiscal years 2008-2009 and thereafter, the
417 maximum budget amount for the standard list of court-related

418 functions of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may
419 be funded from fees, service charges, court costs, and fines
420 retained by the clerks of the court shall be calculated as the
421 rebased budget for the prior county fiscal year adjusted by the
422 projected percentage change in revenues between the prior county
423 fiscal year and the county fiscal year for which the maximum
424 budget amount is being authorized. The rebased budget for the
425 prior county fiscal year shall always be calculated by adjusting
426 the rebased budget for the year preceding the prior county
427 fiscal year by the actual percentage change in revenues between
428 the 12-month period ending June 30 of the year preceding the
429 prior county fiscal year and the 12-month period ending June 30
430 of the prior county fiscal year.
431 (8) Each clerk shall record and report actual expenditures
432 in a format specified by the Clerks of Court Operations
433 Corporation that allows reconciliation to the clerk's budget as
434 certified by the corporation. The clerk shall submit reports of
435 such expenditures to the corporation upon request but at least
436 quarterly.
437 Section 6. Subsection (4) of section 29.008, Florida
438 Statutes, is amended, and subsection (5) is added to that
439 section, to read:
440 29.008 County funding of court-related functions.--
441 (4)(a) A county may be determined not to be in compliance
442 with its responsibility to fund court-related functions if:
443 1. The amount budgeted by the county in the upcoming or
444 current county fiscal year for any item specified in paragraphs
445 (1)(a), (c), (d), (e), (f), (g), and (h) and subsection (3) is

446 less than the amount spent for that item in county fiscal year
447 2002-2003, the base year, plus 1.5 percent growth per year; and
448 2. The chief judge asserts that deficiencies will exist in
449 the functioning of the circuit court due to the lack of
450 sufficient budget for that item which the county is funding at
451 less than the base year plus 1.5 percent growth per year.
452 (b) The process for determining whether a county is not in
453 compliance with its funding responsibility shall be as follows:
454 1. The chief judge shall identify in writing the specific
455 deficiencies the chief judge asserts will be experienced by the
456 circuit court associated with the county's lack of sufficient
457 support for that item, the recommended corrections, and an
458 estimate of the funding required for such corrections and shall
459 furnish this statement to the board of county commissioners.
460 2. The board shall provide a response in writing to the
461 chief judge. If the board chooses not to amend its budget to
462 provide funding sufficient to equal the funding for the item in
463 the base year plus 1.5 percent growth per year or remedy the
464 specific deficiencies identified by the chief judge, whichever
465 is less, within 30 days after receiving written notice of such
466 action by the board, the chief judge may notify the
467 Administration Commission of the alleged deficiency and explain
468 the expected impact on the ability of the court to perform the
469 court's constitutional and statutory functions. The notice shall
470 set forth, in the form and manner prescribed by the Executive
471 Office of the Governor and approved by the Administration
472 Commission, the specific deficiencies, recommended corrections,
473 estimate of the funding required for such corrections,

474 expenditures made by the county in the base year for the items,
475 and budget for the items for the county fiscal year in question.
476 The notice shall be provided to the Executive Office of the
477 Governor and the board. The board shall have 5 days from receipt
478 of the notice to provide to the Executive Office of the Governor
479 a reply to the notice, and the board shall provide a copy of
480 such reply to the chief judge.
481 3. Upon receipt of the notice, the Executive Office of the
482 Governor shall provide for a budget hearing at which the matters
483 presented in the notice and the reply shall be considered. A
484 report of the findings and recommendations of the Executive
485 Office of the Governor on such matters shall be promptly
486 submitted to the Administration Commission, which, within 30
487 days, shall approve the action of the board as to each separate
488 item or direct the Department of Revenue to withhold revenue
489 sharing funds as provided in paragraph (c) in an amount
490 determined by the Administration Commission to be sufficient to
491 remedy the deficiency; however, in no case shall the amount
492 withheld result in a budget that exceeds the amount spent for
493 the item in the base year plus 1.5 percent growth per year for
494 any item enumerated in subparagraph (a)1. The determination of
495 the Administration Commission shall be final and shall be
496 provided to the chief judge, the board, and the Department of
497 Revenue.
498 (c)1. If the Administration Commission determines that the
499 board shall provide additional funding to fulfill its
500 responsibilities under this section ~~Except for revenues used for~~
501 ~~the payment of principal or interest on bonds, tax anticipation~~

502 ~~certificates, or any other form of indebtedness as allowed under~~
503 ~~s. 218.25(1),(2) or (4)~~, the Department of Revenue shall
504 withhold revenue sharing receipts distributed pursuant to part
505 II of chapter 218, except for revenues used for the payment of
506 principal or interest on bonds, tax anticipation certificates,
507 or any other form of indebtedness as allowed under s. 218.25(1),
508 (2), or (4), from that ~~any~~ county determined to be not in
509 compliance as provided in this subsection ~~with the county~~
510 ~~funding obligations for items specified in paragraphs (1)(a),~~
511 ~~(c), (d), (e), (f), (g), and (h) and subsection (3). The~~
512 ~~department shall withhold an amount equal to the difference~~
513 ~~between the amount spent by the county for the particular item~~
514 ~~in county fiscal year 2002-2003, the base year, plus 3 percent,~~
515 ~~and the amount budgeted by the county for these obligations in~~
516 ~~county fiscal year 2004-2005, if the latter is less than the~~
517 ~~former. Every year thereafter, the department shall withhold~~
518 ~~such an amount if the amount budgeted in that year is less than~~
519 ~~the base year plus 1.5 percent growth per year. On or before~~
520 ~~December 31, 2004, counties shall send to the department a~~
521 ~~certified copy of their budget documents for the respective 2~~
522 ~~years, separately identifying expenditure amounts for each~~
523 ~~county funding obligation specified in paragraphs (1) (a), (c),~~
524 ~~(d), (e), (f), (g), and (h) and subsection (3). Each year~~
525 ~~thereafter, on or before December 31 of that year, each county~~
526 ~~shall send a certified copy of its budget document to the~~
527 ~~department~~.
528 ~~(b) Beginning in fiscal year 2005-2006, additional amounts~~
529 ~~shall be withheld pursuant to paragraph (a), if the amount spent~~

530 ~~in the previous fiscal year on the items specified in paragraphs~~
531 ~~(1)(a), (c), (d), (e), (f), (g), and (h), and subsection (3) is~~
532 ~~less than the amount budgeted for those items. Each county shall~~
533 ~~certify expenditures for these county obligations for the prior~~
534 ~~fiscal year to the department within 90 days after the end of~~
535 ~~the fiscal year.~~
536 2.~~(e)~~ The department shall transfer the withheld payments
537 to the General Revenue Fund by March 31 of each year. These
538 payments are hereby appropriated to the Department of Revenue to
539 pay for these responsibilities on behalf of the county.
540 (5) For purposes of this section, the term "salaries"
541 includes associated fringe benefits or other perquisites that
542 are typically provided by the county to its employees.
543 Section 7. Paragraph (d) is added to subsection (5) of
544 section 29.0086, Florida Statutes, and subsection (9) of that
545 section is amended, to read:
546 29.0086 Article V Technology Board.--
547 (5) The board shall:
548 (d) By December 15, 2006, provide a report to the
549 Governor, the President of the Senate, the Speaker of the House
550 of Representatives, and the Chief Justice of the Supreme Court.
551 The report shall contain:
552 1. Recommended statutory language that would provide
553 policy guidance for the strategic plans to be developed and the
554 data integration to be promoted by the Judicial Circuit Article
555 V Technology Advisory Councils.
556 2. Recommended policies to be adopted by the Office of the
557 State Courts Administrator within the framework provided by the

558 recommended statutory language provided under subparagraph 1.
559 regarding circuit information technology.
560 3. A description of any further progress made on efforts
561 to develop a catalog of common data elements.
562 (9) This section is repealed effective January 1, 2007
563 ~~July 1, 2006~~.
564 Section 8. Section 29.0087, Florida Statutes, is created
565 to read:
566 29.0087 Judicial Circuit Article V Technology Advisory
567 Councils.--
568 (1) There shall be established in each judicial circuit a
569 Judicial Circuit Article V Technology Advisory Council.
570 (a) The membership of the council shall include:
571 1. The chief judge of the circuit court, or his or her
572 designee, who shall serve as chair.
573 2. The state attorney of the circuit or his or her
574 designee.
575 3. The public defender of the circuit or his or her
576 designee.
577 4. A sheriff from a county in the circuit selected by the
578 chief judge, or the sheriff's designee, who shall be appointed
579 to an initial term of 1 year and shall serve 2-year terms
580 thereafter.
581 5. A clerk from a county in the circuit selected by the
582 chief judge, or the clerk's designee, who shall be appointed to
583 an initial term of 1 year and shall serve 2-year terms
584 thereafter.

585 6. A member of a board of county commissioners from a
586 county in the circuit selected by the chief judge, or the
587 member's designee, who shall be appointed to an initial term of
588 2 years and shall serve 2-year terms thereafter.
589 7. A member in good standing of The Florida Bar practicing
590 in the circuit, appointed by the chief judge.
591 (b)1. There shall be no limit to the number of terms a
592 member may serve. For multicounty circuits, to the extent
593 possible, the members provided in subparagraphs (a)4.-6. shall
594 be from different counties.
595 2. Members of the advisory council shall serve without
596 compensation but are entitled to per diem and reimbursement for
597 travel expenses in accordance with s. 112.061. Such per diem and
598 reimbursement for travel expenses shall be paid by the entity
599 employing the member, except for the member of The Florida Bar,
600 whose per diem and reimbursement for travel expenses shall be
601 paid by the judicial circuit.
602 (c) The judicial circuit information technology director
603 and such other judicial circuit employees as are necessary shall
604 serve as staff to the advisory council. Employees of the
605 entities represented by the members of the advisory council may
606 also provide staff support to the advisory council at the
607 request of the judicial circuit information technology director.
608 (d) The first meeting of the advisory council shall be
609 held no later than September 30, 2006. The advisory council
610 shall meet at the call of the chair but no less frequently than
611 quarterly.

612 (2) The advisory council shall work to promote the
613 efficiency and effectiveness of the justice system in the
614 circuit and the state as well as to ensure the security of data.
615 (3) The duties of the advisory council shall include:
616 (a) Developing an initial strategic plan and subsequent
617 updated strategic plans to address court-related technology and
618 court technology needs as described in s. 29.008(1)(f)2. and
619 (h). Such plans shall comply with any policies adopted by the
620 Office of the State Courts Administrator regarding circuit-level
621 information technology services. The initial strategic plan or
622 subsequent updated strategic plans shall be provided to the
623 chief judge no later than March 31 of each year.
624 (b) Promoting secure and reliable data integration,
625 interoperability, and access among the information systems under
626 the control of the chief judge, state attorney, and public
627 defender; the clerks of court, sheriffs, and counties of the
628 circuit; and the various state agencies involved in the justice
629 system and the other court systems of the state.
630 Section 9. Subsections (4) and (6) of section 44.103,
631 Florida Statutes, are amended to read:
632 44.103 Court-ordered, nonbinding arbitration.--
633 (4) An arbitrator or, in the case of a panel, the chief
634 arbitrator~~,~~ shall have such power to administer oaths or
635 affirmation and to conduct the proceedings as the rules of court
636 shall provide. The proceedings shall be conducted informally.
637 Presentation of testimony and evidence shall be kept to a
638 minimum and matters shall be presented to the arbitrators
639 primarily through the statements and arguments of counsel. ~~At~~

640 ~~the request of~~ Any party to the arbitration may petition the
641 court in the underlying action, for good cause shown, to
642 authorize the~~, such~~ arbitrator to ~~shall~~ issue subpoenas for the
643 attendance of witnesses and the production of books, records,
644 documents, and other evidence at the arbitration and may
645 petition ~~apply to~~ the court for orders compelling such
646 attendance and production at the arbitration. Subpoenas shall be
647 served and shall be enforceable in the manner provided by law.
648 (6) Upon motion made by either party within 30 days after
649 entry of a judgment, the court may assess costs against the
650 party requesting a trial de novo, including arbitration costs,
651 court costs, reasonable attorney's fees, and other reasonable
652 costs, such as investigation expenses and expenses for expert or
653 other testimony that were incurred after the arbitration hearing
654 and continuing through the trial of the case, in accordance with
655 the guidelines for taxation of costs as adopted by the Supreme
656 Court. Such costs may be assessed if:
657 (a) The plaintiff, having filed for a trial de novo,
658 obtains a judgment at trial that is at least 25 percent less
659 than the arbitration award. In such an instance, the costs and
660 attorney's fees assessed pursuant to this subsection shall be
661 set off against the award. When the costs and attorney's fees
662 assessed pursuant to this subsection total more than the amount
663 of the judgment, the court shall enter judgment for the
664 defendant against the plaintiff for the amount of the costs and
665 attorney's fees, less the amount of the award to the plaintiff.
666 For purposes of a determination under this paragraph, the term
667 "judgment" means the amount of the net judgment entered plus all

668 taxable costs pursuant to the guidelines for taxation of costs
669 as adopted by the Supreme Court, any postarbitration collateral
670 source payments received or due as of the date of the judgment,
671 and any postarbitration settlement amounts by which the verdict
672 was reduced; or
673 (b) The defendant, having filed for a trial de novo, has a
674 judgment entered against the defendant that is a least 25
675 percent more than the arbitration award. For purposes of a
676 determination under this paragraph, the term "judgment" means
677 the amount of the net judgment entered plus any postarbitration
678 settlement amounts by which the verdict was reduced. ~~The party~~
679 ~~having filed for a trial de novo may be assessed the arbitration~~
680 ~~costs, court costs, and other reasonable costs of the party,~~
681 ~~including attorney's fees, investigation expenses, and expenses~~
682 ~~for expert or other testimony or evidence incurred after the~~
683 ~~arbitration hearing if the judgment upon the trial de novo is~~
684 ~~not more favorable than the arbitration decision.~~
685 Section 10. Subsection (3) of section 218.245, Florida
686 Statutes, as amended by section 44 of chapter 2005-236, Laws of
687 Florida, is amended to read:
688 218.245 Revenue sharing; apportionment.--
689 (3) Revenues attributed to the increase in distribution to
690 the Revenue Sharing Trust Fund for Municipalities pursuant to s.
691 212.20(6)(d)6. from 1.0715 percent to 1.3409 percent provided in
692 chapter 2003-402, Laws of Florida, shall be distributed to each
693 eligible municipality and any unit of local government which is
694 consolidated as provided by s. 9, Art. VIII of the State
695 Constitution of 1885, as preserved by s. 6(e), Art. VIII, 1968

696 revised constitution, as follows: each eligible local
697 government's allocation shall be based on the amount it received
698 from the half-cent sales tax under s. 218.61 in the prior state
699 fiscal year divided by the total receipts under s. 218.61 in the
700 prior state fiscal year for all eligible local governments;
701 provided, however, for the purpose of calculating this
702 distribution, the amount received from the half-cent sales tax
703 under s. 218.61 in the prior state fiscal year by a unit of
704 local government which is consolidated as provided by s. 9, Art.
705 VIII of the State Constitution of 1885, as amended, and as
706 preserved by s. 6(e), Art. VIII, of the Constitution as revised
707 in 1968, shall be reduced by 42 ~~50~~ percent for such local
708 government and for the total receipts. For eligible
709 municipalities that began participating in the allocation of
710 half-cent sales tax under s. 218.61 in the previous state fiscal
711 year, their annual receipts shall be calculated by dividing
712 their actual receipts by the number of months they participated,
713 and the result multiplied by 12.
714 Section 11. Subsection (13) of section 318.18, Florida
715 Statutes, is amended to read:
716 318.18 Amount of civil penalties.--The penalties required
717 for a noncriminal disposition pursuant to s. 318.14 are as
718 follows:
719 (13) In addition to any penalties imposed for noncriminal
720 traffic infractions pursuant to this chapter or imposed for
721 criminal violations listed in s. 318.17, a board of county
722 commissioners or any unit of local government which is
723 consolidated as provided by s. 9, Art. VIII of the State

724 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the
725 Constitution of 1968:
726 (a) May impose by ordinance a surcharge of up to $15 for
727 any infraction or violation to fund state court facilities. The
728 court shall not waive this surcharge. Up to 25 percent of the
729 revenue from such surcharge may be used to support local law
730 libraries provided that the county or unit of local government
731 provides a level of service equal to that provided prior to July
732 1, 2004, which shall include the continuation of library
733 facilities located in or near the county courthouse or annexes.
734 (b) That imposed increased fees or service charges by
735 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
736 purpose of securing payment of the principal and interest on
737 bonds issued by the county before July 1, 2003, to finance state
738 court facilities, may impose by ordinance a surcharge for any
739 infraction or violation for the exclusive purpose of securing
740 payment of the principal and interest on bonds issued by the
741 county before July 1, 2003, to fund state court facilities until
742 the date of stated maturity. The court shall not waive this
743 surcharge. Such surcharge may not exceed an amount per violation
744 calculated as the quotient of the maximum annual payment of the
745 principal and interest on the bonds as of July 1, 2003, divided
746 by the number of traffic citations for county fiscal year 2002-
747 2003 certified as paid by the clerk of the court of the county.
748 Such quotient shall be rounded up to the next highest dollar
749 amount. The bonds may be refunded only if savings will be
750 realized on payments of debt service and the refunding bonds are

751 scheduled to mature on the same date or before the bonds being
752 refunded.
753
754 A county may not impose both of the surcharges authorized under
755 paragraphs (a) and (b) concurrently. The county ~~clerk of court~~
756 shall report, no later than 30 days after the end of the
757 quarter, the amount of funds collected, the amount of funds
758 expended, and the uses of the funds under this subsection during
759 each quarter of the fiscal year. The county ~~clerk~~ shall submit
760 the report, in a format developed by the Office of State Courts
761 Administrator, to the chief judge of the circuit, the Governor,
762 the President of the Senate, and the Speaker of the House of
763 Representatives.
764 Section 12. Section 903.286, Florida Statutes, is amended
765 to read:
766 903.286 Return of cash bond; requirement to withhold
767 unpaid fines, fees, and court costs.--Notwithstanding the
768 provisions of s. 903.31(2), the clerk of the court shall
769 withhold from the return of a cash bond posted after June 30,
770 2005, on behalf of a criminal defendant by a person other than a
771 bail bond agent licensed pursuant to chapter 648 sufficient
772 funds to pay any unpaid court fees, court costs, and criminal
773 penalties. The clerk of the court shall provide notice of such
774 withholding of funds and an itemized listing of the specific
775 amounts subject to such withholding to such persons prior to the
776 posting of the cash bond. In the event that sufficient funds are
777 not available to pay all unpaid court fees, court costs, and
778 criminal penalties, the clerk of the court shall immediately

779 obtain payment from the defendant or enroll the defendant in a
780 payment plan pursuant to s. 28.246.
781 Section 13. Subsections (1), (2), and (8) of section
782 938.27, Florida Statutes, are amended to read:
783 938.27 Judgment for costs on conviction.--
784 (1) In all criminal cases, convicted persons or parents of
785 adjudicated juveniles are liable for payment of the documented
786 costs of prosecution, including investigative costs incurred by
787 law enforcement agencies, by fire departments for arson
788 investigations, and by investigations of the Department of
789 Financial Services or the Office of Financial Regulation of the
790 Financial Services Commission~~, if requested by such agencies~~.
791 These costs shall be included and entered in the judgment
792 rendered against the convicted person or adjudicated juvenile.
793 (2)(a) If the court allows additional time for payment of
794 such costs, the convicted person or the parents of the
795 adjudicated juvenile shall be enrolled in a payment plan
796 pursuant to s. 28.246(4) ~~The court shall require the defendant~~
797 ~~to pay the costs within a specified period or in specified~~
798 ~~installments~~.
799 ~~(b) The end of such period or the last such installment~~
800 ~~shall not be later than:~~
801 ~~1. The end of the period of probation or community~~
802 ~~control, if probation or community control is ordered;~~
803 ~~2. Five years after the end of the term of imprisonment~~
804 ~~imposed, if the court does not order probation or community~~
805 ~~control; or~~

806 ~~3. Five years after the date of sentencing in any other~~
807 ~~case.~~
808
809 ~~However, in no event shall the obligation to pay any unpaid~~
810 ~~amounts expire if not paid in full within the period specified~~
811 ~~in this paragraph.~~
812 (b) ~~(c)~~ If not otherwise provided by the court under this
813 section, costs shall be paid immediately.
814 ~~(8) Costs that are collected by the state attorney under~~
815 ~~this section shall be deposited into the state attorney's grants~~
816 ~~and donations trust fund to be used during the fiscal year in~~
817 ~~which the funds are collected, or in any subsequent fiscal year,~~
818 ~~for actual expenses incurred in investigating and prosecuting~~
819 ~~criminal cases, which may include the salaries of permanent~~
820 ~~employees.~~
821 Section 14. Paragraph (a) of subsection (1) of section
822 938.29, Florida Statutes, is amended to read:
823 938.29 Legal assistance; lien for payment of attorney's
824 fees or costs.--
825 (1)(a) A defendant determined to be guilty of a criminal
826 act or found to have committed a delinquent act by a court or
827 jury or through a plea of guilty or nolo contendere, regardless
828 of adjudication, and who has received the assistance of the
829 public defender's office~~, a special assistant public defender,~~
830 or a court-appointed ~~conflict~~ attorney shall be liable for
831 payment of attorney's fees and costs. The court shall determine
832 the amount of the obligation. Such costs shall include, but not
833 be limited to, the cost of depositions; cost of transcripts of

834 depositions, including the cost of defendant's copy, which
835 transcripts are certified by the defendant's attorney as having
836 served a useful purpose in the disposition of the case;
837 investigative costs; witness fees; the cost of psychiatric
838 examinations; or other reasonable costs specially incurred by
839 the state and the clerk of court for the defense of the
840 defendant in criminal prosecutions. Costs shall not include
841 expenses inherent in providing a constitutionally guaranteed
842 jury trial or expenditures in connection with the maintenance
843 and operation of government agencies that must be made by the
844 public irrespective of specific violations of law. Any costs
845 assessed pursuant to this paragraph shall be reduced by any
846 amount assessed against a defendant pursuant to s. 938.05.
847 Section 15. Subsections (4) and (5) of section 948.15,
848 Florida Statutes, are renumbered as subsections (5) and (6),
849 respectively, present subsection (3) is renumbered as subsection
850 (4), paragraph (e) of that subsection is amended, and a new
851 subsection (3) is added to that section, to read:
852 948.15 Misdemeanor probation services.--
853 (3) The entity providing probation services for offenders
854 sentenced by the county court shall establish a process to
855 collect payments for all offender fees, fines, and costs imposed
856 by the court, restitution owed by the misdemeanor probationer,
857 and the cost of supervision. If a payment made by the
858 misdemeanor probationer is not sufficient to cover the total
859 installment required under a payment plan imposed by the court
860 plus any additional payments that are outstanding, the payment
861 made by the misdemeanor probationer shall be allocated

862 proportionally among any fees, fines, and costs imposed by the
863 court, restitution owed by the misdemeanor probationer, and the
864 cost of supervision based upon the percentage that the sum owed
865 for each type of payment comprises of the total owed for all
866 types of payments. The entity providing probation services shall
867 provide any funds collected in accordance with this subsection,
868 within 30 days after collection, to the payee to whom the funds
869 are owed.
870 (4) ~~(3)~~ Any private entity providing services for the
871 supervision of misdemeanor probationers must contract with the
872 county in which the services are to be rendered. In a county
873 with a population of less than 70,000, the county court judge,
874 or the administrative judge of the county court in a county that
875 has more than one county court judge, must approve the contract.
876 Terms of the contract must state, but are not limited to:
877 (e) Procedures for handling the collection in accordance
878 with subsection (3) of all payments owed by an offender ~~fees and~~
879 ~~restitution~~.
880
881 In addition, the entity shall supply the chief judge's office
882 with a quarterly report summarizing the number of offenders
883 supervised by the private entity, payment of the required
884 contribution under supervision or rehabilitation, and the number
885 of offenders for whom supervision or rehabilitation will be
886 terminated. All records of the entity must be open to inspection
887 upon the request of the county, the court, the Auditor General,
888 the Office of Program Policy Analysis and Government
889 Accountability, or agents thereof.

890 Section 16. Section 939.185, Florida Statutes, is
891 renumbered as section 938.195, Florida Statutes.
892 Section 17. Subsection (3) of section 775.083, Florida
893 Statutes, is renumbered as subsection (2) of that section, and
894 present subsection (2) of that section is transferred to section
895 938.065, Florida Statutes, which is created, and amended to
896 read:
897 938.065 County crime prevention programs.--
898 ~~(2) In addition to the fines set forth in subsection (1),~~
899 Court costs shall be assessed and collected in each instance a
900 defendant pleads nolo contendere to, or is convicted of, or
901 adjudicated delinquent for, a felony, a misdemeanor, or a
902 criminal traffic offense under state law, or a violation of any
903 municipal or county ordinance if the violation constitutes a
904 misdemeanor under state law. The court costs imposed by this
905 section shall be $50 for a felony and $20 for any other offense
906 and shall be deposited by the clerk of the court into an
907 appropriate county account for disbursement for the purposes
908 provided in this subsection. A county shall account for the
909 funds separately from other county funds as crime prevention
910 funds. The county, in consultation with the sheriff, must expend
911 such funds for crime prevention programs in the county,
912 including safe neighborhood programs under ss. 163.501-163.523.
913 Section 18. Subsections (1), (2), and (4) of section
914 938.17, Florida Statutes, are amended to read:
915 938.17 County delinquency prevention; juvenile assessment
916 centers and school board suspension programs.--

917 (1) Prior to the use of costs received pursuant to s.
918 938.195 ~~939.185~~, the sheriff's office of the county must be a
919 partner in a written agreement with the Department of Juvenile
920 Justice to participate in a juvenile assessment center or with
921 the district school board to participate in a suspension
922 program.
923 (2) Assessments collected by clerks of the circuit courts
924 comprised of more than one county shall remit the funds
925 collected pursuant to s. 938.195 ~~939.185~~ to the county in which
926 the offense at issue was committed for deposit and disbursement.
927 (4) A sheriff's office that receives proceeds pursuant to
928 s. 938.195 ~~939.185~~ shall account for all funds annually by
929 August 1 in a written report to the juvenile justice county
930 council if funds are used for assessment centers, and to the
931 district school board if funds are used for suspension programs.
932 Section 19. Subsection (7) of section 938.19, Florida
933 Statutes, is amended to read:
934 938.19 Teen courts.--
935 (7) A teen court administered in a county that adopts an
936 ordinance to assess court costs under this section may not
937 receive court costs collected under s. 938.195(1)(a)4.
938 ~~939.185(1)(a)4.~~
939 Section 20. Paragraph (d) of subsection (6) of section
940 948.08, Florida Statutes, is amended to read:
941 948.08 Pretrial intervention program.--
942 (6)
943 (d) Any entity, whether public or private, providing a
944 pretrial substance abuse education and treatment intervention

945 program under this subsection must contract with the county or
946 appropriate governmental entity, and the terms of the contract
947 must include, but need not be limited to, the requirements
948 established for private entities under s. 948.15(4)~~(3)~~.
949 Section 21. Subsection (3) of section 948.16, Florida
950 Statutes, is amended to read:
951 948.16 Misdemeanor pretrial substance abuse education and
952 treatment intervention program.--
953 (3) Any public or private entity providing a pretrial
954 substance abuse education and treatment program under this
955 section shall contract with the county or appropriate
956 governmental entity. The terms of the contract shall include,
957 but not be limited to, the requirements established for private
958 entities under s. 948.15(4)~~(3)~~.
959 Section 22. Paragraph (d) of subsection (1) of section
960 985.306, Florida Statutes, is amended to read:
961 985.306 Delinquency pretrial intervention program.--
962 (1)
963 (d) Any entity, whether public or private, providing
964 pretrial substance abuse education, treatment intervention, and
965 a urine monitoring program under this section must contract with
966 the county or appropriate governmental entity, and the terms of
967 the contract must include, but need not be limited to, the
968 requirements established for private entities under s.
969 948.15(4)~~(3)~~. It is the intent of the Legislature that public or
970 private entities providing substance abuse education and
971 treatment intervention programs involve the active participation

972 of parents, schools, churches, businesses, law enforcement
973 agencies, and the department or its contract providers.
974 Section 23. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

The bill will have a fiscal impact of approximately $900,000 on the City of Tampa in Fiscal Year 2006-2007. The bill has no impact on state expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

City of Tampa Pension System

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

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

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

Requirements for Increasing the Longevity Retirement Benefits

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

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

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

---

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

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

Increasing the Longevity Retirement Benefits

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

C. SECTION DIRECTORY:

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

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

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

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

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, no fiscal impact is expected for Fiscal Year 2005-2006. A fiscal impact of $900,000 is expected for Fiscal Year 2006-2007.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Article X, Section 14

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

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

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

HB 891

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 891 Local Occupational License Taxes
SPONSOR(S): Goldstein and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee	6 Y, 0 N	Rice	Diez-Arguelles
3) Fiscal Council		Rice ACR	Kelly
4)			
5)			

SUMMARY ANALYSIS

This bill allows a municipality that adopted a local occupational license tax ordinance after October 1, 1995, to revise its current tax rate or classification structure before October 1, 2006. The municipality must do this in accordance with s. 205.0535, F.S. This section requires the municipality to appoint an equity study commission to make rate and classification recommendations and limits reclassification increases to the following amounts:

- For licenses costing $150 or less, 200 percent;
- For licenses costing more than $150 but not more than $500, 100 percent;
- For licenses costing more than $500 but not more than $2,500, 75 percent;
- For licenses costing more than $2,500 but not more than $10,000, 50 percent; and
- For licenses costing more than $10,000, 10 percent.

A municipal occupational license tax may not be increased by more than $5,000, and revenues generated by the new rate structure may not exceed the sum of the revenue base plus 10 percent of that revenue base. If a municipality revises its occupational license tax ordinance prior to October 1, 2006, license taxes may be increased by up to five percent each subsequent year if approved by a majority plus one of the municipal governing body.

The bill also authorizes counties and municipalities to decrease or repeal occupational license taxes.

This bill does not have a fiscal impact on state government, and will have an indeterminate impact on local government revenues.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – This bill provides authority for municipalities to revise current occupational license tax ordinances that were adopted after October 1, 1995. The bill also permits municipalities and counties to lower or eliminate local occupational license taxes. Therefore, this bill may result in lower or higher occupational license taxes for some taxpayers depending on the actions of the local governments.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 205.0535, F.S., authorized counties and municipalities to revise occupational license tax ordinances prior to October 1, 1995. In order for a county or municipality to reclassify businesses, professions, or occupations and establish new rate structures under this section, the municipality or county had to first establish an equity study commission composed of representatives of the business community within the local government's jurisdiction. The equity study commission was required to recommend a classification system and rate structure for local occupational license taxes. The local government was authorized to adopt by majority vote a new occupational license tax ordinance after considering the equity study commission recommendation. A reclassification could not increase the occupational license tax by more than the following:

- For licenses costing $150 or less, 200 percent;
- For licenses costing more than $150 but not more than $500, 100 percent;
- For licenses costing more than $500 but not more than $2,500, 75 percent;
- For licenses costing more than $2,500 but not more than $10,000, 50 percent; and
- For licenses costing more than $10,000, 10 percent.

A license tax could not be increased by more than $5,000 and the revenues generated by the new tax rate structure could not exceed the sum of the revenue base plus 10 percent of that revenue base. The revenue base is the sum of the occupational license tax revenue generated by licenses issued for the most recently completed local fiscal year or the amount of revenue that would have been generated from the authorized increases under s. 205.043(1)(b), F.S., whichever is greater, plus any revenue received from the county under s. 205.033(4), F.S.

If a municipality or county revised its occupational license tax ordinance prior to October 1, 1995, license taxes may be increased each subsequent year by up to five percent if approved by a majority plus one of the municipal governing body.

Unless a municipality revised its rate or classification structure in accordance with s. 205.0535, F.S., prior to October 1, 1995, or adopted a new occupational license tax ordinance under s. 205.0315, F.S., an occupational license tax levied under s. 205.043, F.S., may not exceed the rate in effect for the year beginning October 1, 1971 plus increases authorized in the section. The amount of the increase above the license tax rate levied on October 1, 1971, is limited as follows:

- For taxes under $100, a 100% increase is permitted;
- For taxes between $101 and $300, a 50% increase is permitted;
- For taxes over $300, a 25% increase is permitted; and
- For taxes levied at a graduated or per unit rates, a 25% increase is permitted.

Beginning October 1, 1995, a county or municipality that had not adopted an occupational license tax ordinance or resolution may do so under s. 205.0315, F.S. The occupational license tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that adopted an ordinance prior to October 1, 1995 under s. 205.0535, F.S. If no adjacent local government has done so, or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, the rate structure or classifications prescribed in its ordinance may be based upon those prescribed in ordinances adopted by local governments that adopted an ordinance prior to October 1, 1995 under s. 205.0535, F.S., in counties or municipalities that have a comparable population.

Effect of Proposed Changes

This bill amends s. 205.0535, F.S., to allow a municipality that adopted a local occupational license tax ordinance after October 1, 1995 to revise its current tax rate or classification structure before October 1, 2006. If a municipality wishes to revise its local occupational license tax ordinance as authorized by this bill, the municipality must follow the same procedures that applied to revisions of rate and classification structures made prior to October 1, 1995 under s. 205.0535, F.S.

The bill also grants counties and municipalities authority to decrease local occupational license taxes. Currently, the statute does not explicitly grant such authority and the Attorney General's Office has advised a number of jurisdictions that, in the absence of such authority, no decrease or elimination is possible. In AGO 2002-81, the Attorney General stated:

> On several occasions, this office has addressed the authority of a municipality to alter its occupational license tax ordinance, through the exemption of certain categories of occupations or businesses or by decreasing the rates for a particular classification. In the absence of legislative authorization, this office has determined that no such alteration may be made. Given the number of instances where local governments have sought to make such alterations, it may be advisable to seek legislative changes to provide the necessary authority.

Lastly, the bill specifies that nothing in ch. 205, F.S., may be construed to prohibit a municipality or county from decreasing or repealing any license tax authorized under that chapter.

C. SECTION DIRECTORY:

Section 1. Amends section 205.0535, F.S., to allow municipalities that adopted an occupational license tax ordinance after October 1, 1995 to reclassify businesses, professions, and occupations, and establish a new rate structure prior to October 1, 2006; allows municipalities and counties to decrease or repeal license tax rates.

Section 2. Provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill will give municipalities more flexibility to revise local occupational license taxes, including the ability to increase, reduce, or eliminate those taxes.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill grants municipalities and counties the authority to eliminate or reduce local occupational license taxes. As such, some taxpayers may see a reduction in or elimination of these taxes. The bill also allows some municipalities to revise their current license tax or classification structure in a manner that may result in an increase of license taxes for some taxpayers.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to local occupational license taxes;
3 amending s. 205.0535, F.S.; updating provisions
4 authorizing reclassification and new rate structure
5 revisions to local occupational license taxes by
6 ordinance; deleting counties from such authorization
7 provisions; authorizing decreasing local occupational
8 license tax rates; providing construction with respect to
9 decreasing or repealing such taxes; providing an effective
10 date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsections (1) and (4) of section 205.0535,
15 Florida Statutes, are amended to read:
16 205.0535 Reclassification and rate structure revisions.--
17 (1) By October 1, 2006 ~~1995~~, any municipality that has
18 adopted by ordinance an occupational license tax after October
19 1, 1995, ~~or county~~ may~~,~~ by ordinance~~,~~ reclassify businesses,
20 professions, and occupations and may establish new rate
21 structures, if the conditions specified in subsections (2) and
22 (3) are met. A person who is engaged in the business of
23 providing local exchange telephone service or a pay telephone
24 service in a municipality or in the unincorporated area of a
25 county and who pays the occupational license tax under the
26 category designated for telephone companies or a pay telephone
27 service provider certified pursuant to s. 364.3375 is deemed to
28 have but one place of business or business location in each

29 municipality or unincorporated area of a county. Pay telephone
30 service providers may not be assessed an occupational license
31 tax on a per-instrument basis.
32 (4) After the conditions specified in subsections (2) and
33 (3) are met, municipalities and counties may, every other year
34 thereafter, increase or decrease by ordinance the rates of local
35 occupational license taxes by up to 5 percent. An ~~The~~ increase,
36 however, may not be enacted by less than a majority plus one
37 vote of the governing body. Nothing in this chapter shall be
38 construed to prohibit a municipality or county from decreasing
39 or repealing any license tax authorized under this chapter.
40 Section 2. This act shall take effect upon becoming a law.

HB 1311

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1311 CS Qualified Job Training Organizations
SPONSOR(S): Troutman
TIED BILLS: **IDEN./SIM. BILLS:** SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Olmedillo	Carlson
2) Fiscal Council		McAuliffe	Kelly
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill provides for the certification by the Office of Tourism, Trade and Economic Development (OTTED) of qualified job-training organizations for the purpose of receiving and distributing funds to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will expand employment opportunities.

The bill further:

- Defines the term "qualified job training organization";
- Authorizes the Auditor General to examine a certified organization's use of funds for compliance with this provision;
- Permits OTTED to recover any misused funds as determined by the Auditor General and pursuant to laws and rules governing tax assessment;
- Permits the revocation of certification where funds have been misused; and
- Requires that funds for qualified job training organizations be distributed through OTTED.

The bill provides a nonrecurring appropriation of $3 million from the General Revenue Fund in fiscal year 2006-07 and for the following ten fiscal years, totaling $30 million, to a qualified job-training organization meeting the requirements of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill provides state funding to a private non-profit organization and gives the Auditor General audit authority over said organization.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A number of job training organizations currently exist in Florida. These organizations train individuals for a variety of jobs ranging from employment in the service industry to executive positions.

Representatives from one job-training organization, Goodwill Industries, report that 95,000 individuals annually participate in vocational programs. Last year, Goodwill helped approximately 24,000 individuals obtain jobs in Florida resulting in more than $234 million in new salaries.

Goodwill representatives also report that the majority of the organization's revenue is invested in creating jobs for those with disabilities, developing training opportunities that lead to employment in the local communities and assisting in job placement. The primary source of revenue for Goodwill is its retail operation. It currently operates over 300 stores across Florida which generate over $100 million dollars annually, employs about 5,700 Floridians and pays more than $7 million to the state in sales taxes.

Effect of Proposed Changes

The bill appropriates $3 million per year from nonrecurring general revenue for ten years to OTTED to distribute to qualified job training organizations. For fiscal year 2006-2007, funding will be provided from nonrecurring general revenue. For the following ten fiscal years, from 2007-2008 through 2016-2017, funding will be appropriated from nonrecurring general revenue or as specifically provided in the General Appropriations Act. The funds will go directly to OTTED for distribution to organizations meeting the requirements of this bill. The funds must be used to encourage economic development through capital construction, capital improvements, or the purchase of equipment.

The bill specifies criteria to become a "qualified job training organization." This section of the bill also outlines OTTED's duties regarding certification of these organizations, funding parameters and the Auditor General's responsibility regarding examining an organization's use of state funds.

The bill defines a "qualified job training organization" as an organization that:

- Is accredited by the Commission for Accreditation of Rehabilitation Facilities;
- Collects Florida state sales tax;
- Has more than 100 locations within the state;
- Is exempt from income taxation under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code of 1986, as amended;
- Specializes in the retail sale of donated items;
- Provides job training and employment services to individuals with workplace disadvantages and disabilities; and
- Uses a majority of its revenues for job training and placement programs that create jobs and foster economic development.

The bill also provides that, in order to receive funding, an organization must be certified as a qualified job training organization by OTTED.

The bill also requires OTTED to enter into a performance contract with the qualified job training organization that includes performance conditions and sanctions for failure to perform as well as a requirement that salaries for officers and employees of the job training organization comply with section 4958 of the Internal Revenue Code, which prohibits excessive compensation.

The bill requires that certified qualified job training organizations only use their funding to encourage and provide economic development. More specifically, the funding must be used for capital construction, capital improvements, and the purchase of equipment that will result in expanded employment opportunities.

Failure to use proceeds as required under this bill constitutes grounds for revocation of the organization's certification.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.1171, F.S., to provide definitions, duties for OTTED, distribution of funds, specific uses of the funds, grant of audit authority, and revocation of certification.

Section 2. Provides for appropriations.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides a nonrecurring appropriation of $3 million from the General Revenue Fund in fiscal year 2006-2007. For the following ten fiscal years, from 2007-2008 through 2016-2017, the bill provides a $3 million annual nonrecurring appropriation from the General Revenue Fund, or as specifically provided in the General Appropriations Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires the Legislature to appropriate $3 million annually for the next ten years to qualified job-training organizations that have been certified by OTTED, therefore, providing funding for all qualified organizations.

D. FISCAL COMMENTS:

This bill requires the Legislature to appropriate $3 million annually for the next ten years to qualified job-training organizations that have been certified by OTTED.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted two amendments to conform the bill to the Senate companion. The bill makes the following changes:

- It requires Office of Tourism, Trade and Economic Development to enter into a performance contract with the qualified job training organization that includes performance conditions and sanctions for failure to perform as well as a requirement that salaries for officers of the job training organizations not be excessive; and
- It removes incorrect language regarding an Auditor General audit of the qualified job training organization and the assessment of taxes owed by OTTED.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to qualified job-training organizations; creating s. 288.1171, F.S.; defining the term "qualified job-training organization"; providing for the Office of Tourism, Trade, and Economic Development to certify qualified job-training organizations; providing for the distribution of certain funds to a certified organization pursuant to contract; providing contract requirements; specifying uses of the funds; providing for revocation of certification under certain circumstances; providing appropriations for a certain period; providing for appropriations to be distributed through the Office of Tourism, Trade, and Economic Development; providing an effective date.

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

23 Section 1. Section 288.1171, Florida Statutes, is created
24 to read:
25 288.1171 Qualified job-training organizations;
26 certification; duties.--
27 (1) As used in this section, the term "qualified job-
28 training organization" means an organization that satisfies all
29 of the following:
30 (a) Is accredited by the Commission for Accreditation of
31 Rehabilitation Facilities.
32 (b) Collects Florida state sales tax.
33 (c) Operates statewide and has more than 100 locations
34 within the state.
35 (d) Is exempt from income taxation under s. 501(c)3 or s.
36 501(c)4 of the Internal Revenue Code of 1986, as amended.
37 (e) Specializes in the retail sale of donated items.
38 (f) Provides job training and employment services to
39 individuals who have workplace disadvantages and disabilities.
40 (g) Uses a majority of its revenues for job training and
41 placement programs that create jobs and foster economic
42 development.
43 (2) To be eligible for funding, an organization must be
44 certified by the Office of Tourism, Trade, and Economic
45 Development as meeting the criteria in subsection (1). After
46 certification, the Office of Tourism, Trade, and Economic
47 Development may release funds to the qualified job training
48 organization pursuant to a contract with the organization. The
49 contract must address the performance conditions and sanctions
50 for failure to meet the performance conditions and must require

51 that salaries paid to officers and employees of the qualified
52 job training organization comply with s. 4958 of the Internal
53 Revenue Code of 1986, as amended.
54 (3) A qualified job-training organization that is
55 certified must use the proceeds provided solely to encourage and
56 provide economic development through capital construction,
57 improvements, or the purchase of equipment that will result in
58 expanded employment opportunities.
59 (4) The failure to use the proceeds as required
60 constitutes grounds for revoking certification.
61 Section 2. The sum of $3 million per year is appropriated
62 from nonrecurring general revenue for 10 years to the Office of
63 Tourism, Trade, and Economic Development for the purpose
64 specified in s. 288.1171(3), Florida Statutes. For the 2006-2007
65 fiscal year, these funds are appropriated from nonrecurring
66 general revenue. For the 2007-2008 through 2016-2017 fiscal
67 years, the funds shall be appropriated from nonrecurring general
68 revenue or as specifically provided in the General
69 Appropriations Act. The funds shall be distributed by the Office
70 of Tourism, Trade, and Economic Development to organizations
71 meeting the requirements of s. 288.1171, Florida Statutes,
72 solely to encourage and provide economic development through
73 capital construction, improvements, or the purchase of equipment
74 that will result in expanded employment opportunities.
75 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1471 CS Florida Energy Diversity and Efficiency Act
SPONSOR(S): Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	13 Y, 1 N, w/CS	Holt	Holt
2) Fiscal Council		Dixon	Kelly
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

HB1471 creates the "Florida Energy Diversity and Efficiency Act," to govern the siting of new nuclear power plants. The Act is modeled after the existing Power Plant Siting Act, Chapter 403.509, Florida Statutes.

The bill streamlines the siting process while ensuring public input. The legislation also allows the Governor and Cabinet, sitting as the Siting Board, to assess the need and approve/deny the plant.

The bill consolidates all issues related to the certification of a new nuclear power plant into one hearing before an administrative law judge.

The definitions for "associated facilities" and "associated transmission lines," are broadened to create a single forum for "one-stop" permitting of all transmission issues. The bill also defines the scope of intervention in transmission line siting procedures in an effort to eliminate unnecessary delays.

Public Service Commission's (PSC) need determination is also included in the bill, and the bill imposes a 135-day schedule on the PSC for issuing a need order. Issues are defined that the PSC can address in the need proceeding and requires the PSC to grant the utility's petition upon a finding that the plant will (1) provide needed baseload capacity; (2) enhance the reliability of production in the state by improving fuel diversity and lessening reliance on natural gas and oil; (3) mitigate air emissions and; (4) provide the most cost-effective – though not necessarily the least-cost –generating alternative. Further, the bill excludes nuclear plants from the PSC bid rule.

Other provisions provide that once a need petition is granted, costs incurred shall not be subject to challenge unless and only to the extent the PSC finds, based on clear and convincing evidence offered at a hearing initiated by the PSC, that the utility was imprudent in incurring costs significantly in excess of the initial, non-binding estimate provided by the utility.

The total fiscal impact is unknown at this time. However, general estimates from PSC indicate that the costs for constructing a nuclear plant will not change as a result of this act. The change in the rate recovery mechanism will allow a utility to recoup its prudently incurred costs sooner in the process. The bill does not appear to provide any type of tax credit or economic incentive for construction that would create a known fiscal impact.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security: Through the further diversification of the State fuel supply, the siting of new nuclear generation may lessen the dependence on any one particular fuel, in order to ensure power reliability.

B. EFFECT OF PROPOSED CHANGES:

Background

Department of Environmental Protection (DEP)
Certification of nuclear fueled, steam turbine, electric power generation facilities is presently done under the authority of the Electrical Power Plant Siting Act (PPSA), ss. 403.501-403.518 and ss. 403.519, F.S. The PPSA is a centralized, coordinated licensing process. This process preempts all state, regional, and local permits and other authorizations that have jurisdiction for regulation and siting of industrial facilities. All affected agencies participate as parties to the process and all non-procedural requirements of the preempted agencies are included in the certification as conditions of certification.

The PPSA is highly procedural and includes a determination of need by the Public Service Commission (PSC) ss. 403.519, F.S., a mandatory land use hearing and a mandatory certification hearing by an administrative law judge, with ultimate approval/denial authority vested in the Siting Board (Governor and Cabinet). The DEP coordinates the process.

An administrative law judge is involved from the beginning, and the process is handled as litigation and requires the exchange of most documents as legal filings. Persons wishing to become formally involved in the process, for the most part, must become parties to the proceeding. Additional opportunities exist for public comment.

Public Service Commission (PSC)
A precedent condition for an electrical project to proceed under the PPSA (s. 403.508(3)) is an affirmative determination of plant need from the PSC. In implementing the requirements of s. 403.508(3), the PSC has established rules controlling the information to be included in a petition for need and the schedule of administrative events in order to meet the requirements of the PPSA. Section 403.519, F.S., requires the PSC, in considering whether to approve a need petition, to take into account several criteria. These criteria include the need for electric system reliability and integrity; the need for adequate electricity at a reasonable cost; whether the proposed plant is the most cost-effective alternative available; available conservation measures which mitigate the need for the plant; and other matters within the PSC's jurisdiction.

In determining whether the proposed plant is the most cost-effective alternative, the PSC established Rule 25-22.082, F.A.C., Selection of Generating Capacity. This rule requires utilities to request bids for alternatives to its proposed plant in order to meet the identified need for power. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness.

Federal Legislation
The Energy Policy Act of 2005 provides significant financial incentives that may inure to the benefit of Florida consumers. These incentives, however, are limited to the first 6,000 megawatts of new nuclear plants constructed. To date, utilities in a number of other states have announced their intent to build new nuclear plants.

EFFECT OF PROPOSED CHANGES

Section 1. The act may be cited as the Florida Energy Diversity and Efficiency Act.

Section 2. The bill provides legislative purpose declaring that it is in the public interest and critical to the health, prosperity, and general welfare of the state and its citizens to promote the expansion of nuclear generation by the siting of new nuclear power plants and associated facilities within the state.

Section 3. Definitions: The bill provides definitions as used in this act. The definitions are adapted largely from those used in the PPSA, with exceptions for using the term "nuclear" in lieu of "electric." Noteworthy, however, are the following definitions which are expanded from the PPSA for use in the act:

(4) "Applicant" means any electric utility as defined under s. 366.8255(1)(a)[1], Florida Statutes, city, town, county, public utility district, electric cooperative, or joint operating agency, or combination thereof, authorized under Florida law to engage in the business of generating, transmitting, or distributing electric energy to retail electric customers in the state.

The regulatory approval of a nuclear plant in the bill only applies to retail serving utilities as defined in s. 366.8255(10)(a). This allows for the inclusion of municipal and rural electric utilities. Historically, no individual Florida municipal or rural electric cooperative has sought to construct a nuclear unit. However, joint ownership arrangements could exist, and these entities as a result could have ownership shares of future nuclear plants.

(21) "Nuclear power plant" means, for the purpose of certification, any electrical generating facility using any process involving nuclear materials, fuels, or processes and, at the applicant's election, includes associated facilities and associated transmission lines.

The definition includes, at the applicant's option, associated transmission lines which encompass not only lines and substations directly interconnected to nuclear plants, but any transmission upgrades or expansions on the state's transmission system. As a result, any grid-wide upgrades required to reliably handle the electric output of the proposed nuclear plant would be considered as part of the licensing process required under this act.

The bill deletes the definitions used in PPSA for "person" and "sufficiency."

Section 4. Department of Environmental Protection; powers and duties enumerated: Powers are designated to the DEP to adopt rules to implement the act provisions and conduct various studies.

However, the concern was raised the bill provides DEP with no authority to issue final orders if not hearing is requested.

Section 5. Applicability and certification: Provisions provide that the act applies exclusively to any new nuclear power plant and to any expansion in steam-generation capacity of any existing nuclear power plant. Any new construction and capacity expansion occurring after the effective date of this requires certification under this act. The bill provides an exemption from modification of certification for changes to fuel make-up that result in no increase of generation capacity. The processing of any federally delegated or approved program shall be processed within the time constraints of the certification review.

Section 6. Distribution of application; schedules: The bill provides that:

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[1] (1) As used in this section, the term:

(a) "Electric utility" or "utility" means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.

- within 7 days after a site certification application (SCA) is filed, the DEP shall provide the applicant and the Division of Administrative Hearings (DOAH) the names and addresses of affected parties.
- within 7 days after an SCA is determined complete, the DEP distributes the processing schedules. (According to DEP, this could be 66 days after receipt of a SCA. See the correlating note in s. 8 regarding 45 days after receipt for a SCA completeness determination.)
- within 7 days after DEP provides the names and addresses of the affected parties, the applicant distributes copies of the application to all affected parties.

Section 7. Appointment of administrative law judge: The bill provides that:

- within 7 days of receipt to the SCA, the DEP request DOAH to designate and administrative law judge (ALJ).
- within 7 days of receipt of the DEP request, DOAH appoints an ALJ.

Section 8. Determination of completeness: The bill provides that:

- within 30 days of distribution of the SAC, agencies are to submit recommendations on completion to DEP
- within 45 days of distribution, the DEP submits its statement on completeness with the applicant and DOAH. (The bill combines at this point the determination of completeness and the determination of sufficiency which are separate concepts in PPSA).

If a finding of incompleteness is declared, the applicant may: 1) withdraw SCA or amendment, or 2) within forty days or such later date as authorized by department rules, file additional information (DEP then has thirty days to issue a second completeness finding), or 3) ask for additional time to file additional information, or 4) ask for an administrative hearing. If a hearing is requested, the request must be filed within fifteen days. If a hearing is requested, the request must be filed within fifteen days. The hearing shall be within twenty-one days of request and ALJ's decision to be within ten days of end of hearing and all processing time-clocks are tolled until the ALJ's decision.

Section 9: Land use and zoning consistency: This section is created to generally streamline the land use and zoning determination. The bill requires an applicant to include in its application a statement of consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances. Local government is to file with all relevant parties with 80 days its determination consistency of the site and its directly associated facilities with existing land use plans and zoning ordinances. The applicant is to then publish the notice of consistency determination in accordance with s. 17(1)(b). Substantially affected individuals, within 15 days of the published notice, shall file a petition of dispute with DEP.

By stipulation among the applicant, local government, and DEP, the dates in this section may be altered pursuant to s. 403.5095.

If it is determined by the local government that the proposed site, or directly associated facility conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 10. Preliminary statements of issues, reports, and studies: Affected agencies within 45 days of SCA distribution are to file preliminary statement of issues. Statutory agencies, or any other agency, must submit agency reports within 60 days of completeness. All proposed conditions of certification shall specify specific statute, rule, or ordinance which authorizes the condition. No condition may be included in the conditions of certification without such specific authorization.

DEP issues a written analysis 85 days after application determined complete. Analysis contains statement of compliance with agency rules, copies of studies and reports, comments from other agencies or persons, DEP recommendations on disposition of the application, variances or exemptions and exceptions, and DEP's recommendation of federal permits.

Section 11. Notice of department recommendation, petition for certification hearing: DEP and the applicant shall publish notice of DEP's recommendation on the SCA and any associated facilities in newspapers of the affected areas.

Section 12. Land use and certification hearing, parties, participants: The bill creates this section to address land use and certification hearings as follows:

Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations.

Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board.

If any party or person whose substantial interests are affected, files a petition for a certification within 14 days after DEP's notice of certification, the designated ALJ shall no later than 260 days hold a hearing. The PSC affirmative determination of need is a condition precedent to the conduct of the certification hearing. For timely petitions for a certification hearing, the hearing shall be held at a location in proximity to the site. This hearing constitutes the sole hearing allowed by ch. 120, to determine the party's interest regarding any required agency license or any related permit required by any federally delegated or approved permit program. The ALJ's recommended order shall be issued within 60 days. The amendment provides a list of the parties to the proceeding.

Provisions are included in the bill for the listed parties, and others, to file intent to be a party or a waiver of participation. The ALJ shall have all powers and duties granted by ch., 120, this act, and the rules of DEP, and the Administration Commission.

Section 13. Final disposition of application: If no certification hearing is held, or within 60 days of ALJ's recommended order following a certification hearing, the SB must approve or deny issuance of a certification by written order, If denied, the reasons for denial are to also be included in the order. Criteria are provided upon which the SB is to consider whether an SCA is to approve in whole, with modifications or conditions, or denied. If certification is denied, the SB is required to set forth in writing actions needed to secure approval. Concerns were raised in this section concerning: 1) that the bill does not contemplate fatal error that cannot be fixed; 2) that only parties to the proceeding may appear before the SB thereby creating a situation that is contrary to Government in the Sunshine; 3) that local comprehensive plans are to be overridden by the SB to allow the project at the selected site.

Section 14. Alteration of time limits: The provisions in this section are identical to the PPSA.

Section 15. Superseded laws, regulations, and certification power:

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants as defined in this act.

(3) The board may adopt reasonable procedural rules pursuant to ss. 120.536(1) and 120.54 to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

Section 16. Effect of certification: The majority of these provisions model the PPSA. However, concern was raised that agencies have 60 days after completeness to notify an applicant that a variance, exemption or other relief is needed. This is the same date agency reports are due. It appears the bill offers no response time to the applicant, and no time is given to DEP to include the additional information into the DEP report.

Section 17. Notice; costs of proceeding: The provisions of this section model the PPSA, except for (1)(b) and (c). Section (1)(b) provides that notice of the land use determination made pursuant to section 9(1) within 15 days after the determination is filed. Section(1)(c) provides notice of land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

Section 18. Revocation or suspension of certification: The provisions of this section model the PPSA.

Section 19. Review: The bill provides that proceedings under this act shall be subject to judicial review in the Florida Supreme Court. Separate appeals of the certification and federally delegated or approved permit programs shall be consolidated for purposes of judicial review. Review on appeal shall be based solely on the record before the board and briefs to the court and shall be limited to determining whether the certification order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this act. The Supreme Court shall expeditiously as practicable review the case.

Section 20. Enforcement of compliance: The provisions of this section model the PPSA.

Section 21. Availability of information: The provisions of this section model the PPSA.

Section 22. Modification of a certificate: The majority of this section models the PPSA.

Section 23. Supplemental applications for sites certified for ultimate capacity: The majority of this provision models the PPSA.

Section 24. Fees; disposition: The bill provides fee provisions similar to the PPSA.

Section 25. Exclusive forum for determination of need: The provisions of this section are similar to the PPSA. The PSC is the sole forum for determination of electrical need. Section 403.519 reads in part:

> In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available.

The bill proposes new language in s. (2)(a) that reads:

> In making its determination to either grant or deny a petition for determination of need, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

According to the PSC, it has and can examined fuel diversity and type of generating plant that is being requested as part of its consideration of a need petition. The bill however makes fuel diversity and base-load generating capacity specific criteria.

Section (2)(c) has outlined that the Commission "shall grant" a petition for need if it finds that the proposed nuclear plant will: 1) provide needed baseload capacity, 2) enhance the reliability of electric power within the state and reduce Florida's dependence on fuel oil and natural gas, and 3) provide a "cost-effective, although not necessarily the least cost source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, mitigate air emission effects within the state, and contribute to the long-term stability and reliability of the electric grid."

The PSC has limited expertise but no jurisdiction as it relates to mitigation of air impacts within the state. It does however consider environmental costs associated with proposed power plants.

Section (3) exempts nuclear plants from the FPSC Rule 25-22.082, Selection of Generating Capacity. This rule requires utilities prior to requesting a determination of need to solicit bids from alternative providers of generating capacity.

The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness. Requirements of the bid rule can be waived upon a showing by a public utility and a finding by the PSC "that a proposal not in compliance with this rule's provisions will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or otherwise will serve the public welfare." The exemption of nuclear units from this process would reduce the amount of time necessary to proceed with a need hearing.

Section (4) addresses procedural issues. First, the PSC's final order will serve as the report that must be submitted to the DEP under Section 9(2)(a)2. After consideration of any Motions for Reconsideration, a party may appeal the final PSC's order to the Florida Supreme Court. Any such appeals must be based on the record before the PSC and the issues to be considered are limited to whether the order "conforms to the constitution and laws of this state and the United States and is within the authority of he Commission under this section." It also directs the Supreme Court to hear such appeals as "expeditiously as possible".

Section (5) outlines cost recovery with specific direction that once the need determination has been granted, the utility has the right to recover any costs associated with "siting, design, licensing, or construction of the plant...." The only mechanism for permitting any disallowance of costs would be based on the PSC finding of imprudence in the utility's "siting, licensing and construction" of the plant. According to the PSC, it currently uses a standard to determine prudence based on a "preponderance of the evidence." This bill creates a more difficult "clear and convincing" evidence standard that must be applied by the in determining what expenditures could be deemed imprudent. Section 24(5) also states that imprudence may not be found for any costs outside the utility's control and then proceeds to enumerate a list of such events "including, but not limited to" delays in getting necessary permits, litigation delays, construction and equipment costs, or changes in laws or regulations.

Under traditional ratemaking practice, expenditures for any pre-operational costs to build power plants would accrue in a regulatory account and when the plant becomes operational, all costs in this account would become part of the total plant cost that could be placed in rate. PSC practice does allow public utilities to request early cash flows to occur for power plant construction costs upon a showing that the utility would suffer financial hardship without such early recovery of costs.

<u>Section 26</u>. <u>Cost recovery for the siting, design, licensing and construction of nuclear power plants.</u> The bill provides definitions as used in this section. Within 6 months after the effective date of this act, the PSC shall establish, by rule, alternative cost recovery mechanisms for the recovery of cost incurred in the siting, design, licensing, and construction of nuclear power plants. Such mechanism shall be designed to promote utility investment in nuclear plants and allow for the recovery in rates all prudently

incurred costs, with exceptions as listed in the bill. After an affirmative determination of need, a utility may petition the PSC for cost recovery as permitted by this section and commission rules.

Provisions are included that outline the cost recovery method. The utility is required to annually report the budgeted and actual costs as compared to the estimated inservice cost of the nuclear plant pursuant to 25(2)(b). In the event, the utility elects not to complete or is precluded from completing construction, it shall be allowed to recover all prudent preconstruction and construction costs incurred following the determination of need. These costs are to be recovered through the capacity cost recovery clause, over a period equal to the period during which the costs were incurred ,or 5 years, whichever is greater. The unrecovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital.

Section 27. This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

See Effect of Proposed Changes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The fiscal impact is yet to be determined.

2. Expenditures:

   The fiscal impact is yet to be determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The total fiscal impact is yet to be determined. However, general estimates from PSC indicate that the cost for constructing a nuclear plant will not change. The rate recovery mechanism will allow the utility to recoup its prudently incurred costs sooner than later.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the DEP to implement the provisions of the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the DEP, the act would apply to any electric power generation that is fueled by a nuclear process. Whereas the PPSA only applies to steam turbine electric power generation (including nuclear fueled). However, all nuclear fueled electric power generation is by steam turbine.

The deletion of the reference to nuclear fuels in the PPSA does not relieve a generation facility producing steam turbine generated electric power from the need for certification under the PPSA. This means two certifications would be required: one for the steam turbine generation (PPSA), and one for the use of a nuclear fuel (EDEA). Two certifications require two fees. Since the two applications would be virtually identical, all other processes could carry forward as one, however, all official documents would have to be produced and processed separately for each act.

Three concerns were raised in this regard to the definition of "nuclear power plant": 1) definition goes beyond the current definition of associated facilities contained in the PPSA. 2) references to the notice provisions and request for hearings use the term "nuclear power plant" and make no mention of "associated facilities. 3) in order for the Siting Board to comprehensively balance the cost and benefits of an new nuclear power plant, all directly associated facilities should be included in the application and evaluated by the reporting agencies, and should not be at the applicant's option.

Another concern has been raised regarding the provision in section 19 creating an avenue of appeal contrary to the requirements of section 10.

Further, the PSC points out that while it is unlikely that any municipal or cooperative utility would initiate a need determination for a nuclear unit, the provisions of this act would appear to apply to them. As a matter of administrative review, all of the provisions of this bill could appropriately apply to municipal or cooperative utilities, except for the cost recovery provisions contained in 24(5). The PSC does not have any authority over how and what time period municipal or cooperative utilities finance power plants and recovery pre and post construction costs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, the Utilities and Telecommunications Committee adopted a strike-all amendment to the bill. The strike-all added two new sections 9 and 26 and all subsequent sections were renumbered. The strike-all also added language is section 12 related to land use.

Section 9: Land use and zoning consistency: This section is created to generally streamline the land use and zoning determination. The bill requires an applicant to include in its application a statement of consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances. Local government is to file with all relevant parties with 80 days its determination consistency of the site and its directly associated facilities with existing land use plans and zoning ordinances. The applicant is to then publish the notice of consistency determination in accordance with s. 17(1)(b). Substantially affected individuals, within 15 days of the published notice, shall file a petition of dispute with DEP.

By stipulation among the applicant, local government, and DEP, the dates in this section may be altered pursuant to s. 403.5095.

If it is determined by the local government that the proposed site, or directly associated facility conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 12: Land use and certification hearing, parties, participants: The amendment added provisions related to land use hearing: providing that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follow such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board.

If any party or person whose substantial interests are affected, files a petition for a certification within 14 days after DEPs notice of certification, the designated ALJ shall no later than 260 days hold a hearing. The PSC affirmative determination of need is a condition precedent to the conduct of the certification hearing. For timely petitions for a certification hearing, the hearing shall be held at a location in proximity to the site. This hearing constitutes the sole hearing allowed by ch. 120, to determine the party's interest regarding any required agency license or any related permit required by any federally delegated or approved permit program. The ALJ's recommended order shall be issued within 60 days. The amendment provides a list of the parties to the proceeding.

Provisions are included in the bill for the listed parties, and others, to file intent to be a party or a waiver of participation. The ALJ shall have all powers and duties granted by ch., 120, this act, and the rules of DEP, and the Administration Commission.

CHAMBER ACTION

1 The Utilities & Telecommunications 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 energy diversity and efficiency;
8 providing a short title; providing purpose; providing
9 definitions; providing requirements for the authorization,
10 certification, and siting of nuclear power plants;
11 providing for a Nuclear Power Plant Siting Board;
12 enumerating the related powers and duties of the
13 Department of Environmental Protection, including
14 rulemaking authority; requiring certain application,
15 certification, and licensure of nuclear power plants;
16 specifying applicability to certain nuclear power plants;
17 providing for distribution of certain applications and
18 schedules; directing the Division of Administrative
19 Hearings to appoint an administrative judge to conduct
20 certain hearings; providing for the determination of
21 application and amendment completeness; requiring a review
22 of land use and zoning consistency; requiring affected
23 agencies to submit certain reports; providing requirements

24 and procedures with respect thereto; requiring public
25 notice of department recommendation and petition for
26 certification hearings; providing for land use and
27 certification hearings; providing requirements and
28 procedures with respect thereto; authorizing the board to
29 have final disposition on certification applications;
30 providing that this act supersedes certain laws and
31 regulations; providing for effect of certification;
32 requiring certain public notice; providing responsibility
33 for certain costs; providing for revocation or suspension
34 of certification; providing for appeal and review of
35 proceedings under the act; providing for compliance
36 enforcement; requiring the department to make certain
37 information relating to power plant siting available to
38 the public; providing requirements and procedures for
39 modification of certification; providing for supplemental
40 applications for sites certified for ultimate site
41 capacity; requiring certain fees; providing for deposit
42 into the Florida Permit Fee Trust Fund and subsequent
43 distribution; requiring the Public Service Commission to
44 hold hearings on determination of need; providing
45 requirements and procedures with respect thereto; creating
46 s. 366.93, F.S.; providing definitions; requiring the
47 Public Service Commission to implement rules related to
48 nuclear power plant cost recovery; requiring a report;
49 providing an effective date.
50

51 WHEREAS, the extraordinary and unprecedented global
52 increases in the cost of fuel oil and natural gas, coupled with
53 the state's rapidly growing population and increasing demands
54 for electric energy, have brought into sharp focus the need to
55 enhance fuel diversity, and
56 WHEREAS, the world growth in demand for fuel oil and
57 natural gas may continue to have further impact on the cost and
58 supply of these resources, and
59 WHEREAS, the impact of Hurricane Katrina on supplies of
60 natural gas and fuel oil further substantiates the need to alter
61 the balance of fuel diversity in connection with the generation
62 of electricity in the state, and
63 WHEREAS, the federal Energy Policy Act of 2005 encourages
64 the siting and operation of new nuclear generation by providing
65 tax and other incentives to reduce the costs of such plants, and
66 WHEREAS, significant federally funded benefits and
67 incentives available under the federal Energy Policy Act of 2005
68 are available to only the first 6,000 megawatts of new advanced
69 nuclear reactor generating capacity licensed in the United
70 States, and
71 WHEREAS, operation of new nuclear power generation within
72 the state, particularly if such generation is eligible for the
73 tax and other incentives available under the federal Energy
74 Policy Act of 2005, will benefit the state's electric customers,
75 and
76 WHEREAS, existing provisions of the Florida Electrical
77 Power Plant Siting Act are inadequate to address the unique
78 issues of siting nuclear power generation within the state and

79 securing benefits under the federal Energy Policy Act of 2005,
80 NOW, THEREFORE,
81
82 Be It Enacted by the Legislature of the State of Florida:
83
84 Section 1. Short title.--This act may be cited as the
85 "Florida Energy Diversity and Efficiency Act."
86 Section 2. Purpose.--The Legislature finds that the state,
87 its residents, and its economy benefit from diverse sources of
88 fuel for the generation of electricity. Diversity of fuel
89 sources contributes to lower cost electricity and improved
90 reliability of electric supply, as the state will not be
91 dependent upon a particular source of fuel. Nuclear power plants
92 are important sources of electric generation that contribute to
93 the diversity of fuel sources within the state. The state has
94 five operating nuclear power plants that have operated reliably
95 for the benefit of the state, and contributed a stable supply of
96 electricity, with minimal impacts on the state's environment.
97 The citizens of the state and electric power consumers have
98 benefited from the operation of existing nuclear power plants
99 within the state through low-cost and reliable energy
100 production, electric grid reliability, and economic and
101 environmental benefits. The Legislature further finds and
102 declares it is in the public interest and critical to the
103 health, prosperity, and general welfare of the state and its
104 citizens to promote the expansion of nuclear generation by the
105 siting of new nuclear power plants within the state so as to
106 continue these benefits and further ensure the state's access to

107 safe, reliable, efficient, and affordable electric service,
108 thereby enhancing the state's economic future while protecting
109 the environment. Recent events have shown the state's
110 vulnerability to disruptions and price volatility in its
111 electric supplies from the importation of natural gas and fuel
112 oil from domestic and foreign sources. The federal Energy Policy
113 Act of 2005 contains important provisions to promote the
114 construction and operation of new nuclear power plants in the
115 United States, including financial incentives for qualifying
116 advanced nuclear power plants and incentives that are limited to
117 the first 6,000 megawatts of advanced nuclear power plant
118 generating capacity licensed in the United States. The state
119 would benefit from timely siting of a qualifying advanced
120 nuclear power plant as a source of low-cost electricity. In
121 consideration of the present and predicted growth in electric
122 power needs in this state, and the potential for additional
123 reliable sources of electricity from nuclear power plants, the
124 Legislature finds that there is a need to develop a procedure
125 for the selection and utilization of sites for electrical
126 generating facilities utilizing nuclear energy and for the
127 identification of a state position with respect to each proposed
128 site and nuclear power plant. The Legislature recognizes that
129 the selection of sites for new or expanded nuclear-powered
130 electrical generating plants, including any associated linear
131 facilities, will have a significant impact upon the welfare of
132 the population, the location and growth of industry, and the use
133 of the natural resources of the state. The Legislature finds
134 that the efficiency of the permit application and review process

135 at both the state and local level would be improved with the
136 implementation of a process in which a permit application for
137 nuclear power plants would be centrally coordinated and all
138 permit decisions could be reviewed on the basis of adopted
139 standards and recommendations of the deciding agencies. A
140 centrally coordinated permitting process would also enhance the
141 state's ability to become the location of a qualifying advanced
142 nuclear power plant. Nuclear power plants may also be the
143 location of or otherwise promote other public benefits for water
144 supply projects, industrial development, or other activities.
145 Legislation that addresses issues unique to the siting of
146 nuclear power plants is required to encourage electric utilities
147 to site and operate new nuclear power plant facilities within
148 the state and to take advantage of provisions of the federal
149 Energy Policy Act of 2005 that operate to reduce the overall
150 costs of such plants. The state shall promote and approve new
151 nuclear-powered electrical generating facilities that will
152 reasonably balance the increasing demands for reliable, cost-
153 effective electric power and decisions about electrical power
154 plant location, construction, and operation with the broad
155 interests of the public.
156 Section 3. Definitions.--As used in this act:
157 (1) "Act" means the Florida Energy Diversity and
158 Efficiency Act.
159 (2) "Agency," as the context requires, means an official,
160 officer, commission, authority, council, committee, department,
161 division, bureau, board, section, or other unit or entity of
162 government, including a regional or local governmental entity.

163 (3) "Amendment" means a change in the information provided
164 by the applicant to the application for certification made after
165 the initial application filing.
166 (4) "Applicant" means any electric utility as defined
167 under s. 366.8255(1)(a), Florida Statutes, city, town, county,
168 public utility district, electric cooperative, or joint
169 operating agency, or combination thereof, authorized under
170 Florida law to engage in the business of generating,
171 transmitting, or distributing electric energy to retail electric
172 customers in the state.
173 (5) "Application" means the documents required by the
174 department to be filed to initiate a certification proceeding
175 and shall include the documents necessary for the department to
176 render a decision on any permit required pursuant to any
177 federally delegated or approved permit program.
178 (6) "Associated facility" means any facility that directly
179 supports the construction and operation of the nuclear power
180 plant, including, but not limited to, any substation,
181 transmission line that connects the electrical power plant to an
182 electrical transmission network, and right-of-way to which the
183 applicant intends to connect.
184 (7) "Associated transmission line" means any new or
185 upgraded transmission line that is owned by the applicant and
186 connects the electrical power plant to a electrical transmission
187 network or right-of-way to which the applicant intends to
188 connect, including, at the applicant's option, any proposed
189 terminal or intermediate substation, substation expansion
190 connected to the associated transmission line to be certified,

191 or new transmission line, upgrade, or improvement of an existing
192 transmission line that is owned by the applicant on any portion
193 of the state's electrical transmission system necessary to
194 support the generation injected into the system from the
195 proposed nuclear power plant.
196 (8) "Board" means the Governor and Cabinet sitting as the
197 Nuclear Power Plant Siting Board.
198 (9) "Certification" means the written order of the board
199 approving an application in whole or with such changes or
200 conditions as the board may deem appropriate.
201 (10) "Completeness" means that the application has
202 addressed all applicable sections of the prescribed application
203 format and that those sections are sufficient in
204 comprehensiveness of data or in quality of information provided
205 to allow the department to determine whether the application
206 provides the reviewing agencies adequate information to prepare
207 the reports required by this act.
208 (11) "Corridor" means the proposed area within which an
209 associated linear facility right-of-way is to be located. The
210 width of the corridor proposed for certification as an
211 associated facility, at the option of the applicant, may be the
212 width of the right-of-way or a wider boundary, not to exceed a
213 width of 1 mile, within which the right-of-way will be located.
214 The area within the corridor in which a right-of-way may be
215 located may be further restricted by a condition of
216 certification. After all property interests required for the
217 right-of-way have been acquired by the applicant, the boundaries

218 of the area certified shall narrow to only that land within the
219 boundaries of the right-of-way.
220 (12) "Department" means the Department of Environmental
221 Protection.
222 (13) "Designated administrative law judge" means the
223 administrative law judge assigned by the Division of
224 Administrative Hearings pursuant to chapter 120, Florida
225 Statutes, to conduct the hearings required by this act.
226 (14) "Federally delegated or approved permit program"
227 means any environmental regulatory program approved by an agency
228 of the Federal Government so as to authorize the department to
229 administer and issue licenses pursuant to federal law,
230 including, but not limited to, new source review permits,
231 operation permits for major sources of air pollution, and
232 prevention of significant deterioration permits under the Clean
233 Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and
234 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and
235 permits under the Resource Conservation and Recovery Act (42
236 U.S.C. ss. 6901 et seq.).
237 (15) "License" means a franchise, permit, certification,
238 registration, charter, comprehensive plan amendment, development
239 order, or permit as defined in chapters 163 and 380, Florida
240 Statutes, or similar form of authorization required by law,
241 including permits issued under federally delegated or approved
242 permit programs, but it does not include a license required
243 primarily for revenue purposes when issuance of the license is a
244 ministerial act.

245 (16) "Local government" means a municipality or county in
246 the jurisdiction of which the nuclear power generating facility
247 is proposed to be located, unless the term is expressly stated
248 to also include the local governments in the jurisdiction of
249 which associated facilities or associated transmission lines are
250 located.
251 (17) "Modification" means any change in the certification
252 order after issuance, including a change in the conditions of
253 certification.
254 (18) "Nonprocedural requirements of agencies" means any
255 agency's regulatory requirements established by statute, rule,
256 ordinance, or comprehensive plan, excluding any provisions
257 prescribing forms, fees, procedures, or time limits for the
258 review or processing of information submitted to demonstrate
259 compliance with such regulatory requirements.
260 (19) "Notice of intent" means that notice which is filed
261 with the department on behalf of an applicant prior to
262 submission of an application pursuant to this act and which
263 notifies the department of an intent to file an application.
264 (20) "Nuclear power generating facility" means the
265 nuclear-fueled electrical generating facility within a nuclear
266 power plant but, for purposes of this act, excludes any
267 associated facility or associated transmission line.
268 (21) "Nuclear power plant" means, for the purpose of
269 certification, any electrical generating facility using any
270 process involving nuclear materials, fuels, or processes and, at
271 the applicant's election, includes associated facilities and
272 associated transmission lines.

273 (22) "Preliminary statement of issues" means a listing and
274 explanation of those issues within the agency's jurisdiction
275 which are of major concern to the agency in relation to the
276 proposed nuclear power plant.
277 (23) "Public Service Commission" or "commission" means the
278 agency created pursuant to chapter 350, Florida Statutes.
279 (24) "Regional planning council" means a regional planning
280 council as defined in s. 186.503(4), Florida Statutes, in the
281 jurisdiction of which the nuclear power generating facility is
282 proposed to be located.
283 (25) "Right-of-way" means land necessary for the
284 construction and maintenance of an associated linear facility,
285 such as a railroad line, pipeline, or transmission line,
286 including associated facilities and associated transmission
287 lines. The typical width of the right-of-way shall be identified
288 in the application. The right-of-way shall be located within the
289 certified corridor and shall be identified by the applicant
290 subsequent to certification in documents filed with the
291 department prior to construction.
292 (26) "Site" means any proposed location wherein a nuclear
293 power generating facility, or a nuclear power generating
294 facility alteration or addition resulting in an increase in
295 generating capacity, will be located within state jurisdiction.
296 The site may include appropriate buffers and may accommodate
297 facilities constructed by the applicant or an agency to further
298 an objective of an adopted water management district water
299 supply plan. For purposes of this act, the term "site" does not

300 include any associated facilities or associated transmission
301 lines.
302 (27) "Site certification" means the final order issued by
303 the board approving with any conditions or modifications a
304 proposed nuclear power plant.
305 (28) "State comprehensive plan" means that plan set forth
306 in chapter 187, Florida Statutes.
307 (29) "Water management district" means a water management
308 district, created pursuant to chapter 373, Florida Statutes, in
309 the jurisdiction of which the nuclear power plant is proposed to
310 be located.
311 Section 4. Department of Environmental Protection; powers
312 and duties enumerated.--The department shall have the following
313 powers and duties in relation to this act:
314 (1) To adopt rules within 6 months of the effective date
315 of this act pursuant to ss. 120.536(1) and 120.54, Florida
316 Statutes, to implement the provisions of this act.
317 (2) To prescribe the form and content of the public
318 notices and the notice of intent and the form, content, and
319 necessary supporting documentation and studies to be prepared by
320 the applicant for nuclear power plant site certification
321 applications. The department shall utilize any existing site
322 certification application forms and instructions adopted
323 pursuant to the Florida Electrical Power Plant Siting Act, ss.
324 403.501-403.518, Florida Statutes, until such new forms are
325 adopted by the department.
326 (3) To receive applications for nuclear power plant site
327 certifications and to determine the completeness thereof.

328 (4) To make, or contract for, studies of nuclear power
329 plant site certification applications.
330 (5) To administer the processing of applications for
331 nuclear power plant site certifications and to ensure that the
332 applications are processed as expeditiously as possible.
333 (6) To require such fees as allowed by this act.
334 (7) To conduct studies and prepare a written analysis.
335 (8) To prescribe the means for monitoring continued
336 compliance with terms of the certification.
337 (9) To notify all affected agencies of the filing of a
338 notice of intent within 15 days after receipt of the notice.
339 (10) To issue, with the nuclear power plant certification,
340 any license required pursuant to any federally delegated or
341 approved permit program.
342 Section 5. Applicability and certification.--
343 (1) The provisions of this act shall apply exclusively to
344 any nuclear power plant as defined in this act and to any
345 expansion in steam-generating capacity of any existing nuclear
346 power plant. No construction of any new nuclear power plant or
347 expansion in steam-generating capacity of any existing nuclear
348 power plant may be undertaken after the effective date of this
349 act without first obtaining certification as provided in this
350 act. Except as otherwise provided in this subsection, this act
351 shall not apply to any such nuclear power plant that is
352 presently operating or that has, upon the effective date of this
353 act, applied for a permit or certification under requirements in
354 force prior to the effective date of such act.

355 (2) Except as provided in the certification, modification
356 of nuclear fuels, internal-related hardware, or operating
357 conditions not in conflict with certification, which increase
358 the electrical output of a unit to no greater capacity than the
359 maximum operating capacity of the existing electrical generator,
360 shall not constitute an alteration or addition to generating
361 capacity which requires certification pursuant to this act.
362 (3) The application for any related department license
363 which is required pursuant to any federally delegated or
364 approved permit program shall be processed within the time
365 periods allowed by this act, in lieu of those specified in s.
366 120.60, Florida Statutes.
367 Section 6. Distribution of application; schedules.--
368 (1) Within 7 days after the filing of an application, the
369 department shall provide to the applicant and the Division of
370 Administrative Hearings the names and addresses of those
371 affected or other agencies entitled to notice and copies of the
372 application and any amendments.
373 (2) Within 7 days after the filing of an application, the
374 department shall prepare a schedule of dates for submission of
375 statements of issues, determination of completeness, and
376 submittal of final reports from affected and other agencies,
377 petition for a certification hearing, and other significant
378 dates to be followed during the certification process, including
379 dates for filing notices of appearance to be a party pursuant to
380 section 12(3)(c). The schedule shall establish the date for
381 conduct of any certification hearing as provided for in this
382 act. This schedule shall be timely provided by the department to

383 the applicant, the administrative law judge, all agencies
384 identified pursuant to subsection (1), and all parties.
385 (3) Within 7 days after the department issues the names
386 and addresses of those affected or other agencies entitled to
387 notice and copies of the application and any amendments, the
388 applicant shall distribute copies of the application to all
389 agencies identified by the department. Copies of changes and
390 amendments to the application shall be timely distributed by the
391 applicant to all affected agencies and parties.
392 Section 7. Appointment of administrative law
393 judge.--Within 7 days after receipt of an application, the
394 department shall request the Division of Administrative Hearings
395 to designate an administrative law judge to conduct the hearings
396 required by this act. The division director shall designate an
397 administrative law judge within 7 days after receipt of the
398 request from the department.
399 Section 8. Determination of completeness.--
400 (1) Within 45 days after the distribution of the
401 application or amendment to a pending application, the
402 department shall file a statement with the Division of
403 Administrative Hearings and with the applicant declaring its
404 position with regard to the completeness of the application or
405 amendment. The department's statement shall be based upon
406 consultation with the affected agencies, which shall submit to
407 the department recommendations on the completeness of the
408 application within 30 days after distribution of the
409 application.

410 (2) If the department declares the application or
411 amendment incomplete, the applicant may withdraw the application
412 or amendment. If the applicant declines to withdraw the
413 application or amendment, the applicant may, at its option:
414 (a) Within 40 days after the department filed its
415 statement of incompleteness or such later date as authorized by
416 department rules, file additional information necessary to make
417 the application or amendment complete. If the applicant makes
418 its application or amendment complete within this time period,
419 the time schedules under this act shall not be tolled by the
420 department's statement of incompleteness.
421 (b) Advise the department and the administrative law judge
422 that the information necessary to make the application or
423 amendment complete cannot be supplied within the time period
424 authorized in paragraph (a). The time schedules under this act
425 shall be tolled from the date of the notice of incompleteness
426 until the application or amendment is determined complete.
427 (c) Contest the statement of incompleteness by filing a
428 request for a hearing with the administrative law judge within
429 15 days after the filing of the statement of incompleteness. If
430 a hearing is requested by the applicant, all time schedules
431 under this act shall be tolled as of the department's statement
432 of incompleteness, pending the administrative law judge's
433 decision concerning the dispute. A hearing shall be held no
434 later than 21 days after the filing of the statement by the
435 department, and a final decision shall be rendered by the
436 administrative law judge within 10 days after the hearing.

437 (3)(a) If the administrative law judge determines,
438 contrary to the department, that an application or amendment is
439 complete, all time schedules under this act shall resume as of
440 the date of the administrative law judge's determination.
441 (b) If the administrative law judge agrees that the
442 application is incomplete, all time schedules under this act
443 shall remain tolled until the applicant files additional
444 information and the application or amendment is determined
445 complete by the department or the administrative law judge.
446 (4) If, within 30 days after receipt of the additional
447 information submitted pursuant to paragraph (2)(a), paragraph
448 (2)(b), or paragraph (3)(b), based upon the recommendations of
449 the affected agencies, the department determines that the
450 additional information supplied by an applicant does not render
451 the application or amendment complete, the applicant may
452 exercise any of the options specified in subsection (2) as often
453 as may be necessary to resolve the dispute.
454 Section 9. Land use and zoning consistency.--
455 (1) The applicant shall include in the application a
456 statement on the consistency of the site or any directly
457 associated facilities with existing land use plans and zoning
458 ordinances which were in effect on the date the application was
459 filed, and a full description of such consistency.
460 (2) Within 80 days after the filing of the application,
461 each local government shall file a determination with the
462 department, applicant, administrative law judge, and all parties
463 on the consistency of the site or any directly associated
464 facilities with existing land use plans and zoning ordinances

465 which were in effect on the date the application was filed,
466 based on the information provided in the application. The
467 applicant shall publish notice of the consistency determination
468 in accordance with the requirements of section 17(1)(b).
469 (3) If any substantially affected person wishes to dispute
470 the local government's determination, he or she shall file a
471 petition with the department within 15 days after the
472 publication of notice of the local government's determination.
473 If a hearing is requested, the provisions of s. 403.508(1),
474 Florida Statutes, shall apply.
475 (4) The dates in this section may be altered upon
476 agreement between the applicant, the local government, and the
477 department pursuant to s. 403.5095, Florida Statutes.
478 (5) If it is determined by the local government that the
479 proposed site or directly associated facility conforms with
480 existing land use plans and zoning ordinances in effect as of
481 the date of the application and no petition has been filed, the
482 responsible zoning or planning authority shall not thereafter
483 change such land use plans or zoning ordinances so as to
484 foreclose construction and operation of the proposed site or
485 directly associated facilities unless certification is
486 subsequently denied or withdrawn.
487 Section 10. Preliminary statements of issues, reports, and
488 studies.--
489 (1) Each affected agency identified in paragraph (2)(a)
490 shall submit a preliminary statement of issues to the department
491 and the applicant no later than 45 days after the distribution
492 of the application. The failure to raise an issue in this

493 statement shall not preclude the issue from being raised in the
494 agency's report.
495 (2)(a) The following agencies shall prepare reports as
496 provided below and shall submit them to the department and the
497 applicant within 60 days after the application is determined
498 complete:
499 1. The Department of Community Affairs shall prepare a
500 report containing recommendations which address the impact upon
501 the public of the proposed nuclear power plant, based on the
502 degree to which the nuclear power plant is consistent with the
503 applicable portions of the state comprehensive plan and other
504 such matters within its jurisdiction.
505 2. The Public Service Commission shall prepare a report as
506 to the present and future need for the electrical generating
507 capacity to be supplied by the proposed nuclear power plant. The
508 report shall include the commission's determination pursuant to
509 section 25(4) and may include the commission's comments with
510 respect to any other matters within its jurisdiction.
511 3. The water management district shall prepare a report as
512 to matters within its regulatory jurisdiction.
513 4. Each local government in whose jurisdiction the
514 proposed nuclear power plant, including associated facilities
515 and associated transmission lines, is to be located shall
516 prepare a report as to the consistency of the proposed nuclear
517 power plant with all applicable local ordinances, regulations,
518 standards, or criteria that apply to the proposed nuclear power
519 plant, including adopted local comprehensive plans, land
520 development regulations, and any applicable local environmental

521 regulations adopted pursuant to s. 403.182, Florida Statutes, or
522 by other means. Each local government in which the nuclear power
523 generating facility is to be located shall also report on
524 whether the proposed site for a nuclear power generating
525 facility is located in a future land use category and a zoning
526 district, as adopted by the local government and which were in
527 effect on the date upon which the application was filed, which
528 permits the location of a nuclear power generating facility. If
529 the proposed site for a nuclear power generating facility is not
530 located in a future land use category or zoning district which
531 allows such use, then the local government shall identify the
532 future land use category or zoning district which would be
533 required to allow the proposed nuclear power generating facility
534 on the proposed site. If the proposed site for a nuclear power
535 generating facility is not located in a future land use category
536 or zoning district which allows such use, the local government
537 shall identify in its report any reasonable and available
538 methods which the local government believes are necessary to
539 make the proposed use of the site for a nuclear power generating
540 facility consistent with the local comprehensive plan future
541 land use category, in compliance with the local zoning code or
542 compatible with the existing land uses surrounding the proposed
543 nuclear power generating facility site.
544 5. The Fish and Wildlife Conservation Commission shall
545 prepare a report as to matters within its jurisdiction.
546 6. The regional planning council shall prepare a report
547 containing recommendations that address the impact upon the
548 public of the proposed nuclear power plant, as identified under

549 the applicable provisions of the strategic regional policy plan
550 adopted pursuant to chapter 186, Florida Statutes.
551 7. The Department of Health shall prepare a report as to
552 matters within its jurisdiction.
553 8. The Department of Transportation shall prepare a report
554 as to the impact of the proposed nuclear power plant and
555 associated linear facilities on roads, railroads, airports,
556 aeronautics, seaports, and other matters within its
557 jurisdiction.
558 9. Any other agency, if requested by the department and
559 upon approval of the assigned administrative law judge, shall
560 also perform studies or prepare reports as to matters within
561 that agency's jurisdiction which may be directly affected by the
562 proposed nuclear power plant.
563 (b) Each report described in this subsection shall contain
564 all information on variances, exemptions, exceptions, or other
565 relief which may be required and any proposed conditions of
566 certification on matters within the jurisdiction of such agency.
567 For each condition proposed by an agency in its report, the
568 agency shall list the specific statute, rule, or ordinance which
569 authorizes the proposed condition. No condition of certification
570 may be imposed upon a nuclear power plant project that is not
571 directly required to ensure compliance with a specific statute,
572 rule, or ordinance of an agency or the criteria set forth in
573 this act.
574 (c) The agencies shall initiate the activities required by
575 this section no later than 30 days after the complete
576 application is distributed.

577 (3) The department shall prepare a written analysis, which
578 shall be filed with the designated administrative law judge and
579 served on all parties no later than 85 days after the
580 application is found complete, but no later than 60 days prior
581 to the scheduled date for the certification hearing if a
582 petition for hearing were filed, and which shall include:
583 (a) A statement indicating whether the proposed nuclear
584 power plant and proposed ultimate site capacity will be in
585 compliance with the rules of the department and in compliance
586 with a specific statute, rule, or ordinance of an agency
587 identified in that agency's report.
588 (b) Copies of the studies and reports required by this
589 act.
590 (c) The comments received by the department from any other
591 agency or person.
592 (d) The recommendation of the department as to the
593 disposition of the application, variances, exemptions,
594 exceptions, or other relief identified by any party, and of any
595 proposed conditions of certification which the department
596 believes should be imposed, including any conditions proposed by
597 an agency which the department believes should be imposed in any
598 final certification.
599 (e) The recommendation of the department regarding the
600 issuance of any license required pursuant to a federally
601 delegated or approved permit program.
602 (4) Except when good cause is shown, the failure of any
603 agency to submit a preliminary statement of issues or a report,
604 or to submit its preliminary statement of issues or report

605 within the allowed time, shall not be grounds for the alteration
606 of any time limitation in this act. Neither the failure to
607 submit a preliminary statement of issues or a report nor the
608 inadequacy of the preliminary statement of issues or report
609 shall be grounds to deny or condition certification.
610 Section 11. Notice of department recommendation, petition
611 for certification hearing.--
612 (1) The department and the applicant shall publish a
613 public notice as provided for in this section, announcing the
614 issuance of the department's recommendation on the application
615 for site certification. The notice shall be published in the
616 newspaper or newspapers in the jurisdictions where the proposed
617 nuclear power plant and any associated facility are proposed to
618 be located. The notice shall inform the public of the issuance
619 of the department's report, the conclusion reached in that
620 report, and the locations where the department's report and the
621 application are available for public inspection.
622 (2) Within 14 days after its receipt of the department's
623 recommendation or within 14 days after the newspaper notice of
624 the department's recommendation, whichever occurs first, any
625 party or any person whose substantial interests may be affected
626 by the proposed nuclear power plant may file with the department
627 a petition for a site certification hearing. The petition shall
628 identify the person filing the petition, identify the
629 substantial interests alleged to be affected, and identify with
630 specificity those issues which the person alleges require the
631 conduct of a certification hearing on the proposed nuclear power
632 plant.

633 (3) Failure to timely file a petition for a certification
634 hearing shall result in the department's recommendation becoming
635 final and no longer subject to challenge or reversal in any
636 proceeding, including proceedings before the board. Only those
637 conditions contained in the department's recommendation may be
638 imposed upon the proposed nuclear power plant.
639 Section 12. Land use and certification hearings, parties,
640 participants.--
641 (1)(a) If a petition for a hearing on land use has been
642 filed pursuant to section 9(3), the designated administrative
643 law judge shall conduct a land use hearing in the county of the
644 proposed site or directly associated facility, as applicable, as
645 expeditiously as possible, but not later than 30 days after the
646 department's receipt of the petition. The place of such hearing
647 shall be as close as possible to the proposed site or directly
648 associated facility. If a petition is filed, the hearing shall
649 be held regardless of the status of the completeness of the
650 application. However, incompleteness of information necessary
651 for a local government to evaluate an application may be claimed
652 by the local government as cause for a statement of
653 inconsistency with existing land use plans and zoning ordinances
654 under the Florida Electrical Power Plant Siting Act.
655 (b) Notice of the land use hearing shall be published in
656 accordance with the requirements of section 17.
657 (c) The sole issue for determination at the land use
658 hearing shall be whether or not the proposed site is consistent
659 and in compliance with existing land use plans and zoning
660 ordinances. If the administrative law judge concludes that the

661 proposed site is not consistent or in compliance with existing
662 land use plans and zoning ordinances, the administrative law
663 judge shall receive at the hearing evidence on, and address in
664 the recommended order any changes to or approvals or variances
665 of, the applicable land use plans or zoning ordinances which
666 will render the proposed site consistent and in compliance with
667 the local land use plans and zoning ordinances.
668 (d) The designated administrative law judge's recommended
669 order shall be issued within 30 days after completion of the
670 hearing and shall be reviewed by the board within 60 days after
671 receipt of the recommended order by the board.
672 (e) If it is determined by the board that the proposed
673 site does conform with existing land use plans and zoning
674 ordinances in effect as of the date of the application, or as
675 otherwise provided by this act the responsible zoning or
676 planning authority shall not thereafter change such land use
677 plans or zoning ordinances so as to foreclose construction and
678 operation of the proposed power plant on the proposed site or
679 directly associated facilities unless certification is
680 subsequently denied or withdrawn.
681 (f) If it is determined by the board that the proposed
682 site does not conform with existing land use plans and zoning
683 ordinances, the board may, if it determines after notice and
684 hearing and upon consideration of the recommended order on land
685 use and zoning issues that it is in the public interest to
686 authorize the use of the land as a site for an electrical power
687 plant, authorize an amendment to, or a rezoning, variance, or
688 other approval of, the adopted land use plan and zoning

689 ordinances required to render the proposed site consistent with
690 local land use plans and zoning ordinances. The board's action
691 shall not be controlled by any other procedural requirements of
692 law. In the event a variance or other approval is denied by the
693 board, it shall be the responsibility of the applicant to make
694 the necessary application to the applicable local government for
695 any approvals determined by the board as required to make the
696 proposed site consistent and in compliance with local land use
697 plans and zoning ordinances. No further action may be taken on
698 the complete application until the proposed site conforms to the
699 adopted land use plan or zoning ordinances or the board grants
700 relief as provided under this act.
701 (2) If any party or person whose substantial interests are
702 affected files a petition for a certification hearing within 14
703 days after publication of notice of the department's notice of
704 its recommendation on the application for site certification, a
705 certification hearing shall be held by the designated
706 administrative law judge no later than 260 days from the date
707 the application is filed with the department. However, an
708 affirmative determination of need by the Public Service
709 Commission pursuant to this act shall be a condition precedent
710 to the conduct of the certification hearing. If a timely
711 petition for a certification hearing is filed, the certification
712 hearing shall be held at a location in proximity to the proposed
713 site. The certification hearing shall also constitute the sole
714 hearing allowed by chapter 120, Florida Statutes, to determine
715 the substantial interest of a party regarding any required
716 agency license or any related permit required pursuant to any

717 federally delegated or approved permit program. At the
718 conclusion of the certification hearing, the designated
719 administrative law judge shall, after consideration of all
720 evidence of record, submit to the board a recommended order no
721 later than 60 days after the date of the filing of the hearing
722 transcript. In the event the administrative law judge fails to
723 issue a recommended order within 60 days after the date of the
724 filing of the hearing transcript, the administrative law judge
725 shall submit a report to the board with a copy to all parties
726 within 60 days after the date of the filing of the hearing
727 transcript to advise the board of the reason for the delay in
728 the issuance of the recommended order and of the date by which
729 the recommended order will be issued.
730 (3)(a) Parties to the proceeding shall include:
731 1. The applicant.
732 2. The Public Service Commission.
733 3. The Department of Community Affairs.
734 4. The Fish and Wildlife Conservation Commission.
735 5. The Department of Transportation.
736 6. The water management district.
737 7. The department.
738 8. The regional planning council.
739 9. The local government.
740 (b) Any party listed in paragraph (a) other than the
741 department or the applicant may waive its right to participate
742 in these proceedings. If such listed party fails to file a
743 notice of its intent to be a party on or before the 90th day

744 prior to the scheduled date for the certification hearing, such
745 party shall be deemed to have waived its right to be a party.
746 (c) Upon the filing of a notice of intent to be a party
747 with the administrative law judge and no more than 21 days after
748 the date of publication of notice of filing of the application
749 for site certification, the following shall also be parties to
750 the proceeding:
751 1. Any agency not listed in paragraph (a) as to matters
752 within its jurisdiction.
753 2. Any domestic nonprofit corporation or association
754 formed, in whole or in part, to promote conservation or natural
755 beauty; protect the environment, personal health, or other
756 biological values; preserve historical sites; promote consumer
757 interests; represent labor, commercial, or industrial groups; or
758 promote comprehensive planning or orderly development of the
759 area in which the proposed nuclear power plant is to be located.
760 (d) Notwithstanding paragraph (e), failure of an agency to
761 file a notice of intent to be a party within the time provided
762 in this section shall constitute a waiver of the right of the
763 agency to participate as a party in the proceeding.
764 (e) Other parties may include any person, including those
765 persons enumerated in paragraph (c) who have failed to timely
766 file a notice of intent to be a party, whose substantial
767 interests are affected and being determined by the proceeding,
768 and who timely file a motion to intervene pursuant to chapter
769 120, Florida Statutes, and applicable rules. Late intervention
770 pursuant to this paragraph may be granted by the designated
771 administrative law judge upon a showing of good cause that

772 excuses such late intervention and upon such conditions as he or
773 she may prescribe any time prior to 30 days before the
774 commencement of the certification hearing.
775 (f) Any agency, including those whose properties or works
776 are affected, shall be made a party upon the request of the
777 department or the applicant.
778 (4) When appropriate, any person may be given an
779 opportunity to present oral or written communications to the
780 designated administrative law judge. If the designated
781 administrative law judge proposes to consider such
782 communications, then all parties shall be given an opportunity
783 to cross-examine, challenge, or rebut such communications.
784 (5) The designated administrative law judge shall have all
785 powers and duties granted to administrative law judges by
786 chapter 120, Florida Statutes, this act, and the rules of the
787 department and the Administration Commission, including the
788 authority to resolve disputes over the completeness and
789 sufficiency of an application for certification.
790 Section 13. Final disposition of application.--
791 (1) Within 60 days after the date of the issuance of the
792 department's recommendation if no hearing is held, or within 60
793 days after the date of the receipt of the designated
794 administrative law judge's recommended order following a
795 certification hearing, the board shall act upon the application
796 by written order, approving certification or denying the
797 issuance of a certificate, in accordance with the criteria set
798 forth in this act, and stating the reasons for issuance or
799 denial. If no hearing has been held, the board shall enter a

800 final order approving the proposed nuclear power plant subject
801 only to the conditions of certification contained in the
802 department's recommendation.
803 (2) Following the holding of a certification hearing, in
804 determining whether an application should be approved in whole,
805 approved with modifications or conditions, or denied, the board
806 shall consider whether, and the extent to which, the location,
807 construction, and operation of the proposed nuclear power plant
808 will:
809 (a) Meet the electrical energy needs of the state in an
810 orderly and timely fashion, as determined by the Public Service
811 Commission.
812 (b) Comply with nonprocedural requirements of agencies.
813 (c) Be consistent with applicable local government
814 comprehensive plans and in compliance with applicable zoning
815 ordinances.
816 (d) Effect a reasonable balance between the need for the
817 nuclear power plant as a means of providing abundant low-cost
818 electrical energy and the impact upon the public and the
819 environment resulting from the location, construction, and
820 operation of the proposed nuclear power plant.
821 (3) Following the conduct of a certification hearing, if
822 the certificate is denied, the board shall set forth in writing
823 the actions the applicant would have to take to secure the
824 board's approval of the application.
825 (4) The issues that may be raised in any hearing before
826 the board shall be limited to those matters raised in the
827 certification hearing before the administrative law judge or

828 raised in the recommended order. Only parties may appear before
829 the board and shall be subject to the provisions of s. 120.66,
830 Florida Statutes.
831 (5) In regard to the properties and works of any agency
832 which is a party to the certification hearing, the board shall
833 have the authority to decide issues relating to the use, the
834 connection thereto, or the crossing thereof, for the nuclear
835 power plant and site and to direct any such agency to execute,
836 within 30 days after the entry of certification, the necessary
837 license or easement for such use, connection, or crossing,
838 subject only to the conditions set forth in such certification.
839 Section 14. Alteration of time limits.--Any time
840 limitation in this act may be altered by the designated
841 administrative law judge upon stipulation between the department
842 and the applicant, unless objected to by any party within 5 days
843 after notice or for good cause shown by any party.
844 Section 15. Superseded laws, regulations, and
845 certification power.--
846 (1) If any provision of this act is in conflict with any
847 other provision, limitation, or restriction under any law, rule,
848 regulation, or ordinance of this state or any political
849 subdivision, municipality, or agency, this act shall govern and
850 control, and such law, rule, regulation, or ordinance shall be
851 deemed superseded for the purposes of this act.
852 (2) The state hereby preempts the siting, regulation, and
853 certification of nuclear power plant sites and nuclear power
854 plants as defined in this act.

855 (3) The board may adopt reasonable procedural rules
856 pursuant to ss. 120.536(1) and 120.54 to carry out its duties
857 under this act and to give effect to the legislative intent that
858 this act is to provide an efficient, simplified, centrally
859 coordinated, one-stop licensing process.
860 Section 16. Effect of certification.--
861 (1) Subject to the conditions set forth in the
862 certification, any certification signed by the Governor shall
863 constitute the sole license of the state and any agency as to
864 the approval of the site and the construction and operation of
865 the proposed nuclear power plant, except for the issuance of
866 department licenses required under any federally delegated or
867 approved permit program and except as otherwise provided in
868 subsection (4).
869 (2)(a) The certification shall authorize the applicant
870 named in the certification to construct and operate the proposed
871 nuclear power plant, subject only to the conditions of
872 certification set forth in the certification, and except for the
873 issuance of department licenses or permits required under any
874 federally delegated or approved permit program.
875 (b) Except as provided in subsection (4), the
876 certification may include conditions that constitute variances,
877 exemptions, or exceptions from nonprocedural requirements of the
878 department or any agency which were expressly considered during
879 the proceeding, including, but not limited to, any site specific
880 criteria, standards, or limitations under local land use or
881 zoning approvals which affect the proposed power plant or its
882 site unless waived by the agency as provided below and which

883 otherwise would be applicable to the construction and operation
884 of the proposed nuclear power plant. No variance, exemption,
885 exception, or other relief shall be granted from a state statute
886 or rule for the protection of endangered or threatened species,
887 aquatic preserves, and Outstanding National Resource Waters and
888 Outstanding Florida Waters, or for the disposal of hazardous
889 waste, except to the extent authorized by the applicable statute
890 or rule, or upon a finding by the board that certifying the
891 nuclear power plant at the site proposed by the applicant
892 overrides the public interest protected by the statute or rule
893 from which relief is sought. Each party shall notify the
894 applicant and other parties no more than 60 days after the
895 application is determined sufficient of any nonprocedural
896 requirements not specifically listed in the application from
897 which a variance, exemption, exception, or other relief is
898 necessary in order for the board to certify any nuclear power
899 plant proposed for certification. Failure of such notification
900 by an agency shall be treated as a waiver from nonprocedural
901 requirements of the department or any other agency. However, no
902 variance shall be granted from standards or regulations of the
903 department applicable under any federally delegated or approved
904 permit program, except as expressly allowed in such program.
905 (c) To the extent any condition of certification imposed
906 pursuant to this act is inconsistent with or otherwise in
907 conflict with any requirement of federal law, regulation, or
908 license regulating construction and operation of a nuclear power
909 plant certified under this act, then such condition of
910 certification shall be automatically modified to conform to such

911 federal requirement or be superseded by such federal
912 requirement. The state shall not enforce compliance with any
913 such federal requirement under this act, except to the extent
914 the state is authorized to enforce such condition under federal
915 law.
916 (3) The certification and any order on land use and zoning
917 issued under this act shall be in lieu of any license, permit,
918 certificate, or similar document required by any agency pursuant
919 to, but not limited to, chapter 125, chapter 161, chapter 163,
920 chapter 166, chapter 186, chapter 253, chapter 298, chapter 370,
921 chapter 373, chapter 376, chapter 380, chapter 381, chapter 387,
922 chapter 403, except for permits issued pursuant to s. 403.0885,
923 Florida Statutes, and except as provided in s. 403.509(3) and
924 (6), Florida Statutes, chapter 404, Florida Statutes, the
925 Florida Transportation Code, or 33 U.S.C. s. 1341.
926 (4) This act shall not affect the right of any local
927 government to charge appropriate fees or require that
928 construction be in compliance with applicable building
929 construction codes, provided that in the event of a conflict
930 between requirements of local building construction codes and
931 federal requirements, such federal requirements shall supersede
932 local building construction codes.
933 (5)(a) A nuclear power plant certified pursuant to this
934 act shall comply with rules adopted by the department subsequent
935 to the issuance of the certification which prescribe new or
936 stricter criteria, to the extent that the rules are applicable
937 to nuclear power plants. Except when express variances,
938 exceptions, exemptions, or other relief have been granted,

939 subsequently adopted rules which prescribe new or stricter
940 criteria shall operate as automatic modifications to
941 certifications. A holder of a certification issued under this
942 act may apply to the board for relief from such rules to the
943 extent relief is available to other electrical power plants in
944 the state. Any such relief shall be granted in the same manner
945 as provided for the granting of relief at the time of the
946 original certification, as provided for in this act.
947 (b) Upon written notification to the department, any
948 holder of a certification issued pursuant to this act may choose
949 to operate the certified nuclear power plant in compliance with
950 any rule subsequently adopted by the department which prescribes
951 criteria more lenient than the criteria required by the terms
952 and conditions in the certification which are not site-specific.
953 (c) No term or condition of certification shall be
954 interpreted to preclude the postcertification exercise by any
955 party of whatever procedural rights it may have under chapter
956 120, Florida Statutes, including those related to rulemaking
957 proceedings.
958 Section 17. Notice; costs of proceeding.--
959 (1) The following notices are to be published by the
960 applicant:
961 (a) A notice of filing of the application, which shall be
962 published as specified in subsection (2) within 15 days after
963 the application has been determined complete. Such notice shall
964 give notice of the provisions of section 16(1) and (2).
965 (b) Notice of the land use determination made pursuant to
966 section 9(1) within 15 days after the determination is filed.

967 (c) Notice of the land use hearing, which shall be
968 published as specified in subsection (2), no later than 15 days
969 before the hearing.
970 (d) Notice of issuance of the department's agency report
971 and recommendation, which shall be published as specified in
972 subsection (2) no later than 10 days after the report and
973 recommendation are issued by the department.
974 (e) If a certification hearing is to be conducted, then
975 notice published as specified in subsection (2).
976 (f) Notice of modification when required by the
977 department, based on whether the requested modification of
978 certification will significantly increase impacts to the
979 environment or the public. Such notice shall be published as
980 specified under subsection (2):
981 1. Within 21 days after receipt of a request for
982 modification, except that the newspaper notice shall be of a
983 size as directed by the department commensurate with the scope
984 of the modification.
985 2. If a hearing is to be conducted in response to the
986 request for modification, then notice shall be provided as
987 specified in paragraph (e).
988 (g) Notice of a supplemental application, which shall be
989 published as follows:
990 1. Notice of receipt of the supplemental application shall
991 be published as specified in paragraph (a).
992 2. Notice of the certification hearing shall be published
993 as specified in paragraph (f).

994 (2) Notices provided by the applicant shall be published
995 in newspapers of general circulation within the county or
996 counties in which the proposed nuclear power plant will be
997 located. The newspaper notices shall be at least one-half page
998 in size in a standard size newspaper or a full page in a tabloid
999 size newspaper and published in a section of the newspaper other
1000 than the legal notices section. These notices shall include a
1001 map generally depicting the project and all associated
1002 facilities corridors, including associated transmission lines,
1003 if any. A newspaper of general circulation shall be the
1004 newspaper which has the largest daily circulation in that county
1005 and has its principal office in that county. If the newspaper
1006 with the largest daily circulation has its principal office
1007 outside the county, the notices shall appear in both the
1008 newspaper having the largest circulation in that county and in a
1009 newspaper authorized to publish legal notices in that county.
1010 (3) All notices published by the applicant shall be paid
1011 for by the applicant and shall be in addition to the application
1012 fee.
1013 (4) The department shall:
1014 (a) Publish in the manner specified in chapter 120,
1015 Florida Statutes, notices of the filing of the application or
1016 supplemental application; the land use determination and land
1017 use hearing, if one is to be held; the department's report and
1018 recommendation; the certification hearing, if one is to be held;
1019 the hearing before the board; and stipulations, proposed agency
1020 action, or petitions for modification.

1021 (b) Provide copies of those notices to any persons who
1022 have requested to be placed on the departmental mailing list for
1023 the purposes provided in paragraph (a).
1024 (5) The applicant shall pay those expenses and costs
1025 associated with the conduct of the hearings and the recording
1026 and transcription of the proceedings.
1027 Section 18. Revocation or suspension of
1028 certification.--Any certification may be revoked or suspended:
1029 (1) For any material false statement in the application or
1030 in the supplemental or additional statements of fact or studies
1031 required of the applicant when a true answer would have
1032 warranted the board's refusal to recommend a certification in
1033 the first instance.
1034 (2) For failure to comply with the terms or conditions of
1035 the certification.
1036 (3) For violation of the provisions of this act or rules
1037 or orders issued under this act.
1038 Section 19. Review.--Proceedings under this act shall be
1039 subject to judicial review in the Florida Supreme Court.
1040 Separate appeals of the certification order issued by the board
1041 and of any department permit issued pursuant to a federally
1042 delegated or approved permit program shall be consolidated for
1043 purposes of judicial review. Review on appeal shall be based
1044 solely on the record before the board and briefs to the court
1045 and shall be limited to determining whether the certification
1046 order conforms to the constitution and laws of this state and
1047 the United States and is within the authority of the board under
1048 this act. The Supreme Court shall proceed to hear and determine

1049 the action as expeditiously as practicable and give the action
1050 precedence over other matters not accorded similar precedence by
1051 law.
1052 Section 20. Enforcement of compliance.--Failure to obtain
1053 a certification or to comply with the conditions of
1054 certification or this act shall constitute a violation of
1055 chapter 403, Florida Statutes.
1056 Section 21. Availability of information.--The department
1057 shall make available for public inspection and copying during
1058 regular office hours, at the expense of any person requesting
1059 copies, any information filed or submitted to the department
1060 pursuant to this act.
1061 Section 22. Modification of certification.--
1062 (1) A certification may be modified after issuance in any
1063 one of the following ways:
1064 (a) The board may delegate to the department the authority
1065 to modify specific conditions in the certification.
1066 (b) The department may modify the terms and conditions of
1067 the certification if no party to the certification hearing
1068 objects in writing to such modification within 45 days after
1069 notice by mail to such party's last address of record and if no
1070 other person whose substantial interests will be affected by the
1071 modification objects in writing within 30 days after issuance of
1072 public notice. If objections are raised, the applicant may file
1073 a petition for modification pursuant to paragraph (c).
1074 (c) Any petition for modification shall be filed with the
1075 department and the Division of Administrative Hearings. A

1076 petition for modification may be filed by the applicant or the
1077 department setting forth:
1078 1. The proposed modification.
1079 2. The factual reasons asserted for the modification.
1080 3. The anticipated effects of the proposed modification on
1081 the applicant, the public, and the environment.
1082 (2) Petitions filed pursuant to this section shall be
1083 disposed of in the same manner as an application, but with time
1084 periods established by the administrative law judge commensurate
1085 with the significance of the modification requested.
1086 (3) Any agreement or modification under this section must
1087 be in accordance with the terms of this act. No modification to
1088 a certification shall be granted that constitutes a variance
1089 from standards or regulations of the department applicable under
1090 any federally delegated or approved permit program, except as
1091 expressly allowed in such program.
1092 Section 23. Supplemental applications for sites certified
1093 for ultimate site capacity.--
1094 (1)(a) The department shall adopt rules governing the
1095 processing of supplemental applications for certification of the
1096 construction and operation of nuclear power plants to be located
1097 at sites which have been previously certified for an ultimate
1098 site capacity pursuant to this act. Supplemental applications
1099 shall be limited to nuclear power plants using the fuel type
1100 previously certified for that site. The rules adopted pursuant
1101 to this section shall include provisions for:
1102 1. Prompt appointment of a designated administrative law
1103 judge.

1104 2. The contents of the supplemental application.
1105 3. Resolution of disputes as to the completeness and
1106 sufficiency of supplemental applications by the designated
1107 administrative law judge.
1108 4. Public notice of the filing of the supplemental
1109 applications.
1110 5. Time limits for prompt processing of supplemental
1111 applications.
1112 6. Final disposition by the board within 215 days after
1113 the filing of a complete supplemental application.
1114 (b) The time limits shall not exceed any time limitation
1115 governing the review of initial applications for site
1116 certification pursuant to this act, it being the legislative
1117 intent to provide shorter time limitations for the processing of
1118 supplemental applications for nuclear power plants to be
1119 constructed and operated at sites which have been previously
1120 certified for an ultimate site capacity.
1121 (c) Any time limitation in this section or in rules
1122 adopted pursuant to this section may be altered by the
1123 designated administrative law judge upon stipulation between the
1124 department and the applicant, unless objected to by any party
1125 within 5 days after notice or for good cause shown by any party.
1126 The parties to the proceeding shall adhere to the provisions of
1127 chapter 120, Florida Statutes, and this act in considering and
1128 processing such supplemental applications.
1129 (2) Supplemental applications shall be reviewed as
1130 provided in this act, except that the time limits provided in
1131 this section shall apply to such supplemental applications.

1132 (3) The land use and zoning consistency determination
1133 provisions of the Florida Electrical Power Plant Siting Act
1134 shall not be applicable to the processing of supplemental
1135 applications pursuant to this section so long as:
1136 (a) The previously certified ultimate site capacity is not
1137 exceeded.
1138 (b) The lands required for the construction or operation
1139 of the electrical power plant which is the subject of the
1140 supplemental application are within the boundaries of the
1141 previously certified site.
1142 (4) For the purposes of this act, the term "ultimate site
1143 capacity" means the maximum generating capacity for a site as
1144 certified by the board.
1145 Section 24. Fees; disposition.--The department shall
1146 charge the applicant the following fees, as appropriate, which
1147 shall be paid into the Florida Permit Fee Trust Fund:
1148 (1) An application fee, which shall not exceed $200,000.
1149 The fee shall be fixed by rule on a sliding scale related to the
1150 size, type, ultimate site capacity, increase in generating
1151 capacity proposed by the application, or the number and size of
1152 local governments in whose jurisdiction the nuclear power plant
1153 is located.
1154 (a) Sixty percent of the fee shall go to the department to
1155 cover any costs associated with reviewing and acting upon the
1156 application, to cover any field services associated with
1157 monitoring construction and operation of the facility, and to
1158 cover the costs of the public notices published by the
1159 department.

1160 (b) Twenty percent of the fee or $25,000, whichever is
1161 greater, shall be transferred to the Administrative Trust Fund
1162 of the Division of Administrative Hearings of the Department of
1163 Management Services.
1164 (c) Upon written request with proper itemized accounting
1165 within 90 days after final agency action by the board or
1166 withdrawal of the application, the department shall reimburse
1167 the Department of Community Affairs, the Fish and Wildlife
1168 Conservation Commission, any water management district created
1169 pursuant to chapter 373, Florida Statutes, the regional planning
1170 council, and the local government in the jurisdiction of which
1171 the proposed nuclear power plant is to be located, and any other
1172 agency from which the department requests special studies
1173 pursuant to this act. Such reimbursement shall be authorized for
1174 the preparation of any studies required of the agencies by this
1175 act, for agency travel and per diem to attend any hearing held
1176 pursuant to this act, and for local governments to participate
1177 in the proceedings. In the event the amount available for
1178 allocation is insufficient to provide for complete reimbursement
1179 to the agencies, reimbursement shall be on a prorated basis.
1180 (d) If any sums are remaining, the department shall retain
1181 them for its use in the same manner as is otherwise authorized
1182 by this act; provided, however, that if the certification
1183 application is withdrawn, the remaining sums shall be refunded
1184 to the applicant within 90 days after withdrawal.
1185 (2) A certification modification fee, which shall not
1186 exceed $30,000. The fee shall be submitted to the department
1187 with a formal petition for modification to the department. This

1188 fee shall be established, disbursed, and processed in the same
1189 manner as the application fee in subsection (1), except that the
1190 Division of Administrative Hearings shall not receive a portion
1191 of the fee unless the petition for certification modification is
1192 referred to the Division of Administrative Hearings for hearing.
1193 If the petition is so referred, only $10,000 of the fee shall be
1194 transferred to the Administrative Trust Fund of the Division of
1195 Administrative Hearings of the Department of Management
1196 Services. The fee for a modification by agreement shall be
1197 $10,000, to be paid upon the filing of the request for
1198 modification. Any sums remaining after payment of authorized
1199 costs shall be refunded to the applicant within 90 days after
1200 issuance or denial of the modification or withdrawal of the
1201 request for modification.
1202 (3) A supplemental application fee, not to exceed $75,000,
1203 to cover all reasonable expenses and costs of the review,
1204 processing, and proceedings of a supplemental application. This
1205 fee shall be established, disbursed, and processed in the same
1206 manner as the certification application fee in subsection (1)
1207 except that only $20,000 of the fee shall be transferred to the
1208 Administrative Trust Fund of the Division of Administrative
1209 Hearings of the Department of Management Services.
1210 Section 25. Exclusive forum for determination of need.--
1211 (1) On request by an applicant, the Public Service
1212 Commission shall begin a proceeding to determine the need for a
1213 nuclear power plant subject to this act. The applicant shall
1214 publish a notice of the proceeding in a newspaper of general
1215 circulation in each county in which the proposed nuclear power

1216 plant will be located. The notice shall be at least one-quarter
1217 of a page and published at least 21 days prior to the scheduled
1218 date for the proceeding.
1219 (2)(a) The commission shall hold a hearing within 90 days
1220 after the filing of the petition and shall issue an order
1221 granting or denying the petition to determine need within 135
1222 days after the date of the filing of the petition. The
1223 commission shall be the sole forum for the determination of this
1224 matter and the issues addressed in the petition, which
1225 accordingly shall not be reviewed in any other forum. In making
1226 its determination to either grant or deny a petition for
1227 determination of need, the commission shall consider the need
1228 for electric system reliability and integrity, including fuel
1229 diversity, the need for base-load generating capacity, and the
1230 need for adequate electricity at a reasonable cost.
1231 (b) The applicant's petition shall include:
1232 1. A description of the need for the generation capacity.
1233 2. A description of how the proposed nuclear power plant
1234 will enhance the reliability of electric power production within
1235 the state by improving the balance of power plant fuel diversity
1236 and reducing Florida's dependence on fuel oil and natural gas.
1237 3. A description of and a nonbinding estimate for the cost
1238 of the nuclear power plant.
1239 4. The annualized base revenue requirement for the first
1240 12 months of operation of the nuclear power plant.
1241 (c) In making its determination, the commission shall take
1242 into account matters within its jurisdiction, which it deems
1243 relevant, including whether the nuclear power plant will:

1244 1. Provide needed base-load capacity.
1245 2. Enhance the reliability of electric power production
1246 within the state by improving the balance of power plant fuel
1247 diversity and reducing Florida's dependence on fuel oil and
1248 natural gas.
1249 3. Provide the most cost-effective source of power, taking
1250 into account the need to improve the balance of fuel diversity,
1251 reduce Florida's dependence on fuel oil and natural gas, reduce
1252 air-emission compliance costs, and contribute to the long-term
1253 stability and reliability of the electric grid.
1254 (3) No provision of rule 25-22.082, Florida Administrative
1255 Code, shall be applicable to a nuclear power plant sited under
1256 this act, including provisions for cost recovery, and an
1257 applicant shall not otherwise be required to secure competitive
1258 proposals for power supply prior to making application under
1259 this act or receiving a determination of need from the
1260 commission.
1261 (4) The commission's determination of need for a nuclear
1262 power plant shall create a presumption of public need and
1263 necessity and shall serve as the commission's report. An order
1264 entered pursuant to this section constitutes final agency
1265 action. Any petition for reconsideration of a final order on a
1266 petition for need determination shall be filed within 5 days
1267 after the date of such order. The commission's final order,
1268 including any order on reconsideration, shall be reviewable on
1269 appeal in the Florida Supreme Court. Inasmuch as delay in the
1270 determination of need will delay siting of a nuclear power plant
1271 or diminish the opportunity for savings to customers under the

1272 federal Energy Policy Act of 2005, the Supreme Court shall
1273 proceed to hear and determine the action as expeditiously as
1274 practicable and give the action precedence over matters not
1275 accorded similar precedence by law.
1276 (5) After a petition for determination of need has been
1277 granted, the right of a utility to recover any costs incurred
1278 prior to commercial operation, including, but not limited to,
1279 costs associated with the siting, design, licensing, or
1280 construction of the plant, shall not be subject to challenge
1281 unless and only to the extent the commission finds, based on a
1282 preponderance of the evidence adduced at a hearing before the
1283 commission under s. 120.57, Florida Statutes, that certain costs
1284 were imprudently incurred. Proceeding with the construction of
1285 the nuclear power plant following an order by the commission
1286 approving the need for the nuclear power plant under this act
1287 shall not constitute or be evidence of imprudence. Evidence of
1288 imprudence shall not include any cost increases due to events
1289 beyond the utility's control. Further, a utility's right to
1290 recover costs associated with a nuclear power plant may not be
1291 raised in any other forum or in the review of proceedings in
1292 such other forum. Costs incurred prior to commercial operation
1293 shall be recovered pursuant to chapter 366, Florida Statutes.
1294 Section 26. Section 366.93, Florida Statutes, is created
1295 to read:
1296 366.93 Cost recovery for the siting, design, licensing,
1297 and construction of nuclear power plants.--
1298 (1) As used in this section, the term:

1299 (a) "Cost" includes, but is not limited to, all capital
1300 investments, including rate of return, any applicable taxes, and
1301 all expenses, including operation and maintenance expenses,
1302 related to or resulting from the siting, licensing, design,
1303 construction, or operation of the nuclear power plant.
1304 (b) "Electric utility" or "utility" has the same meaning
1305 as that provided in s. 366.8255(1)(a).
1306 (c) "Nuclear power plant" or "plant" has the same meaning
1307 as that provided in the Florida Energy Diversity and Efficiency
1308 Act.
1309 (d) "Preconstruction" is that period of time after a site
1310 has been selected, including the date the utility begins site
1311 clearing work. Preconstruction costs shall be afforded deferred
1312 accounting treatment and shall accrue a carrying charge equal to
1313 the utility's allowance for funds used during construction
1314 (AFUDC) rate until recovered in rates.
1315 (2) Within 6 months after the effective date of this act,
1316 the commission shall establish, by rule, alternative cost
1317 recovery mechanisms for the recovery of costs incurred in the
1318 siting, design, licensing, and construction of nuclear power
1319 plants. Such mechanisms shall be designed to promote utility
1320 investment in nuclear plants and allow for the recovery in rates
1321 all prudently incurred costs, and shall include, but are not
1322 limited to:
1323 (a) Recovery through the capacity cost recovery clause of
1324 any preconstruction costs.
1325 (b) Recovery through an incremental increase in the
1326 utility's capacity cost recovery clause rates of the carrying

1327 costs on the utility's projected construction cost balance
1328 associated with the nuclear power plant. To encourage investment
1329 and provide certainty, for nuclear power plant need petitions
1330 submitted on or before December 31, 2010, associated carrying
1331 costs shall be equal to the pretax AFUDC rate in effect upon
1332 this act becoming law. For nuclear power plants for which need
1333 petitions are submitted after December 31, 2010, the utility's
1334 existing pretax AFUDC rate is presumed to be appropriate unless
1335 determined otherwise by the commission in the determination of
1336 need for the nuclear power plant.
1337 (3) After a petition for determination of need is granted,
1338 a utility may petition the commission for cost recovery as
1339 permitted by this section and commission rules.
1340 (4) When the nuclear power plant is placed in commercial
1341 service, the utility shall be allowed to increase its base rate
1342 charges by the projected annual revenue requirements of the
1343 nuclear power plant based on the jurisdictional annual revenue
1344 requirements of the plant for the first 12 months of operation.
1345 The rate of return on capital investments shall be calculated
1346 using the utility's rate of return last approved by the
1347 commission prior to the commercial inservice date of the nuclear
1348 power plant. If any existing generating plant is retired as a
1349 result of operation of the nuclear power plant, the commission
1350 shall allow for the recovery, through an increase in base rate
1351 charges, of the net book value of the retired plant over a
1352 period not to exceed 5 years.
1353 (5) The utility shall report to the commission annually
1354 the budgeted and actual costs as compared to the estimated

1355 inservice cost of the nuclear power plant provided by the
1356 utility pursuant to section 25(2)(b) until the commercial
1357 operation of the nuclear power plant. The utility shall provide
1358 such information on an annual basis following the final order by
1359 the commission approving the determination of need for the
1360 nuclear power plant, with the understanding that some costs may
1361 be higher than estimated and other costs may be lower.
1362 (6) In the event the utility elects not to complete or is
1363 precluded from completing construction of the nuclear power
1364 plant, the utility shall be allowed to recover all prudent
1365 preconstruction and construction costs incurred following the
1366 commission's issuance of a final order granting a determination
1367 of need for the nuclear power plant. The utility shall recover
1368 such costs through the capacity cost recovery clause over a
1369 period equal to the period during which the costs were incurred
1370 or 5 years, whichever is greater. The unrecovered balance during
1371 the recovery period will accrue interest at the utility's
1372 weighted average cost of capital as reported in the commission's
1373 earnings surveillance reporting requirement for the prior year.
1374 Section 27. This act shall take effect upon becoming law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1245 North Broward Hospital District, Broward County
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) Fiscal Council		Monroe KDM	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The North Broward Hospital District (District) is an independent special tax district with the public purpose of providing for the health care needs of the people of the District. The District was created under ch. 27438 (1951), L.O.F., and amended by subsequent acts. The District has the authority to collect ad valorem taxes at a rate not to exceed 2.5 mills and is governed by a seven member Board of Commissioners (Board) appointed by the Governor.

This bill codifies, or reenacts, all prior special acts of the District into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority or superseding the authority of any entity pursuant to law. Neither is reenactment to be construed as modifying, amending, or altering covenants, contracts, or other obligations of the District with respect to bond indebtedness. The bill codifies the provisions of the charter with editorial and organizational changes, except as follows:

- The training school for nurses must be in accordance with state laws and regulations.
- The bonding powers are significantly revised.
- Provides for an additional method of compromising and settling accounts receivable or other claims for money due and owed to the District.
- Provides that each hospital or clinic established under the act be for the use and benefit of the residents of the District, and that such residents be admitted and entitled to hospitalization subject to the rules and regulations provided by the Board effective on the date of admission of the patient. The hospital and clinic may also provide care and treatment, without charge, for patients found to be indigent by the Board. However, the Board may still collect from patients financially able to pay such chargers established by the Board. Additionally, the Board is allowed to exclude any person having a communicable or contagious disease where there may be detriment to the best interests of the hospital, unless the hospital has a separate ward or building for the special treatment of such patients. The Board may also extend privileges and use of the District's hospitals and clinics to non-residents, though residents of the District have first claim to admission.
- Confidentiality of the quasi-judicial functions of the Board is amended to be confidential only as provided by law.

This bill would take effect upon becoming law.

No fiscal impact is expected for FY 2005/06 or 2006/07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (includes local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

North Broward Hospital District:

The North Broward Hospital District (District) is an independent special tax district with the public purpose of providing for the health care needs of the people of the District. The District has the authority to collect ad valorem taxes at a rate not to exceed 2.5 mills and is governed by a seven member Board of Commissioners (Board) appointed by the Governor. The Board has all the powers of a body corporate, including the power to:

- Sue and be sued;
- Contract;
- Adopt and alter a seal;
- Acquire, purchase, hold, lease, and convey real and personal property;
- Appoint a superintendent and other such agents as deemed advisable;

- Borrow money, incur indebtedness, and issue notes, revenue certificates, bonds, and other evidence of indebtedness;
- Establish and support subsidiary or affiliate organizations to fulfill its public purpose, and to the extent permitted by the State Constitution, to support not-for-profit organizations whose purposes are to provide health care needs to the people of the District;
- Participate as a shareholder in a corporation, or as a joint venturer in a joint venture, that provides health care, or activities related to health care, and to provide equity financing for the activities of the corporation or joint venture and to utilize the assets and resources of the District to the extent not needed for heath care and related activities, to the extent permitted by the State Constitution;
- Invest "surplus funds" as provided for in ch. 218, F.S., and as allowed under s. 218.345, F.S., as amended or superseded;
- Delegate authority to invest surplus funds to a state or national banking organization acting pursuant to a written trust agreement as a trustee of the District's funds;
- Invest any funds in the District's control or possession in accordance with an investment policy, consisting of prudent investment practices, approved by the board and include specific:
    - bankers acceptances
    - commercial paper
    - interest-bearing bonds, debentures, and other such evidence of indebtedness
    - negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government
    - options as to engage in bond fide hedging activities
    - equity securities
    - contracts

The Board is authorized and empowered to establish, operate, maintain, and/or construct, when necessary:

- Hospital(s), supportive facilities, and such facilities needed to provide for limited care and treatment for the needs and use of the people in the District.
- A training school for nurses, for which the Board is empowered to set-up rules and regulations for the operation of, and to issue diplomas of completion.
- Clinics, medical training, and medical research programs in connection with the operation of the District's hospital(s).
- Projects and programs of and for medical research, education, and development affecting human physical or mental health and well being.
- Automobile facilities deemed proper and necessary for a hospital facility.

The Board has the power of eminent domain, to be exercised in the manner provided for in general law. The Board is authorized to sell real or personal property of the District only in accordance to the terms and conditions of its charter.

The Board is also authorized to incur a variety of indebtedness in the forms of bonds, notes, certificates, lease participations, guaranties, and any other form of indebtedness payable from the general revenues and other legally available funds of the District. The charter contains extensive provisions regarding the issuance of bonds and refunding bonds by the Board. The Board also has authority to declare accounts receivable uncollectible and write such accounts off, to settle any accounts receivable, and to obligate the District for the payment of hospital and nursing home expenses for patients transferred from the District's hospitals, provided such patients are deemed indigent by the District.

The Board was required to authorize and establish one medical staff for the direction and control of the practitioners and to insure performance of the necessary professional services in the hospitals and facilities operated by the District. The Board is authorized to establish rules and regulations regarding professional duties and responsibilities of the staff and is provided quasi-judicial procedures for which

membership on said staff can be granted, refused, revoked, or suspended. The charter provides confidentiality of all documents, testimony, and evidence relevant to these proceedings.

The Board is also authorized to employ professional and nonprofessional personnel necessary for the effective and lawful operation of the hospital and facilities of the District. In doing so, the Board is also authorized to establish rules and regulations to govern the operations and conduct of the District's hospitals, facilities, employees, patients, private duty nurses, guests, visitors, or any other person using the premises and facilities.

The Board is authorized and empowered to create an employees pension fund so as to provide life, disability, and medical insurance for all or any of its employees.

The charter limits the purchase of supplies, equipment, and materials used for the operation and maintenance of hospital and facilities to 1.5 mills of the total annual District revenues. All contracts for construction in excess of said amount must go through a competitive bid process, as established in the charter, before being approved.

The charter of the District also declares the District a "local agency", as defined in s. 159.27, F.S., and gives the District all the powers set forth in ch. 159, part II, F.S. Chapter 159, part II, F.S., is the Florida Industrial Development Act, and is intended to provide financing of projects meeting the legislative findings in the chapter.

The District's charter exempts the District from being declared a "public body" or "taxing authority" as provided for in ch. 163, part III, F.S., the Community Redevelopment Act of 1969.

Effect of Bill and Changes to the North Broward Hospital District's Charter:

This bill codifies, or reenacts, all prior special acts of the District into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority, or as superseding the authority of any entity pursuant to law. Neither is the bill entitled to modify, amend, or alter any covenants, contracts, or other obligations of the District with respect to bond indebtedness, or affect the ability of the district to levy and collect taxes, assessments, fees, or chargers for the purpose of redeeming and servicing bound indebtedness. The exclusive charter of the District is recreated by this bill.

The bill codifies the provisions of the charter with editorial and organizational changes, except as follows:

- The training school for nurses provided for in section 7 of the proposed codified charter now must be in accordance with state laws and regulations.
- The bonding powers are significantly revised, with section 10 of the proposed codified charter providing only that the District's bonds be issued or sold in a manner and at a rate or rates of interest as authorized by general law and that the bonds may be sold at par or at such premium or discount as the Board determines, in keeping with general law.
- An additional method of compromising and settling accounts receivable or other claim for money due and owed to the District is provided for in section 11 of the proposed codified charter, authorizing and empowering the Board to do such through the acceptance of promissory notes in accordance with the terms and conditions determined by the Board. However, the Board may not assign, sell, or sit over said promissory notes to commercial institutions or private collection agencies for collection.
- In authorizing the treatment of persons at the facilities of the District, section 17 of the proposed codified charter provides that each hospital or clinic established under the act be for the use and benefit of the residents of the District, and that such residents be admitted and entitle to hospitalization subject to the rules and regulations effective on the date of admission of the patient, provided by the Board. The hospital and clinic may also provide care and treatment, without

charge, for patients found to be indigent by the Board. However, the Board may still collect from patients financially able to pay, such chargers established by the Board. Additionally, the Board is allowed to exclude any person having a communicable or contagious disease where there may be detriment to the best interests of the hospital, unless the hospital has a separate ward or building for the special treatment of such patients. The Board may also extend privileges and use of the District's hospitals and clinics to non-residents, though residents of the District have first claim to admission.

- The confidentiality of the quasi-judicial functions of the Board is amended in section 18(g) of the proposed codified charter to be confidential as provided by law.

The proposed codified charter contains a severability clause, providing that if any provision of the act be invalid or unenforceable, the remaining portion shall remain valid.

C. SECTION DIRECTORY:

Section 1: Provides limits of the reenactment.

Section 2: Codifies, reenacts, amends, and repeals special laws relating to North Broward Hospital District.

Section 3: Provides for the re-created, reenacted charter of North Broward Hospital District.

Section 1: Provides boundaries.
Section 2: Provides seven subdistricts.
Section 3: Creates the board of commissioners.
Section 4: Provides powers of the board of commissioners.
Section 5: Provides rules of procedure for the board of commissioners.
Section 6: Authorizes the Board to establish and maintain health care facilities.
Section 7: Authorizes the Board to establish and maintain a training school for nurses.
Section 8: Provides the Board power of eminent domain.
Section 9: Provides for indebtedness.
Section 10: Authorizes issuance and sale of bonds by the District.
Section 11: Authorizes the Board to accept promissory notes.
Section 12: Provides for payment of funds.
Section 13: Authorizes the Board to collect property taxes and other lawful taxes to pay and provide for a fund for interest on bonds.
Section 14: Provides for the levy of property tax by resolution.
Section 15: Authorizes the Board to use funds to pay expenses.
Section 16: Requires publication of annual financial statements.
Section 17: Establishes each hospital and clinic is for the use and benefit of residents of the District.
Section 18: Provides for one medical staff for the direction and control of practitioners and authorizes the Board to establish bylaws, rules, and regulations for members of the staff. Provides for and the rules of quasi-judicial proceedings.
Section 19: Authorizes the District to provide a pension plan and insurance benefits for employees.
Section 20: Authorizes the Board to sell or lease property of the District.
Section 21: Allows donations to the District.
Section 22: Authorizes the Board to acquire property from the City of Ft. Lauderdale.
Section 23: Allows for the establishment of hospitals without the issuance of bonds.
Section 24: Provides for a competitive bid procedure and authority to negotiate contracts.
Section 25: Authorizes the Board to write off bad debts.
Section 26: Authorizes the Board to compromise and settle accounts receivable.
Section 27: Authorizes the Board to obligate the District to pay for expenses of indigent patients transferred to other hospitals or nursing homes.

Section 28: Authorizes the Board to construct parking facilities and charge fees for use.
Section 29: Authorizes the Board to establish, maintain, or participate in programs and projects for medical research, education, and development affecting mental and physical health.
Section 30: Provides the fiscal year of July 1 thru June 30.
Section 31: Declares the District a local agency under ch. 159, F.S., the Florida Industrial Development Financing Act.
Section 32: Authorizes the transfer or lease of facilities to not-for-profit corporations.
Section 33: Exempts the District from being deemed a public body or taxing authority under the Community Redevelopment Act of 1969.
Section 34: Provides for liberal construction of the charter.

Section 4: Provides for severability.
Section 5: Repeals special laws in the Laws of Florida.
Section 6: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 31, 2005.

WHERE? *Sun-Sentinel*, Broward County, Palm Beach County, and Miami-Dade County, Florida.

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

IF YES, WHEN?

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

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

No fiscal impact is expected for FY 2005/06 or 2006/07.[1]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Board is authorized to establish rules and regulations to govern the operations and conduct of the District's hospitals, facilities, employees, patients, private duty nurses, guests, visitors, or any other person using the premises and facilities. The Board is also authorized to set-up rules and regulations, in accordance with state laws and regulations, for the operation of a nurses training program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[1] 2006 Economic Impact Statement, HB 1245.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating the North Broward Hospital District,
3 Broward County; codifying, amending, reenacting, and
4 repealing chapters 27438 (1951), 61-1931, 61-1937, 63-
5 1192, 65-1316, 65-1319, 67-1170, 67-1171, 69-895, 69-898,
6 69-914, 70-622, 71-567, 71-576, 71-578, 73-411, 73-412,
7 73-413, 74-449, 75-347, 75-348, 76-338, 77-508, 78-481,
8 80-464, 80-468, 81-354, 84-399, 86-369, 87-508, 90-485,
9 91-351, 97-372, and 2002-363, Laws of Florida; codifying
10 the district charter; providing severability; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. (1) The reenactment of existing law in this
16 act shall not be construed as a grant of additional authority to
17 nor to supersede the authority of any entity pursuant to law.
18 Exceptions to law contained in any special act that are
19 reenacted pursuant to this act shall continue to apply.
20 (2) The reenactment of existing law in this act shall not
21 be construed to modify, amend, or alter any covenants,
22 contracts, or other obligations of the district with respect to
23 bonded indebtedness. Nothing pertaining to the reenactment of
24 existing law in this act shall be construed to affect the
25 ability of the district to levy and collect taxes, assessments,
26 fees, or charges for the purpose of redeeming or servicing
27 bonded indebtedness of the district.

28 Section 2. Chapters 27438 (1951), 61-1931, 61-1937, 63-
29 1192, 65-1316, 65-1319, 67-1170, 67-1171, 69-895, 69-898, 69-
30 914, 70-622, 71-567, 71-576, 71-578, 73-411, 73-412, 73-413, 74-
31 449, 75-347, 75-348, 76-338, 77-508, 78-481, 80-464, 80-468, 81-
32 354, 84-399, 86-369, 87-508, 90-485, 91-351, 97-372, and 2002-
33 363, Laws of Florida, are codified, reenacted, amended, and
34 repealed as provided in this act.
35 Section 3. The North Broward Hospital District is re-
36 created and the charter for the district is re-created and
37 reenacted to read:
38 Section 1. Created.--A special tax district is hereby
39 created and incorporated, to be known as the "North Broward
40 Hospital District" in Broward County, which district shall
41 embrace and include the following described property, situate,
42 lying, and being in Broward County:
43 Begin at a point where the North boundary line of
44 Section 25, Township 50 South, Range 42 East,
45 intersects the line of mean low tide of the Atlantic
46 Ocean; thence run westerly along the North boundary
47 line of Sections 25, 26, 27, 28, 29 and 30 in Township
48 50 South, Range 42 East, and continue westerly along
49 the North boundary line of Sections 25, 26, 27, 28, 29
50 and 30 in Township 50 South, Range 41 East, to the
51 westerly boundary of Range 41 East; thence southerly
52 along the westerly boundary line of said Section 30 to
53 a point of intersection with the North boundary line
54 of Section 25, Township 50 South, Range 40 East,
55 extended easterly; thence westerly along the North

56 boundary line of Section 25, Township 50 South, Range
57 40 East, to the northwest corner of said Section;
58 thence southerly along the west boundary line of said
59 Section 25 and Section 36, Township 50 South, Range 40
60 East, and continuing southerly along the west boundary
61 lines of Sections 1, 12, 13, 24, 25 and 36 of Township
62 51 South, Range 40 East, to the southwest corner of
63 said Section 36, the same being the south boundary
64 line of Broward County; thence westerly along the
65 south boundary line of Broward County to the southwest
66 corner of said County; thence northerly along the west
67 boundary line of Broward County, Florida, to the
68 northwest corner of said County; thence easterly along
69 the northern boundary line of Broward County, Florida,
70 to a point where the north boundary line of Broward
71 County intersects the line of mean low tide of the
72 Atlantic Ocean; thence southerly along the mean low
73 tide line of the Atlantic Ocean to the point of
74 beginning, together with all areas within the
75 corporate limits of the City of Fort Lauderdale, lying
76 south of the south boundary line of the above-
77 described property.
78 Section 2. Subdistricts.--The North Broward Hospital
79 District shall be composed of the following subdistricts:
80 (1) Subdistrict No. 1 shall include the areas of Broward
81 County from the north boundary line thereof south to a line
82 running east and west along the boundary line between the City
83 of Pompano Beach and the City of Lighthouse Point and extended

84 east and west along the section lines which comprise said
85 boundary to intersect with the Atlantic Ocean on the east and
86 the western boundary of Broward County on the west.
87 (2) Subdistrict No. 2 shall include that area of Broward
88 County south of the south boundary line of subdistrict No. 1 to
89 a line running east and west along the center of McNab Road and
90 extended east and west along the section lines which bisect the
91 right-of-way of said McNab Road to intersect with the Atlantic
92 Ocean on the east and the western boundary of Broward County on
93 the west.
94 (3) Subdistrict No. 3 shall include that area of Broward
95 County bounded on the north by the south boundary line of
96 subdistrict No. 2, on the south along the center of Sunrise
97 Boulevard, on the west by a line running north and south along
98 the center of U.S. 441 (State Road #7), and on the east by the
99 Atlantic Ocean.
100 (4) Subdistrict No. 4 shall include that area of Broward
101 County bounded on the north by the south boundary line of
102 subdistrict No. 3, on the south by the south boundary line of
103 the North Broward Hospital District, on the west by a line
104 running north and south along the center of U.S. 441 (State Road
105 #7), and on the east by the Atlantic Ocean.
106 (5) Subdistrict No. 5 shall include that area of Broward
107 County bounded on the north by the south boundary line of
108 subdistrict No. 2, on the south by the south boundary line of
109 the North Broward Hospital District, on the west by the western
110 boundary of Broward County, and on the east by a line running
111 north and south along the center of U.S. 441 (State Road #7).

112 (6) Subdistrict No. 6 shall include that area of Broward
113 County which comprises the entire North Broward Hospital
114 District and shall be considered a subdistrict at large.
115 (7) Subdistrict No. 7 shall include that area of Broward
116 County which comprises the entire North Broward Hospital
117 District and shall be considered a subdistrict at large.
118 Section 3. Board of commissioners generally.--The
119 governing body of the North Broward Hospital District shall
120 consist of seven commissioners, one of whom may be a licensed
121 practitioner of the healing arts as defined in chapter 458,
122 Florida Statutes. All commissioners shall serve without
123 compensation. Each subdistrict shall have one representative on
124 the Board of Commissioners of the North Broward Hospital
125 District who has resided in said subdistrict for more than 1
126 year prior to appointment. Said commissioners shall be known and
127 designated as the Board Of Commissioners of North Broward
128 Hospital District. Members of the board of commissioners shall
129 be appointed by the Governor for terms of 4 years each. The
130 Governor shall have the power to remove any member of said board
131 of commissioners for cause and shall fill any vacancies that may
132 at any time occur therein. Each member shall give bond to the
133 Governor for the faithful performance of his or her duties in
134 the sum of $5,000 with a surety company qualified to do business
135 in the state, as surety, which bond shall be approved and kept
136 by the Clerk of the Circuit Court of Broward County. The
137 premiums on said bonds shall be paid as part of the expenses of
138 said district.
139 Section 4. Powers of board of commissioners generally.--

140 (1) The Board of Commissioners of the North Broward
141 Hospital District shall have all the powers of a body corporate,
142 including the power to sue and be sued under the name of the
143 North Broward Hospital District; to contract and be contracted
144 with; to adopt and use a common seal and to alter the same at
145 pleasure; to acquire, purchase, hold, lease as lessee or lessor,
146 and convey such real and personal property as said board may
147 deem proper or expedient to carry out the purposes of this act
148 (any lease of real or personal property entered into by the
149 board of commissioners shall be for such terms as the board of
150 commissioners determines is in the best interest of the
151 district); to appoint and employ a superintendent and such other
152 agents and employees as said board may deem advisable; to borrow
153 money, incur indebtedness, and issue notes, revenue
154 certificates, bonds, and other evidences of indebtedness of said
155 district; to establish and support subsidiary or affiliate
156 organizations to assist the district in fulfilling its declared
157 public purpose of providing for the health care needs of the
158 people of the district and, to the extent permitted by the State
159 Constitution, to support not-for-profit organizations that
160 operate primarily within the district, as well as elsewhere, and
161 that have as their purposes the health care needs of the people
162 of the district by means of nominal interest loans of funds,
163 nominal rent leases of real or personal property, gifts and
164 grants of funds, or guaranties of indebtedness of such
165 subsidiaries, affiliates, and not-for-profit organizations (any
166 such support of a subsidiary or affiliate corporation or
167 nonaffiliated, not-for-profit corporation is hereby found and

168 declared to be a public purpose and necessary for the
169 preservation of the public health and for public use and for the
170 welfare of the district and inhabitants thereof); to the extent
171 permitted by the State Constitution, to participate as a
172 shareholder in a corporation, or as a joint venture in a joint
173 venture, which provides health care or engages in activities
174 related thereto, to provide debt or equity financing for the
175 activities of such corporations or joint ventures, and to
176 utilize, for any lawful purpose, the assets and resources of the
177 district to the extent not needed for health care and related
178 activities; and to carry out the provisions of this charter in
179 the manner hereinafter provided. Said board of commissioners,
180 pursuant to chapter 218, Florida Statutes, is authorized and
181 empowered, as the board of a special tax district of the state,
182 to invest district "surplus funds," as defined in that chapter,
183 in such a manner as allowed under section 218.415 Florida
184 Statutes, or by any general law amending or superseding section
185 218.415, Florida Statutes. The board of commissioners shall also
186 have the power to delegate its authority to invest these surplus
187 funds, as outlined above, to a state or national banking
188 organization acting pursuant to a written trust agreement as a
189 trustee of district funds, provided that such delegation is made
190 in writing by the board of commissioners.
191 (2) In addition to any investment authorized by general
192 law, and to the extent created by the State Constitution, the
193 board of commissioners shall be and is hereby authorized and
194 empowered to invest any funds in its control or possession in
195 accordance with an investment policy approved by the board which

196 mandates prudent investment practices, which shall include,
197 among other items, the investment objectives and permitted
198 securities of the policy. Such investment policy shall be
199 designed to maximize the financial return to the fund consistent
200 with the risks incumbent in each investment and shall be
201 designed to preserve the appropriate diversification of the
202 portfolio. Accordingly, the following instruments are authorized
203 for investment:
204 (a) Bankers' acceptances that are drawn upon and accepted
205 by a commercial bank that is a member bank of the Federal
206 Reserve System, that maintains capital accounts in excess of 7.5
207 percent of total assets, and which member bank or its holding
208 company carries a credit rating that is one of the two highest
209 alphabetical categories from at least two nationally recognized
210 debt-rating agencies.
211 (b) Commercial paper of prime quality rated by at least
212 two nationally recognized debt-rating agencies in the highest
213 letter and numerical rating of each agency. If not rated, such
214 prime quality commercial paper may be purchased if secured by a
215 letter of credit provided by a commercial bank, which bank or
216 its holding company carries a credit rating in one of the two
217 highest alphabetical categories from at least two nationally
218 recognized debt-rating agencies.
219 (c) Interest-bearing bonds, debentures, and any other such
220 evidence of indebtedness with a fixed maturity of any domestic
221 corporation within the United States which is listed on any one
222 or more of the recognized national stock exchanges in the United
223 States and conforms with the periodic reporting requirements

224 under the Securities Exchange Act of 1934. Such obligation shall
225 either carry ratings in one of the two highest classifications
226 of at least two nationally recognized debt-rating agencies or be
227 secured by a letter of credit provided by a commercial bank,
228 which bank or its holding company carries a credit rating in one
229 of the two highest alphabetical categories from at least two
230 nationally recognized debt-rating agencies.
231 (d) Negotiable direct obligations of, or obligations the
232 principal and interest of which are unconditionally guaranteed
233 by, the United States Government at the then-prevailing market
234 rate for such securities; and obligations of the Federal Farm
235 Credit Banks, Federal Home Loan Mortgage Corporation, Federal
236 National Mortgage Association, or Federal Home Loan Bank or its
237 district banks, including Federal Home Loan Mortgage Corporation
238 participation certificates, or obligations guaranteed by the
239 Government National Mortgage Association, which are purchased
240 and sold under repurchase agreements and reverse repurchase
241 agreements. Repurchase agreements and reverse repurchase
242 agreements may be entered into only with a member bank of the
243 Federal Reserve System or primary dealer in United States
244 government securities. Securities purchased or repurchased by
245 the hospital board shall be delivered to the hospital board or
246 its agent versus payment.
247 (e) The purchase of options so as to engage in bona fide
248 hedging activities for the purpose of protecting the asset value
249 of the underlying portfolio, provided the instruments for such
250 purpose are traded on a securities exchange or board of trade

251 regulated by the Securities and Exchange Commission or the
252 Commodities Futures Trading Commission.
253 (f) Equity securities of any corporation that is organized
254 under the laws of the United States, any state, or the District
255 of Columbia and that is listed on any one or more of the
256 recognized national stock exchanges in the United States and
257 conforms with the periodic reporting requirements under the
258 Securities Exchange Act of 1934. Such securities must carry a
259 rating in one of the two highest alphabetical categories from at
260 least two nationally recognized equity ratings agencies.
261 (3) The Board of Commissioners of the North Broward
262 Hospital District shall have the power to enter into and
263 execute:
264 (a) Any contract known or referred to as, or which
265 performs the function of, an interest rate swap agreement,
266 forward payment conversion agreement, or futures contract.
267 (b) Any contract providing for payments based on levels
268 of, or changes or differences in, interest rates.
269 (c) Any contract to exchange cash flows, payments, or
270 series of payments.
271 (d) Any type of contract called or designed to perform the
272 function of interest rate floors or caps, options, puts, or
273 calls to hedge or minimize any type of financial risk,
274 including, without limitation, payment, rate, or other financial
275 risk.
276 (e) Any other type of contract or arrangement that the
277 Board of Commissioners of the North Broward Hospital District
278 determines is to be used, or is intended to be used, to manage

279 or reduce the cost of indebtedness, to convert any element of
280 indebtedness from one form to another, to maximize or increase
281 investment return, to minimize investment return risk, or to
282 protect against any type of financial risk or uncertainty.
283 Section 5. Board of commissioners; rules of
284 procedure.--Four commissioners shall constitute a quorum, and a
285 vote of at least three commissioners shall be necessary to the
286 transaction of any business of the district. The commissioners
287 shall cause true and accurate minutes and records to be kept of
288 all business transacted by them and shall keep full, true, and
289 complete books of account and minutes, which minutes, records,
290 and books of account shall at all reasonable times be open and
291 subject to the inspection of inhabitants of said district, and
292 any person desiring to do so may make or procure copy of said
293 minutes, records, books of account, or such portions thereof as
294 he or she may desire.
295 Section 6. Authority to establish and maintain health care
296 facilities.--The board of commissioners is hereby authorized and
297 empowered to establish, construct, operate, and maintain such
298 hospital or hospitals, supportive facility or facilities,
299 including offices for physicians and other medically related
300 personnel, entities, and activities, and facilities for the care
301 of such persons requiring limited medical care and treatment as
302 in their opinion shall be necessary for the needs and use of the
303 people of said district. Said hospital or hospitals, supportive
304 facility or facilities, and facilities for limited care and
305 treatment shall be established, constructed, operated, and
306 maintained by said board of commissioners for the preservation

307 of the public health, for the public good, and for the use of
308 the public of said district, and the maintenance of said
309 hospital or hospitals, supportive facility or facilities, and
310 facilities for limited care and treatment within said district
311 is hereby found and declared to be a public purpose and
312 necessary for the preservation of the public health and for
313 public use and for the welfare of said district and inhabitants
314 thereof. The location, establishment, operation, and maintenance
315 of such hospital or hospitals, supportive facility or
316 facilities, and facilities for limited care and treatment, as
317 well as the terms, conditions, and consideration for the use
318 thereof, shall be as determined and fixed by said board of
319 commissioners and shall be under the exclusive authority of said
320 board. The provisions and procedures shall be without reference
321 to section 20. The board of commissioners is hereby further
322 authorized and empowered to establish, operate, or support such
323 subsidiaries, either for profit or not for profit, and not-for-
324 profit affiliates for the furtherance and assistance of the
325 district's fulfilling its purpose of provision for the health
326 care needs of the people of the district as in the board's
327 opinion shall be necessary. The board of commissioners is hereby
328 further authorized and empowered, to the extent permitted by the
329 State Constitution, to support nonaffiliated, not-for-profit
330 organizations that operate primarily within the district, as
331 well as elsewhere, and that have as their purpose the
332 furtherance of the district's provision for the health care
333 needs of the people of the district, by such means as in the
334 board's opinion are necessary and appropriate. The board of

335 commissioners is hereby further authorized, to the extent
336 permitted by the State Constitution, to participate in, and to
337 provide debt or equity financing for, a corporation in which the
338 district is a shareholder or a joint venture in which the
339 district is a joint venturer, so long as any such corporation or
340 joint venture provides health care services or engages in
341 activities related thereto that benefit the people of the
342 district, as well as others. The establishment, operation, or
343 support of such subsidiaries or affiliates, the support of such
344 nonaffiliated, not-for-profit organizations, and the
345 participation in and funding of such health care corporations or
346 joint ventures are each hereby found and declared to be a public
347 purpose and necessary for the preservation of the public health
348 and welfare of the district and inhabitants thereof.
349 Notwithstanding the provisions of its charter, the district
350 shall comply with the requirements of section 155.40(2)(a)-(e),
351 Florida Statutes, in implementing the powers provided in this
352 section, section 4, and subsection (4) of section 20.
353 Section 7. Nurse training schools; medical training and
354 research programs.--
355 (1) The board of commissioners is hereby authorized and
356 empowered at any time in its discretion to establish and
357 maintain, in connection with such hospital and as a part
358 thereof, in accordance with state laws and regulations, a
359 training school for nurses and, upon completion of a prescribed
360 course of training, shall give to such nurses who have
361 satisfactorily completed the course a diploma. The board of
362 commissioners is authorized and empowered to set up all rules

363 and regulations necessary for the operation of a nurses training
364 school and to make all necessary expenditures in connection
365 therewith.
366 (2) The board of commissioners is further authorized and
367 empowered to establish and maintain such clinics, medical
368 training, and medical research programs in connection with the
369 operation of district hospitals, including the training of
370 interns and resident physicians, as the board of commissioners,
371 in their discretion, might determine to be necessary or
372 beneficial to the professional services in the district
373 hospitals.
374 Section 8. Eminent domain.--The board shall have the power
375 of eminent domain and may thereby condemn and acquire any real
376 or personal property within the territorial limits of the
377 district which the board may deem necessary for the use of said
378 district. Such power of condemnation shall be exercised in the
379 same manner as is now provided by general law for the exercise
380 of the power of eminent domain by cities and towns of the state.
381 Section 9. Indebtedness generally.--
382 (1) In this act:
383 (a) The term "anticipation notes" means indebtedness
384 authorized pursuant to subsections (2)-(6) which is payable from
385 funds of the district as set forth therein.
386 (b) The term "indebtedness" means any bonds, notes,
387 certificates, lease participations, guaranties, or other forms
388 of indebtedness payable from general revenues and other legally
389 available funds of the district.

390 (2) The district may, in order to provide facilities,
391 including real and personal property, and to carry out,
392 exercise, and perform its powers and duties, and for any other
393 lawful purpose, borrow money from time to time as the board
394 determines is in the best interest of the district and issue and
395 sell the anticipation notes of the district and refund the same
396 by issuing the refunding anticipation notes of the district, all
397 upon such terms and having such maturities, form, and terms as
398 may be determined by the board of commissioners or, if issued in
399 the form of commercial paper, as may be determined by the chair,
400 the vice chair, or the secretary-treasurer within guidelines and
401 limits determined by the board of commissioners as provided in
402 this section. The rate or rates of interest for such borrowing
403 shall be as provided by general law. Further, all indebtedness
404 incurred by the district shall, where required by the State
405 Constitution, be contingent upon voter approval.
406 (3) The district may borrow money and issue bond
407 anticipation notes in anticipation of the issuance of bonds, all
408 as provided in general law; expend the proceeds thereof for the
409 purposes for which such bonds are to be issued; and pledge, by
410 resolution or contract, the proceeds to be derived from the sale
411 of such bonds and other legally available funds of the district
412 for the payment of the principal thereof, premium therefor, if
413 any, and interest thereon.
414 (4) The district may borrow money and issue grant
415 anticipation notes having such maturity as the board may
416 determine in anticipation of the receipt of any federal, state,
417 private, or other grant; expend the proceeds thereof for the

418 purposes for which such grant has been made; and pledge, by
419 resolution or contract, the moneys to be received from such
420 grant and other legally available funds of the district for the
421 payment of the principal thereof, premium therefor, if any, and
422 interest thereon.
423 (5) The district may borrow money and issue revenue
424 anticipation notes having such maturity as the board may
425 determine in anticipation of the receipt of revenues; expend the
426 proceeds thereof for any other lawful purpose; and pledge, by
427 resolution or contract, revenues of the district for the payment
428 of the principal thereof, premium therefor, if any, and interest
429 thereon.
430 (6) The district may borrow money and issue tax
431 anticipation notes having such maturity as the board may
432 determine and levy, appropriate, and pledge, by resolution or
433 contract, ad valorem taxes and other legally available funds of
434 the district in payment of the principal thereof, premium
435 therefor, if any, and interest thereon.
436 (7) The district may issue, from time to time,
437 indebtedness (which may be denominated as notes or bonds) of the
438 district for the purpose of paying all or part of the cost of
439 acquisition, construction, planning, and repairing of,
440 extensions and additions to, and equipping, furnishing, and
441 reconstruction of any hospital or hospitals or related
442 facilities incidental to the foregoing as in the opinion of the
443 board of commissioners are necessary or beneficial for the
444 district, for refinancing any indebtedness incurred to finance
445 any of the foregoing, or for reimbursement of the district for

446 any cost it incurred for any of the foregoing. The indebtedness
447 of each issuance shall be dated, shall mature at such time or
448 times not exceeding 50 years after their date or dates, shall be
449 in such denominations, shall bear interest at such rate or
450 rates, including variable rates, allowed by general law, and may
451 be made redeemable before maturity at the option of the board of
452 commissioners at such price or prices and under such terms and
453 conditions as may be fixed by the board of commissioners prior
454 to the issuance of the indebtedness.
455 (8) The district may issue all forms of indebtedness
456 described in subsections (3)-(7) in the form of commercial paper
457 and, if issued in such form, the resolution authorizing the
458 issuance thereof may provide for the renewal, refunding, or
459 rollover thereof from time to time, having such maturity as the
460 board shall determine. The resolution authorizing the issuance
461 of such indebtedness in the form of commercial paper may set
462 forth guidelines and limits pertaining to the maximum aggregate
463 principal amount of such indebtedness which may be outstanding
464 at any one time, the longest maturity any such indebtedness may
465 bear, the form of such indebtedness, the terms (including
466 redemption provisions, the maximum redemption premium which may
467 be permitted, schedules for the amortization of principal and
468 interest which may be permitted, and such other provisions as
469 the board of commissioners may determine), and the maximum rate
470 of interest authorized by general law and may authorize the
471 chair, the vice chair, the secretary-treasurer, or any one or
472 more of them, from time to time, to determine, within such
473 guidelines and limits, the date or dates on which said

474 indebtedness shall be issued, the aggregate principal amount of
475 indebtedness to be issued at such time, the maturity date or
476 dates of such indebtedness, and the form and terms of such
477 indebtedness (including provisions for redemption thereof, the
478 amount of any redemption premium, the schedule for the
479 amortization of principal and payment of interest, and other
480 provisions as authorized by the board) and to sell, issue, and
481 deliver the same pursuant to such authorization. Any resolution
482 authorizing a negotiated sale of indebtedness in the form of
483 commercial paper to any class of purchaser may likewise
484 authorize the negotiated sale of renewal, refunding, or rollover
485 indebtedness to such class of purchaser and may contain such
486 other provisions as the board may authorize.
487 (9) Any indebtedness authorized pursuant to subsections
488 (3)-(7) may be issued in the form of demand obligations or
489 obligations which the holder thereof may request payment for by
490 the district upon the occurrence of specified events. The board
491 of commissioners shall determine the form of such indebtedness,
492 which shall be executed according to general law, and shall fix
493 the denomination or denominations of indebtedness and the place
494 or places of payment of principal of and interest thereon, which
495 may be at any bank or trust company within or without the state.
496 All forms of indebtedness shall be executed in the name of the
497 district by the chair of the board of commissioners and
498 countersigned and attested by the secretary of the board, and
499 its corporate seal or facsimile shall be attached thereto or
500 reproduced thereon, all in the manner provided by the resolution
501 authorizing such indebtedness. All indebtedness issued under the

502 provisions of this act is hereby declared to have all the
503 qualities and incidents of negotiable instruments under the
504 Uniform Commercial Code and the laws of this state. Such
505 indebtedness shall be issuable in bearer form or shall be
506 registrable in the name of the owner or nominee thereof in the
507 manner provided by general law.
508 (10) The district is hereby authorized to enter into
509 agreements providing for the issuance, repayment, and securing
510 of letters of credit, insurance, or any other credit enhancement
511 device with any financial institution, as the board of
512 commissioners may determine, to further secure any of its
513 indebtedness.
514 Section 10. Bonds.--District bonds shall be issued or sold
515 in such manner and at such rate or rates of interest as
516 authorized by general law. Such bonds may be sold at par or at
517 such premium or discount as the board of commissioners
518 determines, in keeping with general law.
519 Section 11. Acceptance of promissory notes.--The board of
520 commissioners is hereby authorized and empowered, in order to
521 provide for and carry out the purposes of this act, to
522 compromise and settle any accounts receivable or other claim for
523 money due and owing to the district through the acceptance of
524 promissory notes according to such terms and conditions as the
525 board, in its discretion, may determine; however, said board of
526 commissioners is hereby prohibited from assigning, selling, or
527 setting over said promissory note to commercial institutions or
528 private collection agencies for collection.

529 Section 12. Payment of funds.--The funds of the North
530 Broward Hospital District shall be paid out and disbursed
531 according to the manner and procedure established by the board
532 of commissioners of said district. The board of commissioners is
533 hereby authorized and empowered to designate disbursing agents
534 to act on behalf of the North Broward Hospital District for
535 approval of warrants for payment and for the execution of checks
536 and drafts upon district accounts.
537 Section 13. Property tax authorized.--The Board of
538 Commissioners of the North Broward Hospital District is hereby
539 authorized, empowered, and directed annually to levy upon all
540 the real and personal taxable property in said district a
541 sufficient tax, not to exceed 2.5 mills, necessary for the
542 purposes herein granted and to levy other lawful taxes to pay
543 interest and provide and maintain a sinking fund for payment of
544 interest and principal of the bonds provided for and authorized
545 by this act.
546 Section 14. Property tax levy.--The levy by said board of
547 commissioners of the taxes authorized by any provision of this
548 act shall be by resolution of said board duly entered upon the
549 minutes of the board. Certified copies of such resolution
550 executed in the name of the board by its chair, under its
551 corporate seal, shall be made and delivered to the Board of
552 County Commissioners of Broward County and to the Florida Chief
553 Financial Officer not later than 60 days after the millage is
554 certified by the property appraiser or such other time as may be
555 specified by general law. It shall be the duty of the County
556 Commissioners of Broward County to order and require the county

557 property appraiser of said county to assess, and the county tax
558 collector of said county to collect, the amount of taxes so
559 assessed or levied by the board upon the taxable property in
560 said district, not exempt by law, at the rate of taxation
561 adopted by said board of commissioners of said district for said
562 year and included in the warrant of the property appraiser and
563 attached to the assessment roll of taxes for said county each
564 year. The tax collector shall collect such tax so levied by said
565 board in the same manner as other taxes are collected and shall
566 pay the same over to the Board of Commissioners of the North
567 Broward Hospital District within the time and in the manner
568 prescribed by law for the payment by the tax collector of county
569 taxes to the county depository. It shall be the duty of the
570 Florida Chief Financial Officer to assess and levy taxes on all
571 the railroad lines and railroad property and telegraph lines and
572 telegraph property situated or located in said district,
573 including all telephone lines. The taxes shall be assessed by
574 the same officer as are county taxes upon such property, and
575 such taxes shall be remitted by the collecting officer to the
576 Board of Commissioners of the North Broward Hospital District.
577 All such taxes shall be held by said board of commissioners and
578 paid out by them as provided in this act. The board is
579 authorized to pay necessary expenses to the aforenamed officers
580 for the assessment and collection of taxes on a reasonable fee
581 basis.
582 Section 15. Payment of district expenses.--The board of
583 commissioners is authorized to pay from the funds of the
584 district all expenses of the organization of said board, all

585 expenses necessarily incurred with the formation of said
586 district, and all other reasonable and necessary expenses,
587 including the fees and expenses of an attorney in the
588 transaction of the business of the district and in carrying out
589 and accomplishing the purposes of this act. This section,
590 however, shall not be construed to restrict any of the powers
591 vested in said board of commissioners by any other section or
592 provision of this act.
593 Section 16. Publication of annual financial statement.--At
594 least once in each year, the board of commissioners shall
595 publish once in a newspaper published in the district a complete
596 detailed statement of all moneys received and disbursed by them
597 since the creation of the district as to the first published
598 statement and since the last published statement as to any other
599 year. Such statement shall also show the several sources from
600 which said funds were received and shall show the balance on
601 hand at the time of the published statement. It shall show a
602 complete statement of the condition of the district.
603 Section 17. Persons authorized to be treated at
604 facilities.--Each hospital or clinic established under this act
605 shall be for the use and benefit of the residents of the
606 district. Such residents shall be admitted to such hospital or
607 clinic and be entitled to hospitalization, subject, however, to
608 the rules and regulations prescribed by the board of
609 commissioners, which rules and regulations are effective as of
610 the date of admission of a patient or patients to said hospital
611 or clinic. Such hospital or clinic may care for and treat
612 without charge patients who are found by the board of

613 commissioners to be indigent, but such board may collect from
614 patients financially able such charges as the board of
615 commissioners may from time to time establish. The board of
616 commissioners may exclude from treatment and care any person
617 having a communicable or contagious disease, where such disease
618 may be a detriment to the best interests of such hospital or
619 clinic or a source of contagion or infection to the patients in
620 its care, unless such hospital has a separate building or ward
621 for the special treatment of such patients and can properly and
622 with safety to the other patients retain such communicable or
623 contagious case in such separate ward or building. Said board of
624 commissioners may extend the privileges and use of such hospital
625 or clinic to nonresidents of the district upon such terms and
626 conditions as the board may from time to time by its rules and
627 regulations provide; however, the residents of the district
628 wherein such hospital or clinic is located shall have first
629 claim to admission.
630 Section 18. Medical staff generally.--
631 (1) The Board of Commissioners of the North Broward
632 Hospital District shall authorize and establish one medical
633 staff for the direction and control of the practitioners, and to
634 ensure the performance of necessary professional services, in
635 the hospitals and facilities operated by the North Broward
636 Hospital District. The board of commissioners is hereby
637 authorized and empowered to establish reasonable bylaws, rules,
638 and regulations thereof and to prescribe and establish in said
639 bylaws, rules, and regulations reasonable professional duties
640 and responsibilities for members of the staff so that the

641 welfare and health of the patients and the best interest of the
642 hospitals may at all times be served.
643 (2) The board of commissioners is hereby authorized and
644 empowered to grant or refuse, revoke, and suspend membership on
645 the staff and to grant or refuse, revoke, or suspend any
646 privileges attendant to such membership so that the welfare and
647 health of the patients and the best interest of the hospitals
648 may at all times be best served. In addition:
649 (a) The board of commissioners is hereby authorized and
650 empowered to establish such standards of good moral character,
651 professional ethics, professional competency, and professional
652 conduct to be prerequisites for membership on the staff as the
653 board, in its reasonable discretion, shall determine to be
654 necessary for the protection of the health and welfare of the
655 patients and the hospital, but the failure of the board of
656 commissioners to establish such standards by rule or regulation
657 shall not destroy the power of the board to determine membership
658 on the staff according to the authority, requirements, and
659 standards otherwise prescribed by this act. The board of
660 commissioners is further authorized and empowered to require
661 members of the staff to abide by all the rules, regulations, and
662 bylaws established by the board of commissioners under the
663 authorization of this act; to require the performance of those
664 professional duties and responsibilities prescribed by said
665 rules, regulations, and bylaws; and to enforce such requirements
666 by the revocation and suspension of staff membership and
667 privileges. No person shall be eligible for membership on the
668 staff, be eligible for any privilege of the practice of medicine

669 in any hospital or facility operated by said district, or retain
670 or possess any membership upon the staff or any privilege of the
671 practice of medicine in any of said hospitals or facilities
672 unless he or she is a graduate of a medical school recognized
673 and approved by the Florida Board of Medicine with the degree of
674 doctor of medicine and possesses a valid license to practice
675 medicine as prescribed and required by chapter 458, Florida
676 Statutes, or, in the alternative, unless he or she possesses a
677 valid license from the Florida Board of Dentistry to practice
678 dentistry as prescribed and required by chapter 466, Florida
679 Statutes.
680 (b) Whenever the board of commissioners considers the
681 refusal, revocation, or suspension for a period of more than 30
682 days of staff membership of any person, or any privileges
683 attendant to such membership, a hearing shall be held before the
684 board of commissioners, or before such examining board as the
685 board of commissioners might establish for the purpose of taking
686 and hearing testimony and evidence and reporting to the board
687 thereon, upon the objections to such person's membership and
688 privileges.
689 (c) Whenever a hearing upon the staff membership and
690 privileges of any person is required by this act, reasonable
691 notice shall be given to the person concerned by registered mail
692 of the time and place of such hearing, and the nature of the
693 objections to the person's membership and privileges shall be
694 made solely upon the record of such hearing and the findings and
695 conclusions made therefor.

696 (d) The board of commissioners, or such administrative
697 personnel and personnel of the staff and hospitals as the board
698 may authorize and designate, is authorized and empowered to
699 suspend any membership on the staff, and any or all privileges
700 attendant thereto, for a period of less than 31 days without
701 hearing prior to such suspension whenever it appears that delay
702 in such suspension would cause an immediate danger to the
703 hospital or any patient thereof or whenever it appears that the
704 suspended physician has failed to abide by a prescribed rule of
705 administrative or staff procedure in willful or negligent
706 violation of hospital discipline. It is further provided that
707 any staff member suspended for a period of less than 31 days
708 without hearing shall, upon written request to the chair of the
709 board of commissioners, be granted by said chair a speedy
710 hearing in the same manner and according to the same procedure
711 as prescribed for other determinations of staff membership and
712 privileges.
713 (e) A decision of the board of commissioners to refuse,
714 revoke, or suspend membership on the staff or to refuse, revoke,
715 or suspend any privilege attendant to such membership is hereby
716 declared to be a quasi-judicial function of the board, and any
717 hearing held for the purpose set forth in this section shall be
718 held and conducted in accordance with general law relating to
719 quasi-judicial hearings and determinations. Judicial review of
720 such decision shall be by certiorari to the Fourth District
721 Court of Appeal in the time and manner prescribed by the Florida
722 Appellate Rules unless the provisions of such appellate rules
723 confer exclusive jurisdiction upon the Supreme Court of Florida.

724 The board of commissioners shall establish such rules of
725 procedure for hearing required by this act as are reasonably
726 necessary to ensure an orderly, fair, and impartial proceeding
727 in which all facts relevant to the objections to the person's
728 membership and privileges may be heard by the examining
729 authority.
730 (f) The testimony at any hearing required by this section
731 shall be stenographically or mechanically recorded, and such
732 record shall thereafter be transcribed. Such transcription,
733 together with all notices to the person concerned; all
734 documents, exhibits, and demonstrative evidence submitted to the
735 examining authority for consideration at the hearing; all
736 findings and recommendations of the examining authority, if any;
737 and all findings and decisions of the board of commissioners
738 relevant to those proceedings shall be preserved by the district
739 as a permanent record of the proceedings. The physician
740 concerned shall be entitled to a copy or copies of such
741 permanent record, certified by the chair of the board of
742 commissioners to be a true copy thereof, upon written request
743 and payment of a reasonable cost of preparation.
744 (g) All documents, testimony, and evidence relevant to the
745 proceeding or the issues thereof and the official record of such
746 proceeding shall be confidential to the North Broward Hospital
747 District and the physician concerned, or his or her attorneys
748 and agents, as provided by law. After the final decision of the
749 board of commissioners upon the refusal, revocation, or
750 suspension of membership on the staff or the privileges
751 attendant thereto, the official record of such proceeding as

752 required by this act may be made public upon the mutual
753 agreement of the board of commissioners and the physician
754 concerned or may be made public by the filing thereof with a
755 court of law for purposes of judicial review.
756 (3) The Board of Commissioners of the North Broward
757 Hospital District is hereby authorized and empowered to employ
758 professional and nonprofessional personnel necessary to the
759 effective and lawful operation of the hospital and facilities of
760 the district, including, but not limited to:
761 (a) Registered, practical, and student nurses and nurse's
762 aides.
763 (b) Physicians licensed or approved by the Florida Board
764 of Medicine necessary to provide emergency medical care and
765 treatment in the emergency rooms of the district hospitals.
766 (c) Interns and resident physicians who are engaged in an
767 authorized medical training program of the district.
768 (d) Physicians licensed by the Florida Board of Medicine
769 and technicians specially trained in the basic sciences allied
770 with, and necessary to, the practice of medicine who are
771 necessary to an authorized medical training program of the
772 district or who are necessary to provide professional advice and
773 services to medical staff physicians.
774
775 All physicians employed by the North Broward Hospital District
776 as authorized in this subsection shall be members of the medical
777 staff and subject to the medical staff bylaws, rules, and
778 regulations.

779 (4) The Board of Commissioners of the North Broward
780 Hospital District is further authorized and empowered to
781 establish reasonable rules and regulations to govern the
782 operation of district hospitals and facilities and to govern and
783 control the conduct of all employees, patients, private duty
784 nurses, guests, visitors, or any other parties or persons who
785 are in any manner upon or using the premises and facilities of
786 any district hospital or facility so that the health and welfare
787 of the patients and the best interest of the hospital will at
788 all times be served.
789 Section 19. Pension plan and insurance benefits for
790 employees.--The North Broward Hospital District is authorized
791 and empowered to create an employees' pension fund to provide
792 for life, disability, and medical insurance for all or any of
793 its employees or officers on a group insurance or other
794 acceptable plan approved by said Board of Commissioners of North
795 Broward Hospital District; to establish and create by resolution
796 an employees' pension, annuity, and retirement plan for any and
797 all groups of officers and employees employed by the North
798 Broward Hospital District and qualifying for such plan; and to
799 pay all or such portion of the cost of any such employees'
800 pension, annuity, and retirement plan from funds available to
801 the district from its authorized sources, with the employees
802 defraying the balance thereof, if any, as said board of
803 commissioners by resolution may determine for any and all groups
804 of officers and employees employed by said North Broward
805 Hospital District. The Board of Commissioners of the North
806 Broward Hospital District is authorized to invest and reinvest

807 available funds of the pension fund in accordance with the
808 provisions of sections 215.44-215.53, Florida Statutes.
809 Section 20. Sale or lease of property.--The board of
810 commissioners is authorized and empowered to lease or sell any
811 real or personal property owned by the North Broward Hospital
812 District or to otherwise relinquish and dispose of the
813 district's title in such property according to the following
814 terms and conditions:
815 (1) Any real or personal property of a fair value of less
816 than an amount to be determined from time to time by resolution
817 of the board of commissioners may be sold, or the title disposed
818 of, according to the manner and procedure and the terms and
819 conditions the board of commissioners at the time might
820 determine.
821 (2) Any real or personal property of a fair value in
822 excess of the amount established from time to time by resolution
823 of the board of commissioners pursuant to subsection (1) may be
824 sold or disposed of after the board of commissioners has
825 determined by appropriate resolution that such property is
826 surplus to the needs and requirements of the district and after
827 the board of commissioners has submitted the property to the
828 general public for offers by publishing a notice of intent to
829 dispose of property in a newspaper of general circulation in the
830 North Broward Hospital District at least 30 days in advance of
831 such sale or other disposition. Any person desiring such
832 property shall submit his or her offer to buy to the board of
833 commissioners during such 30-day period, or during such longer
834 period as the board might establish, along with the terms and

835 conditions of such offer. The published notice shall be
836 sufficient if it reasonably identifies the property in question
837 and informs any persons interested in such property that the
838 board of commissioners desires to dispose of said property and
839 seeks offers to buy thereon. It is not required that such notice
840 specify the terms or conditions desired by the district, and if
841 such terms and conditions are included in such notice or
842 otherwise provided, they are to be for general information only
843 and shall not prevent the board of commissioners from accepting
844 different terms and conditions which the board might determine
845 to be more beneficial to the district. Offers submitted by the
846 bidders are not required to be sealed or to be kept confidential
847 to the district, unless otherwise specified in the published
848 notice, and any bidder may submit any number of alternate offers
849 at any time during the bidding period.
850 (3) The board of commissioners is hereby authorized and
851 empowered to accept any bid upon surplus property and to sell or
852 otherwise convey said property in accordance with the provisions
853 of this section or to reject all the bids as the board of
854 commissioners might determine to be in the best interests of the
855 district.
856 (4) The board of commissioners is authorized and empowered
857 to convey to Broward County, to any municipality or any other
858 governmental body or agency of the state or of the United States
859 located partially or entirely within the boundaries of the North
860 Broward Hospital District, to any subsidiary, either for profit
861 or not for profit, to any not-for-profit affiliate of the
862 district, or to any not-for-profit organization that operates

863 primarily within the district and that supports the district's
864 provision for the health care needs of the people of the
865 district any property for a nominal consideration and according
866 to those terms and conditions as the board of commissioners may
867 at that time determine, regardless of the value of such
868 property, whenever it appears to the board of commissioners that
869 such conveyance would be in the best interests of the district
870 and the residents thereof; however, such conveyance for nominal
871 consideration to other than such subsidiaries, affiliates, or
872 not-for-profit organizations as described in this subsection
873 shall not be made until at least 30 days after the terms and
874 conditions thereof have been published in a newspaper of general
875 circulation in the North Broward Hospital District or until
876 residents and taxpayers of the district have been afforded an
877 opportunity to be heard upon such conveyance at a regular
878 meeting of the board of commissioners. It is further provided,
879 however, that the board of commissioners is authorized to give,
880 grant, sell, or convey any easements or rights-of-way for the
881 use of the public, for the use of public utilities, or to
882 support in any manner deemed necessary and appropriate by the
883 board of commissioners a subsidiary, affiliate, or not-for-
884 profit organization as described in this subsection without any
885 requirement for advertising or public hearing.
886 Section 21. Donations to district.--Any person or persons,
887 firm, organization, corporation, or society, public or private,
888 desiring to make donations of money, personal property, or real
889 estate for the benefit of such district shall have the right to
890 vest title of the money, personal property, or real estate so

891 donated in said county to be controlled when accepted by the
892 commissioners of said district according to the terms of the
893 deed, gift, devise, or bequest of such property.
894 Section 22. Acquisition of property from the City of Fort
895 Lauderdale.--The Board of Commissioners of the North Broward
896 Hospital District is authorized and empowered to acquire, by
897 gift, purchase, lease, or otherwise, personal or real property
898 for the benefit of such hospital or hospitals; to enter into
899 agreements or contracts in the acquisition of such real estate
900 or personal property; and to pledge, encumber, or mortgage the
901 acquired property as security for the debt incurred in the
902 acquisition or purchase thereof. Notwithstanding the Charter of
903 the City of Fort Lauderdale to the contrary, the Board of
904 Commissioners of the North Broward Hospital District and the
905 City of Fort Lauderdale are authorized and empowered to
906 negotiate for the sale, transfer, acquisition, purchase, or
907 conveyance of the present hospital or hospitals now owned by the
908 City of Fort Lauderdale under such terms, conditions, and
909 agreements as are acceptable to the City of Fort Lauderdale and
910 to the district. All sales, transfers, or conveyances by the
911 City of Fort Lauderdale to the North Broward Hospital District
912 are hereby declared to be valid and binding, and all laws in
913 conflict therewith are hereby declared to be repealed and
914 invalid.
915 Section 23. Establishment of hospitals without issuance of
916 bonds.--If the Board of Commissioners of the North Broward
917 Hospital District, by reason of funds on hand, donations, or
918 otherwise, is able to build and establish a hospital or

919 hospitals without issuing bonds, the board of commissioners is
920 hereby authorized and empowered to establish such hospital or
921 hospitals.
922 Section 24. Competitive bids to be sought; procedure;
923 authority to negotiate contracts; group purchasing.--
924 (1)(a) All purchases of supplies, equipment, and materials
925 for use in the operation and maintenance of a hospital or
926 hospitals in excess of an amount to be determined from time to
927 time by resolution of the board of commissioners not to exceed
928 1.5 mills of the total annual district revenues, and all
929 contracts for construction of improvements authorized under this
930 act at a contract price in excess of said amount, shall be
931 approved only after competitive conditions have been maintained
932 and competitive bids sought from at least three different
933 sources of supply, but this does not necessarily require
934 newspaper advertising. The board of commissioners shall have the
935 authority to modify or negotiate to the extent provided in
936 subsection (2).
937 (b) All purchases of supplies, equipment, and materials
938 for use in the operation and maintenance of a hospital or
939 hospitals in excess of an amount to be established from time to
940 time by resolution of the board of commissioners not to exceed
941 1.5 mills of the total annual district revenues, and all
942 contracts for construction of improvements authorized under this
943 act at a contract price in excess of said amount, shall be made
944 or let only after an advertisement inviting bids upon such
945 purchases or contracts has been published in a newspaper of
946 general circulation in the North Broward Hospital District. The

947 board of commissioners shall have the authority to modify or
948 negotiate to the extent provided in subsection (2).
949 (c) Bids upon such purchases or contracts shall be sealed
950 and shall not be opened by the North Broward Hospital District
951 until after the last bid to be considered has been received by
952 the district.
953 (d) All purchases of supplies, equipment, and materials
954 for use in the operation and maintenance of a hospital or
955 hospitals made by the district may be made through participation
956 in group purchasing plans by or with other governmental or
957 nongovernmental agencies at the discretion of the board of
958 commissioners. The district may purchase in accordance with
959 prices established by such group purchasing plans where it can
960 be demonstrated that savings to the district would be realized.
961 (2) Any plans and specifications provided to prospective
962 bidders shall be solely for the purpose of identifying the
963 purchase or construction desired, and the board of commissioners
964 is hereby authorized and empowered to deviate from such plans,
965 specifications, and instructions in the acceptance of any bid so
966 long as the contract or purchase accepted is substantially
967 similar in function and purpose to that identified. The board of
968 commissioners is further authorized and empowered to agree with
969 the successful bidder for changes and modifications to the
970 successful bid, the total value of changes and modifications not
971 to exceed 20 percent of the agreed price, without voiding the
972 existing contract and without any further bidding procedure.
973 (3) No bidding procedure prescribed in this section shall
974 apply to work performed by regular employees of the district.

975 (4) Whenever it reasonably appears to the board of
976 commissioners that, by reason of an emergency or unusual
977 conditions, compliance with the bidding procedures prescribed by
978 this section would be detrimental to the interests of the North
979 Broward Hospital District, the board of commissioners may by
980 appropriate resolution identify such emergency or unusual
981 condition and authorize the purchase or construction desired
982 without compliance with the prescribed bidding procedures of
983 this section.
984 Section 25. Bad debts.--The board of commissioners is
985 authorized to declare accounts receivable uncollectible and to
986 write such accounts off the active books and financial records
987 of the district as bad debts. The board of commissioners is
988 further authorized to destroy the account records of those
989 accounts declared to be bad debts, but such records shall not be
990 destroyed earlier than 4 years after the annual audit of the
991 district reflecting such writeoff has been sent to the office of
992 the Florida Chief Financial Officer, as required by law.
993 Section 26. Settlement of claims of district against
994 others.--The board of commissioners shall be authorized and
995 empowered to compromise and settle any accounts receivable or
996 other claim on money due and owing to the district according to
997 such terms and conditions as the board of commissioners in its
998 discretion might determine. It is expressly provided that
999 factors which may be considered by the board of commissioners in
1000 such compromise are the ability of the debtors to pay and the
1001 probabilities of collection in full. The board of commissioners
1002 is further authorized and empowered to sell, assign, or convey

1003 to any person the right, title, and interest of the district in
1004 any account receivable or judgment owned by the district by full
1005 or partial payment of such account or judgment as the board of
1006 commissioners in its discretion might determine. The board of
1007 commissioners is further authorized and empowered to subordinate
1008 its interest in any mortgage or judgment lien to the interests
1009 of any third parties according to such terms and conditions as
1010 the board of commissioners in its discretion might determine.
1011 Section 27. Payments to other medical institutions.--The
1012 board of commissioners is authorized and empowered to obligate
1013 the district for the payment of hospital and nursing home
1014 expenses for patients transferred from hospitals of the district
1015 to such other institutions at the district's request, provided
1016 that said patients shall be first certified to be medically
1017 indigent by the North Broward Hospital District, based upon the
1018 definition and standards used by the state. The authority to
1019 obligate the district to such institutions may be delegated by
1020 the board of commissioners to such administrative officers of
1021 the district as the board might believe to be necessary and
1022 proper, and such obligations may be incurred by the district
1023 according to such circumstances, terms, and conditions as the
1024 board of commissioners might determine or specify.
1025 Section 28. Parking facilities.--The board of
1026 commissioners is authorized and empowered to establish,
1027 construct, and maintain such automobile parking facilities upon
1028 district property as the board of commissioners in its
1029 discretion might determine to be necessary and proper to a
1030 hospital facility. The board of commissioners is further

1031 authorized and empowered to charge such fee for the use of such
1032 facilities as it might determine.
1033 Section 29. Medical research.--The board of commissioners
1034 is hereby authorized and empowered at any time in its discretion
1035 to establish, maintain, or participate in such programs and
1036 projects of and for medical research, education, and development
1037 affecting human physical or mental health and well being as it
1038 may deem desirable. In connection with such programs and
1039 projects, the board of commissioners is authorized and empowered
1040 to cooperate with public and private educational or research
1041 institutions, corporations, foundations, or organizations of any
1042 and all types as well as agencies, departments, divisions,
1043 branches, or bodies of government, or created by government,
1044 whether federal, state, county, municipal, or otherwise. In
1045 furtherance of such programs and projects, said board of
1046 commissioners is further authorized and empowered to expend
1047 moneys and utilize assets and property, real or personal, of the
1048 district and to receive donations, grants, or gifts of money or
1049 property, real or personal, from any person or persons, firm,
1050 organization, corporation, society, institution, foundation, or
1051 legal entity of whatever nature, whether private, governmental,
1052 or public.
1053 Section 30. Fiscal year.--Notwithstanding the provisions
1054 of section 218.33, Florida Statutes, the fiscal year of the
1055 North Broward Hospital District shall commence July 1 and end
1056 June 30 of each calendar year.
1057 Section 31. Use of Florida Industrial Development
1058 Financing Act.--The district is hereby declared to be a local

1059 agency as defined in section 159.27, Florida Statutes, and shall
1060 have all additional powers set forth in part II of chapter 159,
1061 Florida Statutes, to be exercised in furtherance of the purposes
1062 of the district.
1063 Section 32. Transfer or lease of facilities to not-for-
1064 profit corporations authorized.--
1065 (1) The district shall have the authority to transfer, by
1066 lease, installment sale agreement, or otherwise, any or all of
1067 its hospitals and other facilities to one or more Florida not-
1068 for-profit corporations for the purpose of operating and
1069 managing such facilities and to enter into leases with one or
1070 more Florida not-for-profit corporations for the operating of
1071 such facilities. The term of any such lease, contract, or
1072 agreement and the conditions, covenants, and agreements to be
1073 contained therein shall be determined by the board.
1074 (2) Any lease, contract, or agreement made pursuant to
1075 subsection (1) shall:
1076 (a) Provide that the articles of incorporation of such
1077 not-for-profit corporations initially be subject to the approval
1078 of the board of commissioners of the district.
1079 (b) Require that the not-for-profit corporations become
1080 qualified under s. 501(c)(3) of the United States Internal
1081 Revenue Code.
1082 (c) Provide for the orderly transition of such facilities
1083 to not-for-profit corporations.
1084 (d) Provide for the return of such facility to the
1085 district upon the termination of such agreement or the
1086 dissolution of such not-for-profit corporations.

1087 Section 33. Community Redevelopment Act of 1969.--
1088 (1) Notwithstanding the provisions of part III of chapter
1089 163, Florida Statutes, the Community Redevelopment Act of 1969,
1090 the North Broward Hospital District shall not be deemed to be a
1091 public body or taxing authority as those terms are used in part
1092 III of chapter 163, Florida Statutes.
1093 (2) This section shall not apply with respect to community
1094 redevelopment agencies established prior to January 1, 2002.
1095 Section 34. Liberal construction of act.--The provisions
1096 of this act shall be liberally construed for accomplishing the
1097 work authorized and provided for or intended to be provided for
1098 in this act, and where strict construction would result in the
1099 defeat of the accomplishment of any part of the work authorized
1100 by this act and a liberal construction would permit or assist in
1101 the accomplishment thereof, the liberal construction shall be
1102 chosen.
1103 Section 4. Severability.--Any provision of this act which
1104 for any reason may be held or declared invalid or unenforceable
1105 may be eliminated, and the remaining portion or portions thereof
1106 shall remain in full force and be valid and enforceable as if
1107 such invalid or unenforceable provision had not been
1108 incorporated therein.
1109 Section 5. Chapters 27438 (1951), 61-1931, 61-1937, 63-
1110 1192, 65-1316, 65-1319, 67-1170, 67-1171, 69-895, 69-898, 69-
1111 914, 70-622, 71-567, 71-576, 71-578, 73-411, 73-412, 73-413, 74-
1112 449, 75-347, 75-348, 76-338, 77-508, 78-481, 80-464, 80-468, 81-
1113 354, 84-399, 86-369, 87-508, 90-485, 91-351, 97-372, and 2002-
1114 363, Laws of Florida, are repealed.

1115 Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1253 Broward County, Florida
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:** HB 1083

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) Fiscal Council		Monroe	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) conducts an in-depth review of every property appraiser's assessment rolls at least every two years. DOR creates a report on each assessment roll. Included in the report is DOR's confidence level in the property appraiser's rolls based on DOR's use of various statistical and analytical measures, which are also included in the report. DOR then forwards this report to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the property appraiser. Once DOR presents the property appraiser with its report, the report becomes a public record.

This bill requires that the Broward County Property Appraiser forward a copy of DOR's report to the Mayor of Broward County, each county commissioner, and the county auditor.

This bill would take effect upon becoming law.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the duties of the Broward County Property Appraiser by requiring them to the forward a copy of the reports they receive from the Department of Revenue to the Mayor of Broward County, each county commissioner, and the county auditor.

B. EFFECT OF PROPOSED CHANGES:

Current Situation in Assessment Rolls:

Property appraisers[1] are required to assess all property in their county and prepare assessment rolls for all real property and tangible personal property.[2] An assessment roll is a record of all taxable property within the tax district which is completed, verified, and reported to the Department of Revenue (DOR) by the property appraiser. DOR has supervisory authority over property appraisers under chapter 195, F.S. DOR prescribes forms, rules and regulations for assessing and collecting taxes, establishment of standards of value, manual of instructions, classification of property, budgetary processes, and review of assessment rolls.

Each assessment roll is submitted to DOR for review. The purpose of the review is to determine that the rolls meet the appropriate requirements of law relating to form and just value.[3] DOR is required to conduct an in-depth review of the assessment rolls for each county no less than once every two years. At a minimum, DOR is to review the level of assessment for the county in relation to just value of each of the various classifications of property found in s. 195.0969(3)(a), F.S. The in-depth review may include review of the proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

Within 120 days after receiving a county's assessment roll, or within 10 days after approving it, whichever is later, DOR is to finalize its review and forward its findings to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the appropriate property appraiser. DOR is to include in its findings a statement of the confidence interval for the median, other measures studied, and the roll as a whole[4], and related statistical and analytical information.[5] DOR's report becomes a public record, subject to chapter 119, F.S., once it is released to the property appraiser.[6]

Effect of Bill:

This local bill requires the Broward County Property Appraiser to forward a copy of the report to the Mayor of Broward County, each of the nine county commissioners, and the county auditor, within 90 days of receiving the report from DOR. The report shall include the same results provided to the Broward County Property Appraiser by DOR. The copy is required to include:

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[1] Property Appraisers are independently elected, constitutional officers. Art. VII, section 1(d), Florida Constitution.
[2] Sections 192.011 and 193.114, F.S.
[3] Section 193.1142(1), F.S.
[4] The confidence interval is a statistical measure of the reliability of DOR's sample. E-mail from David Beggs of DOR (March 8, 2006).
[5] Section 195.096(2)(f), F.S.
[6] Section 195.096(2)(e), F.S.

- All statistical and analytical measures taken for the real property assessment roll as a whole and the personal property assessment roll as a whole.
- The results of any audit or review of procedures the county property appraiser used to appraise the property, listed independently for each class or sub class of real property studied.

For the years in which Broward County is not under in-depth review, the report forwarded by the property appraiser must include any value-weighted mean level of assessment projected for that year pursuant to state law.[7]

C. SECTION DIRECTORY:

Section 1: Requires Broward County Property Appraiser to forward copies of the Department of Revenue's report.

Section 2: Provides an effective of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 10, 2006

WHERE? *Sun-Sentinel*, Broward/Palm Beach/Miami Dade County, Florida.

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

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[7] These projections are made by DOR and based upon the best information available, utilizing professionally accepted methodology, and separately allocate changes in total assessed value to: new construction, additions, and deletions, changes in the value of the dollar, changes in the market value of property, and the level of assessment. Section 195.096(3)(b), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

According to the Economic Impact Statement, the advantage of this bill is the public scrutiny and examination improves public performance. When the present Broward County Property Appraiser, a former County Commissioner and School Board Member, took office, she was unaware of these reports. When she became aware of these reports, she requested copies from the Department of Revenue. The reports showed that Broward County had not been in compliance for years. Her position is that had these reports been known, the property appraiser would have had to fix the problem or the audits would have been used against them during elections.[8]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[8] E-mail from Lori N. Parrish, March 20, 2006.

1 A bill to be entitled
2 An act relating to Broward County, Florida; requiring the
3 Property Appraiser of Broward County to forward a copy of
4 the findings of the Florida Department of Revenue
5 regarding the Broward County Assessment Rolls to the Mayor
6 of Broward County, each county commissioner, and the
7 county auditor; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. The Property Appraiser of Broward County shall,
12 within 90 days after receipt of the findings of the Florida
13 Department of Revenue regarding the Broward County Assessment
14 Rolls, forward a copy of the findings to the Mayor of Broward
15 County, each county commissioner, and the county auditor. The
16 results furnished to the Mayor of Broward County, each county
17 commissioner, and the county auditor shall include the same
18 results as furnished to the county property appraiser, such as
19 all statistical and analytical measures computed for the real
20 property assessment roll as a whole, the personal property
21 assessment roll as a whole, and, independently for the real
22 property classes and subclasses studied, results of any audit or
23 review of procedures used by the county property appraiser, and,
24 if Broward County is not being studied in the current year, any
25 value-weighted mean levels of assessment projected for that year
26 pursuant to state law.
27 Section 2. This act shall take effect upon becoming a law.

Amendment Packet

Fiscal Council

Joe Negron, Chair
Fred Brummer, Vice Chair

Friday, April 21, 2006
11:15 a.m. – 1:00 p.m.
212 Knott

Allan G. Bense
Speaker

Joe Negron
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **29 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: Fiscal Council
2 Representative(s) Brummer offered the following:
3
4 **Amendment**
5 On line(s) 21 through 22 and on line 34
6 Remove: last 9 days of July 2006
7
8 and insert:
9 period beginning July 22 and ending July 30,2006
10

000000

Amendment No. 1

Bill No. **69 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: Fiscal Council
2 Representative Brummer offered the following:
3
4 **Amendment**
5 Remove line(s) 270-275 and insert:
6
7 Section 5. For the 2006-2007 fiscal year, the sum of
8 $222,946 is appropriated from the General Revenue Fund and four
9 positions are authorized to the Department of Revenue for the
10 purpose of implementing this act. Of the funds appropriated in
11 this section, $203,574 are recurring funds and $19,372 are
12 nonrecurring funds.

Amendment No. (for drafter's use only)

Bill No. **0237**

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: Fiscal Council
2 Representative(s) Benson offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 14 and 15, insert:
6 Section 1. Subsection (2) of section 162.21, Florida
7 Statutes, is amended to read:
8 162.21 Enforcement of county or municipal codes or
9 ordinances; penalties.--
10 (2) A county or a municipality may designate certain of
11 its employees or agents as code enforcement officers. The
12 training and qualifications of the employees or agents for such
13 designation shall be determined by the county or the
14 municipality. Employees or agents who may be designated as code
15 enforcement officers may include, but are not limited to, code
16 inspectors, environmental enforcement officers, law enforcement
17 officers, animal control officers, or firesafety inspectors.
18 Designation as a code enforcement officer does not provide the
19 code enforcement officer with the power of arrest or subject the
20 code enforcement officer to the provisions of ss. 943.085-
21 943.255. However, employees or agents of a county or

22 municipality who are designated as environmental enforcement
23 officers as defined in s. 943.10 shall have the power of arrest
24 for violations of the following provisions of law: s. 403.413,
25 relating to the Florida Litter Law; chapter 298, relating to
26 drainage; s. 386.041, relating to nuisances injurious to health;
27 s. 823.07, relating to public nuisances; and s. 861.01, relating
28 to obstructing highways, and for violations of s. 62.256 of the
29 Florida Administrative Code, relating to prohibited burning.
30 Nothing in this section amends, alters, or contravenes the
31 provisions of any state-administered retirement system or any
32 state-supported retirement system established by general law.
33 Section 2. Subsection (22) is added to section 943.10,
34 Florida Statutes, to read:
35 943.10 Definitions; ss. 943.085-943.255.--The following
36 words and phrases as used in ss. 943.085-943.255 are defined as
37 follows:
38 (22) "Environmental enforcement officer" means a person
39 who is employed full time by a county or municipality, who is
40 vested with authority to make arrests, and whose primary
41 responsibility is the enforcement of litter and solid waste laws
42 of the state which provide for a criminal penalty.
43
44 ========== T I T L E A M E N D M E N T ==========
45 Remove line 7 and insert:
46 enforcement personnel; amending s. 162.21, F.S.; including
47 environmental enforcement officers as authorized county or
48 municipality code enforcement officers; providing arrest power
49 to environmental enforcement officers for specified violations;
50 amending s. 943.10, F.S.; defining the term "environmental
51 enforcement officer"; amending s. 943.13, F.S.; revising

Amendment No. (for drafter's use only)

Bill No. **353**

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: Fiscal Council
2 Representative(s) Zapata offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 That the following amendment to Section 6 of Article VII
8 and the creation of Section 26 of Article XII of the State
9 Constitution is agreed to and shall be submitted to the electors
10 of this state for approval or rejection at the next general
11 election or at an earlier special election specifically
12 authorized by law for that purpose:
13 ARTICLE VII
14 FINANCE AND TAXATION
15 SECTION 6. Homestead exemptions.--
16 (a) Every person who has the legal or equitable title to
17 real estate and maintains thereon the permanent residence of the
18 owner, or another legally or naturally dependent upon the owner,
19 shall be exempt from taxation thereon, except assessments for
20 special benefits, up to the assessed valuation of five thousand
21 dollars, upon establishment of right thereto in the manner
22 prescribed by law. The real estate may be held by legal or

23 equitable title, by the entireties, jointly, in common, as a
24 condominium, or indirectly by stock ownership or membership
25 representing the owner's or member's proprietary interest in a
26 corporation owning a fee or a leasehold initially in excess of
27 ninety-eight years.

28 (b) Not more than one exemption shall be allowed any
29 individual or family unit or with respect to any residential
30 unit. No exemption shall exceed the value of the real estate
31 assessable to the owner or, in case of ownership through stock
32 or membership in a corporation, the value of the proportion
33 which the interest in the corporation bears to the assessed
34 value of the property.

35 (c) By general law and subject to conditions specified
36 therein, the exemption shall be increased to a total of twenty-
37 five thousand dollars of the assessed value of the real estate
38 for each school district levy. By general law and subject to
39 conditions specified therein, the exemption for all other levies
40 may be increased up to an amount not exceeding ten thousand
41 dollars of the assessed value of the real estate if the owner
42 has attained age sixty-five or is totally and permanently
43 disabled and if the owner is not entitled to the exemption
44 provided in subsection (d).

45 (d) By general law and subject to conditions specified
46 therein, the exemption shall be increased to a total of the
47 following amounts of assessed value of real estate for each levy
48 other than those of school districts: fifteen thousand dollars
49 with respect to 1980 assessments; twenty thousand dollars with
50 respect to 1981 assessments; twenty-five thousand dollars with
51 respect to assessments for 1982 and each year thereafter.
52 However, such increase shall not apply with respect to any
53 assessment roll until such roll is first determined to be in

54 compliance with the provisions of section 4 by a state agency
55 designated by general law. This subsection shall stand repealed
56 on the effective date of any amendment to section 4 which
57 provides for the assessment of homestead property at a specified
58 percentage of its just value.
59 (e) By general law and subject to conditions specified
60 therein, the Legislature may provide to renters, who are
61 permanent residents, ad valorem tax relief on all ad valorem tax
62 levies. Such ad valorem tax relief shall be in the form and
63 amount established by general law.
64 (f) The legislature may, by general law, allow counties or
65 municipalities, for the purpose of their respective tax levies
66 and subject to the provisions of general law, to grant an
67 additional homestead tax exemption not exceeding fifty ~~twenty-~~
68 ~~five~~ thousand dollars to any person who has the legal or
69 equitable title to real estate and maintains thereon the
70 permanent residence of the owner and who has attained age sixty-
71 five and whose household income, as defined by general law, does
72 not exceed twenty thousand dollars. The general law must allow
73 counties and municipalities to grant this additional exemption,
74 within the limits prescribed in this subsection, by ordinance
75 adopted in the manner prescribed by general law, and must
76 provide for the periodic adjustment of the income limitation
77 prescribed in this subsection for changes in the cost of living.
78 Article XII
79 SCHEDULE
80 Section 26 - The amendment to Section 6 of Article VII
81 increasing the maximum additional homestead exemption for low
82 income seniors shall take effect January 1, 2007.
83

84 BE IT FURTHER RESOLVED that the following statement be
85 placed on the ballot:
86 CONSTITUTIONAL AMENDMENT
87 INCREASED HOMESTEAD EXEMPTION.--Proposing an amendment to
88 Section 6 of Article VII, and the creation of Section 26 of
89 Article XII of the State Constitution to increase the maximum
90 additional homestead exemption for low income seniors from
91 $25,000 to $50,000, effective January 1, 2007.
92
93
94 ========== T I T L E A M E N D M E N T ==========
95 Remove the entire title and insert:
96 A joint resolution proposing an amendment to Section 6 of
97 Article VII and the creation of Section 26 of Article XII
98 of the State Constitution to increase the maximum
99 additional homestead exemption for low income seniors from
100 $25,000 to $50,000.
101

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **857**

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	____	

---

1 Council/Committee hearing bill: Fiscal Council
2 Representative(s) Mahon offered the following:
3
4 **Amendment (with title amendments)**
5 Remove line(s) 29-30 and insert:
6
7 policies taxable under paragraph (c),~~)~~ covering
8
9 ========== T I T L E A M E N D M E N T ==========
10 Remove line 4 and insert:
11 title insurance policies; providing limitations;

000000

Amendment No. (2)

Bill No. **857**

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: Fiscal Council
2 Representative(s) Mahon offered the following:
3
4 **Amendment (with title amendments)**
5 Remove line(s) 47-72 and insert:
6
7 (c) An amount equal to .6 percent of the premiums for title
8 insurance on property located in this state. For purposes of
9 this paragraph, the term "premium" shall have the same meaning
10 as provided in s. 627.7711(2).
11
12
13 ========== T I T L E A M E N D M E N T ==========
14 Remove line 5 and insert:
15 referencing the definition of the

Amendment No. (for drafter's use only)

Bill No. **1431**

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: Fiscal Council
2 Representative(s) Cretul offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 163.31801, Florida Statutes, is created to
7 read:
8 163.31801 Florida Impact Fee Act; short title; legislative
9 intent; minimum requirements.—
10 (1) Short title - This act may be cited as the "Florida
11 Impact Fee Act."
12 (2) Legislative Findings and Intent - The Legislature finds
13 that impact fees are an important source of revenue for local
14 governments to fund infrastructure necessitated by new growth.
15 The Legislature further finds that impact fees are an outgrowth
16 of local governments' home rule powers to provide certain
17 services within their jurisdictions. Due to the growth of
18 impact fee collections and local governments' reliance on impact
19 fees to fund infrastructure necessitated by new growth, it is
20 the intent of the Legislature to ensure that when a county or
21 municipality enacts an impact fee by ordinance or a special

22 district enacts an impact fee by resolution the governing
23 authority complies with this Act.
24 (3) Impact Fee Ordinance or Resolution; Minimum
25 Requirements - An impact fee ordinance or resolution must:
26 (a) premise its impact fee calculations upon the most
27 recent and localized data;
28 (b) significantly address affordable housing by either
29 waiving, exempting, deferring, or paying impact fees for
30 affordable housing units out of another revenue source or
31 establishing a significant affordable housing program;
32 (c) provide for accounting and reporting of impact fee
33 collections and expenditures. Specifically, each local
34 governmental entity that imposes an impact fee to address
35 infrastructure needs shall account for the revenues and
36 expenditures of each impact fee within a separate accounting
37 fund;
38 (d) limit administrative charges for impact fee collections
39 to actual cost; and
40 (e) provide notice of not less than 90 days before the
41 effective date of a new impact fee ordinance or resolution or an
42 amendment to an existing impact fee ordinance or resolution.
43 (4) Audits - Certified public accountants conducting audits
44 of local governmental entities and district school boards shall
45 report, as part of the audit, whether or not the local
46 governmental entity or district school board has complied with
47 this section and local laws pertaining to impact fees.
48 Section 2. This act shall take effect July 1, 2006.
49
50
51
52

53 ========== T I T L E A M E N D M E N T ==========
54 Remove the entire title and insert:
55 An act relating to impact fees; creating s.163.31801, F.S.;
56 creating the "Florida Impact Fee Act"; providing legislative
57 intent; requiring that an impact fee meet certain specified
58 requirements concerning calculation of the fee, affordable
59 housing, accounting for revenues and expenditures, provision of
60 notice, and collection of administrative costs; providing
61 an effective date.
62

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: Fiscal Council
2 Representative(s) Mayfield offered the following:
3
4 **Amendment**
5 Remove lines 274-293 and insert:
6
7 Section 6. Section 377.805, Florida Statutes, is created
8 to read:
9 377.805 Energy-efficient products sales tax holiday.--The
10 period from 12:01 a.m., October 5, 2006, through midnight,
11 October 11, 2006, shall be designated "Energy Efficiency Week,"
12 and the tax levied under chapter 212 may not be collected on the
13 sale of a new energy-efficient product having a selling price of
14 $1,500 or less per product during that period. This exemption
15 applies only when the energy-efficient product is purchased for
16 noncommercial home or personal use and does not apply when the
17 product is purchased for trade, business, or resale. As used in
18 this subsection, the term "energy-efficient product" means a
19 dishwasher, clothes washer, air conditioner, ceiling fan,
20 incandescent or fluorescent light bulb, dehumidifier,
21 programmable thermostat, or refrigerator that has been

22 designated by the United States Environmental Protection Agency
23 or by the United States Department of Energy as meeting or
24 exceeding the requirements under the Energy Star Program of
25 either agency. Purchases made under this paragraph may not be
26 made using a business or company credit or debit card or check.
27 Any construction company, building contractor, or commercial
28 business or entity that purchases or attempts to purchase the
29 energy-efficient products exempt as provided in this section
30 commits an unfair method of competition in violation of s.
31 501.204, Florida Statutes, punishable as provided in s.
32 501.2075, Florida Statutes.

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: House Fiscal Council
2 Representative(s) Mayfield offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between lines 273 and 274 insert:
6 (6) The department shall coordinate and actively consult
7 with the Department of Agriculture and Consumer Services during
8 the review and approval process of grants relating to bioenergy
9 projects for renewable energy technology, and the two
10 departments shall jointly determine the grant awards to these
11 bioenergy projects. No grant funding shall be awarded to any
12 bioenergy project without such joint approval. Factors for
13 consideration in awarding grants may include, but are not
14 limited to, the degree to which:
15 (a) The project stimulates in-state capital investment and
16 economic development in metropolitan and rural areas, including
17 the creation of jobs and the future development of a commercial
18 market for bioenergy.
19 (b) The project produces bioenergy from Florida-grown
20 crops or biomass.

21 (c) The project demonstrates efficient use of energy and
22 material resources.
23 (d) The project fosters overall understanding and
24 appreciation of bioenergy technologies.
25 (e) Matching funds and in-kind contributions from an
26 applicant are available.
27 (f) The project duration and the timeline for expenditures
28 are acceptable.
29 (g) The project has a reasonable assurance of enhancing
30 the value of agricultural products or will expand agribusiness
31 in the state.
32 (h) Preliminary market and feasibility research has been
33 conducted by the applicant or others and shows there is a
34 reasonable assurance of a potential market.
35
36
37 ========== D I R E C T O R Y A M E N D M E N T ==========
38 Remove line(s) and insert:
39
40
41 ========== T I T L E A M E N D M E N T ==========
42 Remove line(s) and insert:
43

Amendment No. (for drafter's use only)

Bill No. **1473**

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: Fiscal Council
2 Representative Mayfield offered the following:
3
4 **Substitute Amendment (with title amendments) for amendment**
5 **#3**
6 Between lines 2444 and 2445 insert:
7 Section 42. Section 403.885, Florida Statutes, is amended
8 to read:
9 403.885 Water Projects Grant Program ~~Stormwater~~
10 ~~management; wastewater management; and Water Restoration Grant~~
11 ~~Program~~.--
12 (1) The Department of Environmental Protection shall
13 administer a grant program to use funds transferred pursuant to
14 s. 212.20 to the Ecosystem Management and Restoration Trust Fund
15 or other moneys as appropriated by the Legislature for water
16 quality improvement, stormwater management, wastewater
17 management, and water restoration project grants. Eligible
18 recipients of such grants include counties, municipalities,
19 water management districts, and special districts that have
20 legal responsibilities for water quality improvement, water
21 management, storm water management, wastewater management, ~~and~~

22 lake and river water restoration projects~~.~~ and drinking ~~Drinking~~
23 water projects ~~are not eligible for funding~~ pursuant to this
24 section.
25 (2) The grant program shall provide for the evaluation of
26 annual grant proposals. The department shall evaluate such
27 proposals to determine if they:
28 (a) Protect public health ~~and~~ or the environment.
29 (b) Implement plans developed pursuant to the Surface
30 Water Improvement and Management Act created in part IV of
31 chapter 373, other water restoration plans required by law,
32 management plans prepared pursuant to s. 403.067, or other plans
33 adopted by local government for water quality improvement and
34 water restoration.
35 ~~(3) In addition to meeting the criteria in subsection (2),~~
36 ~~annual grant proposals must also meet the following~~
37 ~~requirements:~~
38 ~~(a) An application for a stormwater management project may~~
39 ~~be funded only if the application is approved by the water~~
40 ~~management district with jurisdiction in the project area.~~
41 ~~District approval must be based on a determination that the~~
42 ~~project provides a benefit to a priority water body.~~
43 ~~(b) Except as provided in paragraph (c), an application~~
44 ~~for a wastewater management project may be funded only if:~~
45 ~~1. The project has been funded previously through a line~~
46 ~~item in the General Appropriations Act; and~~
47 ~~2. The project is under construction.~~
48 ~~(c) An application for a wastewater management project~~
49 ~~that would qualify as a water pollution control project and~~
50 ~~activity in s. 403.1838 may be funded only if the project~~

51 ~~sponsor has submitted an application to the department for~~
52 ~~funding pursuant to that section.~~
53 ~~(4) All project applicants must provide local matching~~
54 ~~funds as follows:~~
55 ~~(a) An applicant for state funding of a stormwater~~
56 ~~management project shall provide local matching funds equal to~~
57 ~~at least 50 percent of the total cost of the project; and~~
58 ~~(b) An applicant for state funding of a wastewater~~
59 ~~management project shall provide matching funds equal to at~~
60 ~~least 25 percent of the total cost of the project.~~
61
62 ~~The requirement for matching funds may be waived if the~~
63 ~~applicant is a financially disadvantaged small local government~~
64 ~~as defined in subsection (5).~~
65 ~~(5) Each fiscal year, at least 20 percent of the funds~~
66 ~~available pursuant to this section shall be used for projects to~~
67 ~~assist financially disadvantaged small local governments. For~~
68 ~~purposes of this section, the term "financially disadvantaged~~
69 ~~small local government" means a municipality having a population~~
70 ~~of 7,500 or less, a county having a population of 35,000 or~~
71 ~~less, according to the latest decennial census and a per capita~~
72 ~~annual income less than the state per capita annual income as~~
73 ~~determined by the United States Department of Commerce, or a~~
74 ~~county in an area designated by the Governor as a rural area of~~
75 ~~critical economic concern pursuant to s. 288.0656. Grants made~~
76 ~~to these eligible local governments shall not require matching~~
77 ~~local funds.~~
78 ~~(6) Each year, stormwater management and wastewater~~
79 ~~management projects submitted for funding through the~~
80 ~~legislative process shall be submitted to the department by the~~

81 ~~appropriate fiscal committees of the House of Representatives~~
82 ~~and the Senate. The department shall review the projects and~~
83 ~~must provide each fiscal committee with a list of projects that~~
84 ~~appear to meet the eligibility requirements under this grant~~
85 ~~program.~~
86
87
88 ========== T I T L E A M E N D M E N T ==========
89 On line 138 after the semicolon insert:
90 amending 403.885, F.S.; revising requirements relating to the
91 Department of Environmental Protection's water project grants
92 program;

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:
2 Representative(s) Mayfield offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between lines 2444 and 2445 insert:
6
7 Section 42. There is hereby appropriated $61,379 from the
8 General Revenue Fund to the Department of Revenue for the
9 purposes of administering the energy-efficient products sales
10 tax holiday.
11
12
13
14 ========== T I T L E A M E N D M E N T ==========
15 Remove line(s) 138 and insert:
16
17 certain determinations; providing an appropriation; providing
18 and effective date.
19

Amendment No. (for drafter's use only)

Bill No. 7109

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:
2 Representative(s) Brummer offered the following:
3
4 **Amendment**
5 Remove line(s) 56-85 and insert:
6 assessed pursuant to subsection (5). This paragraph applies to
7 changes, additions, or improvements commenced within 3 years
8 after the January 1 following the damage or destruction of the
9 homestead.
10 (c) Changes, additions, or improvements that replace all
11 or a portion of real property that was damaged or destroyed by
12 misfortune or calamity shall be assessed upon substantial
13 completion as if such damage or destruction had not occurred and
14 in accordance with paragraph (b) if the owner of such property:
15 1. Was permanently residing on such property when the
16 damage or destruction occurred;
17 2. Was not entitled to receive homestead exemption on such
18 property as of January 1 of that year; and
19 3. Applies for and receives homestead exemption on such
20 property the following year.

21 (d)(c) Changes, additions, or improvements include
22 improvements made to common areas or other improvements made to
23 property other than to the homestead property by the owner or by
24 an owner association, which improvements directly benefit the
25 homestead property. Such changes, additions, or improvements
26 shall be assessed at just value, and the just value shall be
27 apportioned among the parcels benefiting from the improvement.
28
29 Section 2. Subsection (7) is added to section 196.031,
30 Florida Statutes, to read:
31 196.031 Exemption of homesteads.--
32 (7) When homestead property is damaged or destroyed by
33 misfortune or calamity and the property is uninhabitable on
34 January 1 after the damage or destruction occurs, the homestead
35 exemption may be granted if the property is otherwise qualified
36 and if the property owner notifies the property appraiser that
37 he or she intends to repair or rebuild the property and live in
38 it as his or her primary residence after it is repaired or
39 rebuilt and does not claim a homestead exemption on any other
40 property or otherwise violate this section. Failure by the
41 property owner to commence the repair or rebuilding of the
42 homestead property within 3 years after January 1 following its
43 damage or destruction constitutes abandonment of the property as
44 a homestead.
45
46 Section 3. This act shall take effect upon becoming a law
47 and shall apply retroactively to homestead property replaced on
48 or after January 1, 2006.
49

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7173**

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: Fiscal Council
2 Representative Galvano offered the following:
3
4 **Amendment**
5 Remove line(s) 1561 through 1570.
6
7
8 ========== T I T L E A M E N D M E N T ==========
9 Remove line 62 and insert:
10 by the act; providing an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7173**

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: Fiscal Council
2 Representative Galvano offered the following:
3
4 **Amendment**
5 Remove line 1571 and insert:
6 Section 15. This act shall take effect July 1, 2006, only
7 if a specific appropriation to fund the provisions of this bill
8 is made in the General Appropriations Act for Fiscal Year 2006-
9 2007.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7181**

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	____	

---

1 Council/Committee hearing bill: Fiscal Council
2 Representative Berfield offered the following:
3
4 **Amendment**
5 Remove lines 160 - 161 and insert:
6 the Governor. The task force shall be composed of members of the
7 Legislature and representatives from the private and public
8 sectors, as designated by the
9
10
11

000000

HB 7181 Berfield.doc

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: Fiscal Council
2 Representative(s) Brummer offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (3) of section 11.243, Florida
7 Statutes, is amended to read:
8 11.243 Publishing Florida Statutes; price, sale.--
9 (3) All moneys collected from the sale of the Florida
10 Statutes or other publications shall be deposited in the Grants
11 and Donations Trust Fund within the Legislature ~~State Treasury~~
12 ~~and credited to the appropriation for legislative expense~~.
13 Section 2. Subsections (2) and (3) of section 11.513,
14 Florida Statutes, are amended, present subsections (5) and (6)
15 of that section are renumbered as subsections (6) and (7),
16 respectively, and a new subsection (5) is added to that section,
17 to read:
18 11.513 Program evaluation and justification review.--
19 (2) A state agency's inspector general, internal auditor,
20 or other person designated by the agency head or the Chief
21 Justice of the Supreme Court shall develop, in consultation with
22 the Office of Program Policy Analysis and Government

23 Accountability, a plan for monitoring and reviewing the state
24 agency's or the judicial branch's major programs to ensure that
25 performance measures and standards, as well as baseline and
26 previous-year performance data, are maintained and supported by
27 agency records.
28 (3) The program evaluation and justification review shall
29 be conducted on major programs, but may include other programs.
30 The review shall be comprehensive in its scope but, at a
31 minimum, must be conducted in such a manner as to specifically
32 determine the following, and to consider and determine what
33 changes, if any, are needed with respect thereto:
34 (a) The identifiable cost of each program.
35 (b) The specific purpose of each program, as well as the
36 specific public benefit derived therefrom.
37 (c) Progress toward achieving the outputs and outcomes
38 associated with each program.
39 (d) An explanation of circumstances contributing to the
40 state agency's ability to achieve, not achieve, or exceed its
41 projected outputs and outcomes, as defined in s. 216.011,
42 associated with each program.
43 (e) Alternate courses of action that would result in
44 administration of the same program in a more efficient or
45 effective manner. The courses of action to be considered must
46 include, but are not limited to:
47 1. Whether the program could be organized in a more
48 efficient and effective manner, whether the program's mission,
49 goals, or objectives should be redefined, or, when the state
50 agency cannot demonstrate that its efforts have had a positive
51 effect, whether the program should be reduced in size or
52 eliminated.

53 2. Whether the program could be administered more
54 efficiently or effectively to avoid duplication of activities
55 and ensure that activities are adequately coordinated.
56 3. Whether the program could be performed more efficiently
57 or more effectively by another unit of government or a private
58 entity, or whether a program performed by a private entity could
59 be performed more efficiently and effectively by a state agency.
60 4. When compared to costs, whether effectiveness warrants
61 elimination of the program or, if the program serves a limited
62 interest, whether it should be redesigned to require users to
63 finance program costs.
64 5. Whether the cost to administer the program exceeds
65 license and other fee revenues paid by those being regulated.
66 6. Whether other changes could improve the efficiency and
67 effectiveness of the program.
68 (f) The consequences of discontinuing such program. If any
69 discontinuation is recommended, such recommendation must be
70 accompanied by a description of alternatives to implement such
71 recommendation, including an implementation schedule for
72 discontinuation and recommended procedures for assisting state
73 agency employees affected by the discontinuation.
74 (g) Determination as to public policy, which may include
75 recommendations as to whether it would be sound public policy to
76 continue or discontinue funding the program, either in whole or
77 in part, in the existing manner.
78 <u>(h) Whether current performance measures and standards</u>
79 <u>should be reviewed or amended to assist agencies' and the</u>
80 <u>judicial branch's efforts in achieving outputs and outcome</u>
81 <u>measures.</u>

82 (i) ~~(h)~~ Whether the information reported as part of the
83 state's performance-based program budgeting system has relevance
84 and utility for the evaluation of each program.
85 (j) ~~(i)~~ Whether state agency management has established
86 control systems sufficient to ensure that performance data are
87 maintained and supported by state agency records and accurately
88 presented in state agency performance reports.
89 (5) The Office of Program Policy Analysis and Government
90 Accountability may perform evaluation and justification reviews
91 when necessary and as directed by the Legislature in order to
92 determine whether current agency and judicial branch performance
93 measures and standards are adequate. Reports concerning the
94 evaluation and review of agency and judicial branch performance
95 measures and standards shall be submitted to the Executive
96 Office of the Governor, the President of the Senate, the Speaker
97 of the House of Representatives, and the chair and vice chair of
98 the Legislative Budget Commission. Reports concerning the
99 evaluation and review of judicial branch performance measures
100 and standards shall be submitted to the Chief Justice of the
101 Supreme Court.
102 Section 3. Subsection (1) of section 11.151, Florida
103 Statutes, is amended to read:
104 11.151 Annual legislative appropriation to contingency
105 fund for use of Senate President and House Speaker.--
106 (1) There is established a legislative contingency fund
107 consisting of $20,000 ~~$10,000~~ for the President of the Senate
108 and $20,000 ~~$10,000~~ for the Speaker of the House of
109 Representatives, which amounts shall be set aside annually from
110 moneys appropriated for legislative expense. These funds shall
111 be disbursed by the Chief Financial Officer upon receipt of
112 vouchers authorized by the President of the Senate or the

113 Speaker of the House of Representatives. Such funds may be
114 expended at the unrestricted discretion of the President of the
115 Senate or the Speaker of the House of Representatives in
116 carrying out their official duties during the entire period
117 between the date of their election as such officers at the
118 organizational meeting held pursuant to s. 3(a), Art. III of the
119 State Constitution and the next general election.
120 Section 4. Paragraph (h) of subsection (1) of section
121 20.435, Florida Statutes, is amended to read:
122 20.435 Department of Health; trust funds.--
123 (1) The following trust funds are hereby created, to be
124 administered by the Department of Health:
125 (h) Biomedical Research Trust Fund.
126 1. Funds to be credited to the trust fund shall consist of
127 funds deposited pursuant to s. 215.5601. Funds shall be used for
128 the purposes of the James and Esther King Biomedical Research
129 Program as specified in ss. 215.5602 and 288.955. The trust fund
130 is exempt from the service charges imposed by s. 215.20.
131 2. Notwithstanding the provisions of s. 216.301 and
132 pursuant to s. 216.351, any balance in the trust fund at the end
133 of any fiscal year shall remain in the trust fund at the end of
134 the year and shall be available for carrying out the purposes of
135 the trust fund. The department may invest these funds
136 independently through the Chief Financial Officer or may
137 negotiate a trust agreement with the State Board of
138 Administration for the investment management of any balance in
139 the trust fund.
140 3. Notwithstanding s. 216.301 and pursuant to s. 216.351,
141 any balance of any appropriation from the Biomedical Research
142 Trust Fund which is not disbursed but which is obligated
143 pursuant to contract or committed to be expended may be <u>carried</u>

144 forward ~~certified by the Governor~~ for up to 3 years following
145 the effective date of the original appropriation.
146 4. The trust fund shall, unless terminated sooner, be
147 terminated on July 1, 2008.
148 Section 5. Section 215.18, Florida Statutes, is amended to
149 read:
150 215.18 Transfers between funds; limitation.--Whenever
151 there exists in any fund provided for by s. 215.32 a deficiency
152 which would render such fund insufficient to meet its just
153 requirements, and there shall exist in the other funds in the
154 State Treasury moneys which are for the time being or otherwise
155 in excess of the amounts necessary to meet the just requirements
156 of such last-mentioned funds, the Governor may order a temporary
157 transfer of moneys from one fund to another in order to meet
158 temporary deficiencies in a particular fund without resorting to
159 the necessity of borrowing money and paying interest thereon.
160 Any action proposed under this section is subject to the notice
161 and objection procedures set forth in s. 216.177, and the
162 Governor shall provide notice of such action at least 7 days
163 prior to the effective date of the transfer of funds.
164 (1) Except as otherwise provided in s. 216.222(1)(a)2.,
165 the fund from which any money is temporarily transferred shall
166 be repaid the amount transferred from it not later than the end
167 of the fiscal year in which such transfer is made, the date of
168 repayment to be specified in the order of the Governor.
169 (2) Notwithstanding subsection (1) and for the 2005-2006
170 fiscal year only, the repayment period for funds temporarily
171 transferred in fiscal year 2004-2005 to meet deficiencies
172 resulting from hurricanes striking this state in 2004 may be
173 extended until grants awarded by the Federal Emergency
174 Management Agency for FEMA Disaster Declarations 1539-DR-FL,

175 1545-DR-FL, 1551-DR-FL, and 1561-DR-FL are received. This
176 subsection expires July 1, 2006.
177 Section 6. Subsections (2) and (4) of section 215.3206,
178 Florida Statutes, are amended to read:
179 215.3206 Trust funds; termination or re-creation.--
180 (2) If the trust fund is terminated and not immediately
181 re-created, all cash balances and income of the trust fund shall
182 be deposited into the General Revenue Fund. The agency or Chief
183 Justice shall pay any outstanding debts of the trust fund as
184 soon as practicable, and the Chief Financial Officer shall close
185 out and remove the trust fund from the various state financial
186 ~~accounting~~ systems, using generally accepted accounting
187 practices concerning warrants outstanding, assets, and
188 liabilities. No appropriation or budget amendment shall be
189 construed to authorize any encumbrance of funds from a trust
190 fund after the date on which the trust fund is terminated or is
191 judicially determined to be invalid.
192 (4) For the purposes of this section, the Governor, Chief
193 Justice, and agencies shall review the trust funds as they are
194 identified by a classification scheme set out in the legislative
195 budget request instructions pursuant to s. 216.023 consistent
196 with the Department of Financial Services' financial systems ~~by~~
197 ~~a unique 6-digit code in the Florida Accounting Information~~
198 ~~Resource Subsystem at a level composed of the 2-digit~~
199 ~~organization level 1, the 1-digit state fund type 2, and the~~
200 ~~first three digits of the fund identifier~~. The Governor, Chief
201 Justice, and agencies may also conduct their review and make
202 recommendations concerning accounts within such trust funds.
203 Section 7. Subsection (1) and paragraph (a) of subsection
204 (2) of section 215.3208, Florida Statutes, are amended to read:
205 215.3208 Trust funds; legislative review.--

206 (1) In order to implement s. 19(f), Art. III of the State
207 Constitution, for the purpose of reviewing trust funds prior to
208 their automatic termination pursuant to the provisions of s.
209 19(f)(2), Art. III of the State Constitution, the Legislature
210 shall review all state trust funds at least once every 4 years.
211 The schedule for such review may be included in the legislative
212 budget instructions developed pursuant to the requirements of s.
213 216.023. The Legislature shall review trust funds as they are
214 identified by a classification scheme set out in the legislative
215 budget request instructions pursuant to s. 216.023 consistent
216 with the Department of Financial Services' financial systems ~~by~~
217 ~~a unique 6-digit code in the Florida Accounting Information~~
218 ~~Resource Subsystem at a level composed of the 2-digit~~
219 ~~organization level 1, the 1-digit state fund type 2, and the~~
220 ~~first three digits of the fund identifier~~. When a statutorily
221 created trust fund that was in existence on November 4, 1992,
222 has more than one fund ~~6-digit~~ code in the financial systems,
223 the Legislature may treat it as a single trust fund for the
224 purposes of this section. The Legislature may also conduct its
225 review concerning accounts within such trust funds.
226 (2)(a) When the Legislature terminates a trust fund, the
227 agency or branch of state government that administers the trust
228 fund shall pay any outstanding debts or obligations of the trust
229 fund as soon as practicable, and the Chief Financial Officer
230 shall close out and remove the trust fund from the various state
231 financial ~~accounting~~ systems, using generally accepted
232 accounting principles concerning assets, liabilities, and
233 warrants outstanding.
234 Section 8. Section 215.35, Florida Statutes, is amended to
235 read:

236 215.35 State funds; warrants and their issuance.--All
237 warrants issued by the Chief Financial Officer shall be numbered
238 in a manner that uniquely identifies each warrant for audit and
239 reconciliation purposes ~~chronological order commencing with~~
240 ~~number one in each fiscal year and each warrant shall refer to~~
241 ~~the Chief Financial Officer's voucher by the number thereof,~~
242 ~~which voucher shall also be numbered as above set forth~~. Each
243 warrant shall state the name of the payee thereof and the amount
244 allowed, and said warrant shall be stated in words at length. No
245 warrant shall issue until same has been authorized by an
246 appropriation made by law but such warrant need not state or set
247 forth such authorization. The Chief Financial Officer shall
248 register and maintain a record of each warrant in his or her
249 office. The record shall show the funds, accounts, purposes, and
250 departments involved in the issuance of each warrant. In those
251 instances where the expenditure of funds of regulatory boards or
252 commissions has been provided for by laws other than the annual
253 appropriations bill, warrants shall be issued upon requisition
254 to the Chief Financial Officer by the governing body of such
255 board or commission.
256 Section 9. Subsections (1) and (2), paragraphs (a) and (b)
257 of subsection (3), and subsection (6) of section 215.422,
258 Florida Statutes, are amended to read:
259 215.422 Payments, warrants~~, vouchers,~~ and invoices;
260 processing time limits; dispute resolution; agency or judicial
261 branch compliance.--
262 (1) ~~The voucher authorizing payment of~~ An invoice
263 submitted to an agency of the state or the judicial branch,
264 required by law to be filed with the Chief Financial Officer,
265 shall be recorded in the financial systems of the state,
266 approved for payment by the agency or the judicial branch, and

267 filed with the Chief Financial Officer not later than 20 days
268 after receipt of the invoice and receipt, inspection, and
269 approval of the goods or services, except that in the case of a
270 bona fide dispute the invoice recorded in the financial systems
271 of the state ~~voucher~~ shall contain a statement of the dispute
272 and authorize payment only in the amount not disputed. The Chief
273 Financial Officer may establish dollar thresholds and other
274 criteria for all invoices and may delegate to a state agency or
275 the judicial branch responsibility for maintaining the official
276 invoices ~~vouchers~~ and documents for invoices which do not exceed
277 the thresholds or which meet the established criteria. Such
278 records shall be maintained in accordance with the requirements
279 established by the Secretary of State. The transmission of an
280 approved invoice recorded in the financial systems of the state
281 ~~electronic payment request transmission~~ to the Chief Financial
282 Officer shall constitute filing of a request ~~voucher~~ for payment
283 of invoices for which the Chief Financial Officer has delegated
284 to an agency custody of official records. Approval and
285 inspection of goods or services shall take no longer than 5
286 working days unless the bid specifications, purchase order, or
287 contract specifies otherwise. If an invoice ~~a voucher~~ filed
288 within the 20-day period is returned by the Department of
289 Financial Services because of an error, it shall nevertheless be
290 deemed timely filed. The 20-day filing requirement may be waived
291 in whole or in part by the Department of Financial Services on a
292 showing of exceptional circumstances in accordance with rules
293 and regulations of the department. For the purposes of
294 determining the receipt of invoice date, the agency or the
295 judicial branch is deemed to receive an invoice on the date on
296 which a proper invoice is first received at the place designated
297 by the agency or the judicial branch. The agency or the judicial

298 branch is deemed to receive an invoice on the date of the
299 invoice if the agency or the judicial branch has failed to
300 annotate the invoice with the date of receipt at the time the
301 agency or the judicial branch actually received the invoice or
302 failed at the time the order is placed or contract made to
303 designate a specific location to which the invoice must be
304 delivered.

305 (2) The Department of Financial Services shall approve
306 payment of an invoice no later than 10 days after the agency's
307 filing of the approved invoice ~~The warrant in payment of an~~
308 ~~invoice submitted to an agency of the state or the judicial~~
309 ~~branch shall be issued not later than 10 days after filing of~~
310 ~~the voucher authorizing payment~~. However, this requirement may
311 be waived in whole or in part by the Department of Financial
312 Services on a showing of exceptional circumstances in accordance
313 with rules and regulations of the department. If the 10-day
314 period contains fewer than 6 working days, the Department of
315 Financial Services shall be deemed in compliance with this
316 subsection if the payment is approved ~~warrant is issued~~ within 6
317 working days without regard to the actual number of calendar
318 days. ~~For purposes of this section, a payment is deemed to be~~
319 ~~issued on the first working day that payment is available for~~
320 ~~delivery or mailing to the vendor.~~

321 (3)(a) Each agency of the state or the judicial branch
322 which is required by law to file invoices ~~vouchers~~ with the
323 Chief Financial Officer shall keep a record of the date of
324 receipt of the invoice; dates of receipt, inspection, and
325 approval of the goods or services; date of filing of the
326 approved invoice ~~voucher~~; and date of issuance of the warrant in
327 payment thereof. If the invoice ~~voucher~~ is not filed or the
328 warrant is not issued within the time required, an explanation

329 in writing by the agency head or the Chief Justice shall be
330 submitted to the Department of Financial Services in a manner
331 prescribed by it. Agencies and the judicial branch shall
332 continue to deliver or mail state payments promptly.
333 (b) If a warrant in payment of an invoice is not issued
334 within 40 days after receipt of the invoice and receipt,
335 inspection, and approval of the goods and services, the agency
336 or judicial branch shall pay to the vendor, in addition to the
337 amount of the invoice, interest at a rate as established
338 pursuant to s. 55.03(1) on the unpaid balance from the
339 expiration of such 40-day period until such time as the warrant
340 is issued to the vendor. Such interest shall be added to the
341 invoice at the time of submission to the Chief Financial Officer
342 for payment whenever possible. If addition of the interest
343 penalty is not possible, the agency or judicial branch shall pay
344 the interest penalty payment within 15 days after issuing the
345 warrant. The provisions of this paragraph apply only to
346 undisputed amounts for which payment has been authorized.
347 Disputes shall be resolved in accordance with rules developed
348 and adopted by the Chief Justice for the judicial branch, and
349 rules adopted by the Department of Financial Services or in a
350 formal administrative proceeding before an administrative law
351 judge of the Division of Administrative Hearings for state
352 agencies, provided that, for the purposes of ss. 120.569 and
353 120.57(1), no party to a dispute involving less than $1,000 in
354 interest penalties shall be deemed to be substantially affected
355 by the dispute or to have a substantial interest in the decision
356 resolving the dispute. In the case of an error on the part of
357 the vendor, the 40-day period shall begin to run upon receipt by
358 the agency or the judicial branch of a corrected invoice or
359 other remedy of the error. <u>For purposes of this section, the</u>

360 non-submittal of the appropriate federal taxpayer identification
361 documentation to the Department of Financial Services by the
362 vendor will be deemed an error on the part of the vendor and the
363 vendor will be required to submit the appropriate federal
364 taxpayer documentation in order to remedy the error. The
365 provisions of this paragraph do not apply when the filing
366 requirement under subsection (1) or subsection (2) has been
367 waived in whole by the Department of Financial Services. The
368 various state agencies and the judicial branch shall be
369 responsible for initiating the penalty payments required by this
370 subsection and shall use this subsection as authority to make
371 such payments. The budget request submitted to the Legislature
372 shall specifically disclose the amount of any interest paid by
373 any agency or the judicial branch pursuant to this subsection.
374 The temporary unavailability of funds to make a timely payment
375 due for goods or services does not relieve an agency or the
376 judicial branch from the obligation to pay interest penalties
377 under this section.
378 (6) The Department of Financial Services shall monitor
379 each agency's and the judicial branch's compliance with the time
380 limits and interest penalty provisions of this section. The
381 department shall provide a report to an agency or to the
382 judicial branch if the department determines that the agency or
383 the judicial branch has failed to maintain an acceptable rate of
384 compliance with the time limits and interest penalty provisions
385 of this section. The department shall establish criteria for
386 determining acceptable rates of compliance. The report shall
387 also include a list of late invoices ~~vouchers~~ or payments, the
388 amount of interest owed or paid, and any corrective actions
389 recommended. The department shall perform monitoring
390 responsibilities, pursuant to this section, using the Department

391 of Financial Services' financial systems ~~Management Services and~~
392 ~~Purchasing Subsystem or the Florida Accounting Information~~
393 ~~Resource Subsystem~~ provided in s. 215.94. Each agency and the
394 judicial branch shall be responsible for the accuracy of
395 information entered into the Department of Management Services'
396 procurement system ~~Management Services and Purchasing Subsystem~~
397 and the Department of Financial Services' financial systems
398 ~~Florida Accounting Information Resource Subsystem~~ for use in
399 this monitoring.
400 Section 10. Paragraph (d) of subsection (1) of section
401 215.97, Florida Statutes, is amended to read:
402 215.97 Florida Single Audit Act.--
403 (1) The purposes of the section are to:
404 (d) Provide for identification of state financial
405 assistance transactions in the ~~appropriations act,~~ state
406 accounting records~~,~~ and recipient organization records.
407 Section 11. Effective upon this act becoming a law,
408 paragraphs (bb) and (ss) of subsection (1) of section 216.011,
409 Florida Statutes, are amended, and paragraphs (tt) and (uu) are
410 added to that subsection, to read:
411 216.011 Definitions.--
412 (1) For the purpose of fiscal affairs of the state,
413 appropriations acts, legislative budgets, and approved budgets,
414 each of the following terms has the meaning indicated:
415 (bb) "Operating capital outlay" means the appropriation
416 category used to fund equipment, fixtures, and other tangible
417 personal property of a nonconsumable and nonexpendable nature
418 under s. 273.025~~, according to the value or cost specified in s.~~
419 ~~273.02~~.
420 (ss) "Qualified expenditure category" means the
421 appropriations category used to fund specific activities and

422 projects which must be transferred to one or more appropriation
423 categories for expenditure upon recommendation by the Governor
424 or Chief Justice, as appropriate, and subject to approval by the
425 Legislative Budget Commission. The legislature by law may
426 provide that a specific portion of the funds appropriated in
427 this category be transferred to one or more appropriation
428 categories without approval by the commission and may provide
429 that requirements or contingencies be satisfied prior to the
430 transfer.
431 (tt) "Incurred obligation" means a legal obligation for
432 goods or services that have been contracted for, referred to as
433 an encumbrance in the state's financial system, or received or
434 incurred by the state and referred to as a payable in the
435 state's financial system.
436 (uu) "Salary rate reserve" means the withholding of a
437 portion of the annual salary rate for a specific purpose.
438 Section 12. Paragraphs (h) through (k) are added to
439 subsection (1) of section 216.013, Florida Statutes, and
440 subsection (5) of that section is amended, to read:
441 216.013 Long-range program plan.--State agencies and the
442 judicial branch shall develop long-range program plans to
443 achieve state goals using an interagency planning process that
444 includes the development of integrated agency program service
445 outcomes. The plans shall be policy based, priority driven,
446 accountable, and developed through careful examination and
447 justification of all agency and judicial branch programs.
448 (1) Long-range program plans shall provide the framework
449 for the development of budget requests and shall identify or
450 update:
451 (h) Legislatively approved output and outcome performance
452 measures.

453 (i) Performance standards for each performance measure and
454 justification for the standards and the sources of data to be
455 used for measurement.
456 (j) Prior-year performance data on approved performance
457 measures and an explanation of deviation from expected
458 performance. Performance data must be assessed for reliability
459 in accordance with s. 20.055.
460 (k) Proposed performance incentives and disincentives.
461 (5) ~~Following the adoption of the annual General~~
462 ~~Appropriations Act,~~ The state agencies and the judicial branch
463 shall make appropriate adjustments to their long-range program
464 plans, excluding adjustments to performance measures and
465 standards, to be consistent with the appropriations ~~and~~
466 ~~performance measures~~ in the General Appropriations Act and
467 legislation implementing the General Appropriations Act.
468 Agencies and the judicial branch have 30 days subsequent to the
469 effective date of the General Appropriations Act and
470 implementing legislation ~~until June 30~~ to make adjustments to
471 their plans as posted on their Internet websites.
472 Section 13. Paragraph (a) of subsection (4) and
473 subsections (5), (6), and (8) of section 216.023, Florida
474 Statutes, are amended, and subsections (7), (9), (10), (11), and
475 (12) are renumbered as subsections (5), (6), (7), (8), and (9),
476 respectively, to read:
477 216.023 Legislative budget requests to be furnished to
478 Legislature by agencies.--
479 (4)(a) The legislative budget request must contain for
480 each program:
481 1. The constitutional or statutory authority for a
482 program, a brief purpose statement, and approved program
483 components.

484 2. Information on expenditures for 3 fiscal years (actual
485 prior-year expenditures, current-year estimated expenditures,
486 and agency budget requested expenditures for the next fiscal
487 year) by appropriation category.
488 3. Details on trust funds and fees.
489 4. The total number of positions (authorized, fixed, and
490 requested).
491 5. An issue narrative describing and justifying changes in
492 amounts and positions requested for current and proposed
493 programs for the next fiscal year.
494 6. Information resource requests.
495 ~~7. Legislatively approved Output and outcome performance~~
496 ~~measures and any proposed revisions to measures.~~
497 ~~8. Proposed performance standards for each performance~~
498 ~~measure and justification for the standards and the sources of~~
499 ~~data to be used for measurement.~~
500 ~~9. Prior-year performance data on approved performance~~
501 ~~measures and an explanation of deviation from expected~~
502 ~~performance. Performance data must be assessed for reliability~~
503 ~~in accordance with s. 20.055.~~
504 ~~10. Proposed performance incentives and disincentives.~~
505 7.~~11.~~ Supporting information, including applicable cost-
506 benefit analyses, business case analyses, performance
507 contracting procedures, service comparisons, and impacts on
508 performance standards for any request to outsource or privatize
509 agency functions.
510 8.~~12.~~ An evaluation of any major outsourcing and
511 privatization initiatives undertaken during the last 5 fiscal
512 years having aggregate expenditures exceeding $10 million during
513 the term of the contract. The evaluation shall include an
514 assessment of contractor performance, a comparison of

515 anticipated service levels to actual service levels, and a
516 comparison of estimated savings to actual savings achieved.
517 Consolidated reports issued by the Department of Management
518 Services may be used to satisfy this requirement.
519 ~~(5) Agencies must maintain a comprehensive performance~~
520 ~~accountability system and provide a list of performance measures~~
521 ~~maintained by the agency which are in addition to the measures~~
522 ~~approved by the Legislature.~~
523 ~~(6) Annually, by June 30, executive agencies shall submit~~
524 ~~to the Executive Office of the Governor adjustments to their~~
525 ~~performance standards based on the amounts appropriated for each~~
526 ~~program by the Legislature. When such an adjustment is made, all~~
527 ~~performance standards, including any adjustments made, shall be~~
528 ~~reviewed and revised as necessary by the Executive Office of the~~
529 ~~Governor and, upon approval, submitted to the Legislature~~
530 ~~pursuant to the review and approval process provided in s.~~
531 ~~216.177. The Senate and the House of Representatives~~
532 ~~appropriations committees shall advise Senate substantive~~
533 ~~committees and House of Representatives substantive committees,~~
534 ~~respectively, of all adjustments made to performance standards~~
535 ~~or measures. The Executive Office of the Governor shall maintain~~
536 ~~the official record of adjustments to the performance standards.~~
537 ~~As used in this section, the term "official record" means the~~
538 ~~official compilation of information about state agency~~
539 ~~performance-based programs and measures, including approved~~
540 ~~programs, approved outputs and outcomes, baseline data, approved~~
541 ~~standards for each performance measure and any approved~~
542 ~~adjustments thereto, as well as actual agency performance for~~
543 ~~each measure.~~
544 ~~(8) Annually, by June 30, the judicial branch shall make~~
545 ~~adjustments to any performance standards for approved programs~~

546 ~~based on the amount appropriated for each program, which shall~~
547 ~~be submitted to the Legislature pursuant to the notice and~~
548 ~~review process provided in s. 216.177. The Senate and the House~~
549 ~~of Representatives appropriations committees shall advise Senate~~
550 ~~substantive committees and House substantive committees,~~
551 ~~respectively, of all adjustments made to performance standards~~
552 ~~or measures.~~
553 Section 14. Paragraph (a) of subsection (4) of section
554 216.134, Florida Statutes, is amended, and paragraph (c) is
555 added to that subsection, to read:
556 216.134 Consensus estimating conferences; general
557 provisions.--
558 (4) Consensus estimating conferences are within the
559 legislative branch. The membership of each consensus estimating
560 conference consists of principals and participants.
561 (a) A person designated by law as a principal may preside
562 over conference sessions, convene conference sessions, request
563 information, specify topics to be included on the conference
564 agenda, agree or withhold agreement on whether information is to
565 be official information of the conference, release official
566 information of the conference, interpret official information of
567 the conference, and monitor errors in official information of
568 the conference. The responsibility of presiding over sessions of
569 the conference shall be rotated among the principals.
570 (c) The principals of each conference shall be
571 professional staff of the Executive Office of the Governor
572 designated by the Governor, the coordinator of the Office of
573 Economic and Demographic Research, professional staff of the
574 Senate designated by the President of the Senate, and
575 professional staff of the House of Representatives designated by
576 the Speaker of the House of Representatives, or their designees.

577 Section 15. Section 216.136, Florida Statutes, is amended
578 to read:
579 216.136 Consensus estimating conferences; duties and
580 principals.--
581 (1) ECONOMIC ESTIMATING CONFERENCE.--
582 ~~(a) Duties.--~~The Economic Estimating Conference shall
583 develop such official information with respect to the national
584 and state economies as the conference determines is needed for
585 the state planning and budgeting system. The basic, long-term
586 forecasts which are a part of its official information shall be
587 trend forecasts. However, the conference may include cycle
588 forecasts as a part of its official information if the subject
589 matter of the forecast warrants a cycle forecast and if such
590 forecast is developed in a special impact session of the
591 conference.
592 ~~(b) Principals.--The Executive Office of the Governor, the~~
593 ~~coordinator of the Office of Economic and Demographic Research,~~
594 ~~and professional staff of the Senate and House of~~
595 ~~Representatives who have forecasting expertise, or their~~
596 ~~designees, are the principals of the Economic Estimating~~
597 ~~Conference. The responsibility of presiding over sessions of~~
598 ~~the conference shall be rotated among the principals.~~
599 (2) DEMOGRAPHIC ESTIMATING CONFERENCE.--
600 ~~(a) Duties.--~~The Demographic Estimating Conference shall
601 develop such official information with respect to the population
602 of the nation and state by age, race, and sex as the conference
603 determines is needed for the state planning and budgeting
604 system. The conference shall use the official population
605 estimates provided under s. 186.901 in developing its official
606 information.

607 ~~(b) Principals.--The Executive Office of the Governor, the~~
608 ~~coordinator of the Office of Economic and Demographic Research,~~
609 ~~and professional staff of the Senate and House of~~
610 ~~Representatives who have forecasting expertise, or their~~
611 ~~designees, are the principals of the Demographic Estimating~~
612 ~~Conference. The responsibility of presiding over sessions of~~
613 ~~the conference shall be rotated among the principals.~~
614 (3) REVENUE ESTIMATING CONFERENCE.--
615 ~~(a) Duties.--~~The Revenue Estimating Conference shall
616 develop such official information with respect to anticipated
617 state and local government revenues as the conference determines
618 is needed for the state planning and budgeting system. Any
619 principal may request the conference to review and estimate
620 revenues for any trust fund.
621 ~~(b) Principals.--The Executive Office of the Governor, the~~
622 ~~coordinator of the Office of Economic and Demographic Research,~~
623 ~~and professional staff of the Senate and House of~~
624 ~~Representatives who have forecasting expertise, or their~~
625 ~~designees, are the principals of the Revenue Estimating~~
626 ~~Conference. The responsibility of presiding over sessions of~~
627 ~~the conference shall be rotated among the principals.~~
628 (4) EDUCATION ESTIMATING CONFERENCE.--
629 (a) ~~Duties.--~~The Education Estimating Conference shall
630 develop such official information relating to the state public
631 and private educational system, including forecasts of student
632 enrollments, the number of students qualified for state
633 financial aid programs and for the William L. Boyd, IV, Florida
634 Resident Access Grant Program and the appropriation required to
635 fund the full award amounts for each program, fixed capital
636 outlay needs, and Florida Education Finance Program formula
637 needs, as the conference determines is needed for the state

638 planning and budgeting system. The conference's initial
639 projections of enrollments in public schools shall be forwarded
640 by the conference to each school district no later than 2 months
641 prior to the start of the regular session of the Legislature.
642 Each school district may, in writing, request adjustments to the
643 initial projections. Any adjustment request shall be submitted
644 to the conference no later than 1 month prior to the start of
645 the regular session of the Legislature and shall be considered
646 by the principals of the conference. A school district may
647 amend its adjustment request, in writing, during the first 3
648 weeks of the legislative session, and such amended adjustment
649 request shall be considered by the principals of the conference.
650 For any adjustment so requested, the district shall indicate and
651 explain, using definitions adopted by the conference, the
652 components of anticipated enrollment changes that correspond to
653 continuation of current programs with workload changes; program
654 improvement; program reduction or elimination; initiation of new
655 programs; and any other information that may be needed by the
656 Legislature. For public schools, the conference shall submit
657 its full-time equivalent student consensus estimate to the
658 Legislature no later than 1 month after the start of the regular
659 session of the Legislature. No conference estimate may be
660 changed without the agreement of the full conference.
661 (b) ~~Adjustments.--~~No later than 2 months prior to the
662 start of the regular session of the Legislature, the conference
663 shall forward to each eligible postsecondary education
664 institution its initial projections of the number of students
665 qualified for state financial aid programs and the appropriation
666 required to fund those students at the full award amount. Each
667 postsecondary education institution may request, in writing,
668 adjustments to the initial projection. Any adjustment request

669 must be submitted to the conference no later than 1 month prior
670 to the start of the regular session of the Legislature and shall
671 be considered by the principals of the conference. For any
672 adjustment so requested, the postsecondary education institution
673 shall indicate and explain, using definitions adopted by the
674 conference, the components of anticipated changes that
675 correspond to continuation of current programs with enrollment
676 changes, program reduction or elimination, initiation of new
677 programs, award amount increases or decreases, and any other
678 information that is considered by the conference. The conference
679 shall submit its consensus estimate to the Legislature no later
680 than 1 month after the start of the regular session of the
681 Legislature. No conference estimate may be changed without the
682 agreement of the full conference.
683 ~~(c) Principals.--The Commissioner of Education, the~~
684 ~~Executive Office of the Governor, the coordinator of the Office~~
685 ~~of Economic and Demographic Research, and professional staff of~~
686 ~~the Senate and House of Representatives who have forecasting~~
687 ~~expertise, or their designees, are the principals of the~~
688 ~~Education Estimating Conference. The Commissioner of Education~~
689 ~~or his or her designee shall preside over sessions of the~~
690 ~~conference.~~
691 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.--
692 ~~(a) Duties.--~~The Criminal Justice Estimating Conference
693 shall:
694 (a)~~1.~~ Develop such official information relating to the
695 criminal justice system, including forecasts of prison
696 admissions and population and of supervised felony offender
697 admissions and population, as the conference determines is
698 needed for the state planning and budgeting system.

699 (b)~~2.~~ Develop such official information relating to the
700 number of eligible discharges and the projected number of civil
701 commitments for determining space needs pursuant to the civil
702 proceedings provided under part V of chapter 394.
703 (c)~~3.~~ Develop official information relating to the number
704 of sexual offenders and sexual predators who are required by law
705 to be placed on community control, probation, or conditional
706 release who are subject to electronic monitoring. ~~In addition,~~
707 ~~the Office of Economic and Demographic Research shall study the~~
708 ~~factors relating to the sentencing of sex offenders from the~~
709 ~~point of arrest through the imposition of sanctions by the~~
710 ~~sentencing court, including original charges, plea negotiations,~~
711 ~~trial dispositions, and sanctions. The Department of~~
712 ~~Corrections, the Office of the State Courts Administrator, the~~
713 ~~Florida Department of Law Enforcement, and the state attorneys~~
714 ~~shall provide information deemed necessary for the study. The~~
715 ~~final report shall be provided to the President of the Senate~~
716 ~~and the Speaker of the House of Representatives by March 1,~~
717 ~~2006.~~
718 ~~(b) Principals.--The Executive Office of the Governor, the~~
719 ~~coordinator of the Office of Economic and Demographic Research,~~
720 ~~and professional staff, who have forecasting expertise, from the~~
721 ~~Senate, the House of Representatives, and the Supreme Court, or~~
722 ~~their designees, are the principals of the Criminal Justice~~
723 ~~Estimating Conference. The principal representing the Executive~~
724 ~~Office of the Governor shall preside over sessions of the~~
725 ~~conference.~~
726 (6) SOCIAL SERVICES ESTIMATING CONFERENCE.--
727 ~~(a) Duties.--~~
728 (a)~~1.~~ The Social Services Estimating Conference shall
729 develop such official information relating to the social

730 services system of the state, including forecasts of social
731 services caseloads, utilization, and expenditures, as the
732 conference determines is needed for the state planning and
733 budgeting system. Such official information shall include, but
734 not be limited to, cash assistance and Medicaid caseloads.
735 (b)~~2.~~ The Social Services Estimating Conference shall
736 develop information relating to the Florida Kidcare program,
737 including, but not limited to, outreach impacts, enrollment,
738 caseload, utilization, and expenditure information that the
739 conference determines is needed to plan for and project future
740 budgets and the drawdown of federal matching funds. ~~The agencies~~
741 ~~required to collect and analyze Florida Kidcare program data~~
742 ~~under s. 409.8134 shall be participants in the Social Services~~
743 ~~Estimating Conference for purposes of developing information~~
744 ~~relating to the Florida Kidcare program.~~
745 ~~(b) Principals.--The Executive Office of the Governor, the~~
746 ~~coordinator of the Office of Economic and Demographic Research,~~
747 ~~professional staff who have forecasting expertise from the~~
748 ~~Department of Children and Family Services, the Agency for~~
749 ~~Health Care Administration, the Senate, and the House of~~
750 ~~Representatives, or their designees, are the principals of the~~
751 ~~Social Services Estimating Conference. The principal~~
752 ~~representing the Executive Office of the Governor shall preside~~
753 ~~over sessions of the conference.~~
754 (7) WORKFORCE ESTIMATING CONFERENCE.--
755 ~~(a) Duties.--~~
756 (a)~~1.~~ The Workforce Estimating Conference shall develop
757 such official information on the workforce development system
758 planning process as it relates to the personnel needs of
759 current, new, and emerging industries as the conference
760 determines is needed by the state planning and budgeting system.

761 Such information, using quantitative and qualitative research
762 methods, must include at least: short-term and long-term
763 forecasts of employment demand for jobs by occupation and
764 industry; entry and average wage forecasts among those
765 occupations; and estimates of the supply of trained and
766 qualified individuals available or potentially available for
767 employment in those occupations, with special focus upon those
768 occupations and industries which require high skills and have
769 high entry wages and experienced wage levels. In the development
770 of workforce estimates, the conference shall use, to the fullest
771 extent possible, local occupational and workforce forecasts and
772 estimates.
773 (b)~~2.~~ The Workforce Estimating Conference shall review
774 data concerning the local and regional demands for short-term
775 and long-term employment in High-Skills/High-Wage Program jobs,
776 as well as other jobs, which data is generated through surveys
777 conducted as part of the state's Internet-based job matching and
778 labor market information system authorized under s. 445.011. The
779 conference shall consider such data in developing its forecasts
780 for statewide employment demand, including reviewing the local
781 and regional data for common trends and conditions among
782 localities or regions which may warrant inclusion of a
783 particular occupation on the statewide occupational forecasting
784 list developed by the conference. Based upon its review of such
785 survey data, the conference shall also make recommendations
786 semiannually to Workforce Florida, Inc., on additions or
787 deletions to lists of locally targeted occupations approved by
788 Workforce Florida, Inc.
789 ~~3. During each legislative session, and at other times if~~
790 ~~necessary, the Workforce Estimating Conference shall meet as the~~
791 ~~Workforce Impact Conference for the purpose of determining the~~

792 ~~effects of legislation related to the state's workforce and~~
793 ~~economic development efforts introduced prior to and during such~~
794 ~~legislative session. In addition to the designated principals of~~
795 ~~the impact conference, nonprincipal participants of the impact~~
796 ~~conference shall include a representative of the Florida Chamber~~
797 ~~of Commerce and other interested parties. The impact conference~~
798 ~~shall use both quantitative and qualitative research methods to~~
799 ~~determine the impact of introduced legislation related to~~
800 ~~workforce and economic development issues.~~
801 (c) ~~4. Notwithstanding subparagraph 3.,~~ The Workforce
802 Estimating Conference, for the purposes described in paragraph
803 (a) ~~subparagraph 1.~~, shall meet no less than 2 times in a
804 calendar year. The first meeting shall be held in February, and
805 the second meeting shall be held in August. Other meetings may
806 be scheduled as needed.
807 ~~(b) Principals.--The Commissioner of Education, the~~
808 ~~Executive Office of the Governor, the director of the Office of~~
809 ~~Tourism, Trade, and Economic Development, the director of the~~
810 ~~Agency for Workforce Innovation, the executive director of the~~
811 ~~Commission for Independent Education, the Chancellor of the~~
812 ~~State University System, the chair of Workforce Florida, Inc.,~~
813 ~~the coordinator of the Office of Economic and Demographic~~
814 ~~Research, or their designees, and professional staff from the~~
815 ~~Senate and the House of Representatives who have forecasting and~~
816 ~~substantive expertise, are the principals of the Workforce~~
817 ~~Estimating Conference. In addition to the designated principals~~
818 ~~of the conference, nonprincipal participants of the conference~~
819 ~~shall include a representative of the Florida Chamber of~~
820 ~~Commerce and other interested parties. The principal~~
821 ~~representing the Executive Office of the Governor shall preside~~
822 ~~over the sessions of the conference.~~

823 (8) EARLY LEARNING PROGRAMS ESTIMATING CONFERENCE.--
824 ~~(a) Duties.--~~
825 (a)~~1.~~ The Early Learning Programs Estimating Conference
826 shall develop estimates and forecasts of the unduplicated count
827 of children eligible for school readiness programs in accordance
828 with the standards of eligibility established in s. 411.01(6),
829 and of children eligible for the Voluntary Prekindergarten
830 Education Program in accordance with s. 1002.53(2), as the
831 conference determines are needed to support the state planning,
832 budgeting, and appropriations processes.
833 (b)~~2.~~ The Agency for Workforce Innovation shall provide
834 information on needs and waiting lists for school readiness
835 programs, and information on the needs for the Voluntary
836 Prekindergarten Education Program, as requested by the Early
837 Learning Programs Estimating Conference or individual conference
838 principals in a timely manner.
839 ~~(b) Principals.--The Executive Office of the Governor, the~~
840 ~~Director of Economic and Demographic Research, and professional~~
841 ~~staff who have forecasting expertise from the Agency for~~
842 ~~Workforce Innovation, the Department of Children and Family~~
843 ~~Services, the Department of Education, the Senate, and the House~~
844 ~~of Representatives, or their designees, are the principals of~~
845 ~~the Early Learning Programs Estimating Conference. The principal~~
846 ~~representing the Executive Office of the Governor shall preside~~
847 ~~over sessions of the conference.~~
848 (9) SELF-INSURANCE ESTIMATING CONFERENCE.--
849 ~~(a) Duties.--~~The Self-Insurance Estimating Conference
850 shall develop such official information on self-insurance
851 related issues as the conference determines is needed by the
852 state planning and budgeting system.

853 ~~(b) Principals.--The Executive Office of the Governor, the~~
854 ~~coordinator of the Office of Economic and Demographic Research,~~
855 ~~and professional staff of the Senate and the House of~~
856 ~~Representatives who have forecasting and substantive experience,~~
857 ~~or their designees, are the principals of the Self-Insurance~~
858 ~~Estimating Conference. The responsibility of presiding over~~
859 ~~sessions of the conference shall be rotated among the~~
860 ~~principals.~~
861 (10) FLORIDA RETIREMENT SYSTEM ACTUARIAL ASSUMPTION
862 CONFERENCE.--
863 ~~(a) Duties.--~~The Florida Retirement System Actuarial
864 Assumption Conference shall develop official information with
865 respect to the economic and noneconomic assumptions and funding
866 methods of the Florida Retirement System necessary to perform
867 the system actuarial study undertaken pursuant to s. 121.031(3).
868 Such information shall include: an analysis of the actuarial
869 assumptions and actuarial methods used in the study and a
870 determination of whether changes to the assumptions or methods
871 need to be made due to experience changes or revised future
872 forecasts.
873 ~~(b) Principals.--The Executive Office of the Governor, the~~
874 ~~coordinator of the Office of Economic and Demographic Research,~~
875 ~~and professional staff of the Senate and House of~~
876 ~~Representatives who have forecasting and substantive expertise,~~
877 ~~or their designees, are the principals of the Florida Retirement~~
878 ~~System Actuarial Assumption Conference. The Executive Office of~~
879 ~~the Governor shall have the responsibility of presiding over the~~
880 ~~sessions of the conference. The State Board of Administration~~
881 ~~and the Division of Retirement shall be participants in the~~
882 ~~conference.~~

883 Section 16. Paragraph (a) of subsection (2) of section
884 216.177, Florida Statutes, is amended to read:
885 216.177 Appropriations acts, statement of intent,
886 violation, notice, review and objection procedures.--
887 (2)(a) Whenever notice of action to be taken by the
888 Executive Office of the Governor or the Chief Justice of the
889 Supreme Court is required by law ~~this chapter~~, such notice shall
890 be given to the chair and vice chair of the Legislative Budget
891 Commission in writing, and shall be delivered at least 14 days
892 prior to the action referred to, unless a shorter period is
893 approved in writing by the chair and vice chair or a different
894 period is specified by law. If the action is solely for the
895 release of funds appropriated by the Legislature, the notice
896 shall be delivered at least 3 days before the effective date of
897 the action. Action shall not be taken on any budget item for
898 which this chapter requires notice to the Legislative Budget
899 Commission or the appropriations committees without such notice
900 having been provided, even though there may be good cause for
901 considering such item.
902 Section 17. Subsections (3), (5), (6), and (11) of section
903 216.181, Florida Statutes, are amended to read:
904 216.181 Approved budgets for operations and fixed capital
905 outlay.--
906 (3) All amendments to original approved operating budgets,
907 regardless of funding source, are subject to the notice and
908 objection ~~review~~ procedures set forth in s. 216.177.
909 (5) An amendment to the original operating budget for an
910 information technology project or initiative that involves more
911 than one agency, has an outcome that impacts another agency, or
912 exceeds $500,000 in total cost over a 1-year period, except for
913 those projects that are a continuation of hardware or software

914 maintenance or software licensing agreements, or that are for
915 desktop replacement that is similar to the technology currently
916 in use must be reviewed by the Technology Review Workgroup
917 pursuant to s. 216.0446 and approved by the Executive Office of
918 the Governor for the executive branch or by the Chief Justice
919 for the judicial branch, and shall be subject to the notice and
920 objection ~~review~~ procedures set forth in s. 216.177.
921 (6)(a) A detailed plan allocating a lump-sum appropriation
922 to traditional appropriations categories shall be submitted by
923 the affected agency to the Executive Office of the Governor or
924 the Chief Justice of the Supreme Court. The Executive Office of
925 the Governor and the Chief Justice of the Supreme Court shall
926 submit such plan to the chair and vice chair of the Legislative
927 Budget Commission either before or concurrent with the
928 submission of any budget amendment that recommends the transfer
929 and release of ~~may require the submission of a detailed plan~~
930 ~~from the agency or entity of the judicial branch affected,~~
931 ~~consistent with the General Appropriations Act, special~~
932 ~~appropriations acts, and statements of intent before~~
933 ~~transferring and releasing~~ the balance of a lump-sum
934 appropriation.
935 (b) The Executive Office of the Governor and the Chief
936 Justice of the Supreme Court may amend, without approval of the
937 Legislative Budget Commission, state agency and judicial branch
938 entity budgets, respectively, to reflect the transferred funds
939 and to provide the associated increased salary rate based on the
940 approved plans for lump-sum appropriations. Any action proposed
941 pursuant to this paragraph is subject to the procedures set
942 forth in s. 216.177.
943

944 The Executive Office of the Governor shall transmit to each
945 state agency and the Chief Financial Officer, and the Chief
946 Justice shall transmit to each judicial branch component and the
947 Chief Financial Officer, any approved amendments to the approved
948 operating budgets.
949 (8) As part of the approved operating budget, the
950 Executive Office of the Governor shall furnish to each state
951 agency, and the Chief Justice of the Supreme Court shall furnish
952 to the entity of the judicial branch, an approved annual salary
953 rate for each budget entity containing a salary appropriation.
954 This rate shall be based upon the actual salary rate and shall
955 be consistent with the General Appropriations Act or special
956 appropriations acts. The annual salary rate shall be:
957 (a) Determined by the salary rate specified in the General
958 Appropriations Act and adjusted for reorganizations authorized
959 by law, for any other appropriations made by law, and, subject
960 to s. 216.177, for distributions of lump-sum appropriations and
961 administered funds <u>and for actions that require authorization of</u>
962 <u>salary rate from salary rate reserve and placement of salary</u>
963 <u>rate in salary rate reserve</u>.
964 (10)(a) The Legislative Budget Commission may authorize
965 increases or decreases in the approved salary rate<u>, except as</u>
966 <u>authorized in s. 216.181(8)(a),</u> for positions pursuant to the
967 request of the agency filed with the Executive Office of the
968 Governor or pursuant to the request of an entity of the judicial
969 branch filed with the Chief Justice of the Supreme Court, if
970 deemed necessary and in the best interest of the state and
971 consistent with legislative policy and intent.
972 (11) The Executive Office of the Governor and the Chief
973 Justice of the Supreme Court may approve changes in the amounts
974 appropriated from state trust funds in excess of those in the

975 approved operating budget up to $1 million only pursuant to the
976 federal funds provisions of s. 216.212, when grants and
977 donations are received after April 1, or when deemed necessary
978 due to a set of conditions that were unforeseen at the time the
979 General Appropriations Act was adopted and that are essential to
980 correct in order to continue the operation of government.
981 Changes in the amounts appropriated from state trust funds in
982 excess of those in the approved operating budget which are in
983 excess of $1 million may be approved only by the Legislative
984 Budget Commission pursuant to the request of a state agency
985 filed with the Executive Office of the Governor or pursuant to
986 the request of an entity of the judicial branch filed with the
987 Chief Justice of the Supreme Court. The provisions of this
988 subsection are subject to the notice~~, review,~~ and objection
989 procedures set forth in s. 216.177.
990 Section 18. Section 216.1811, Florida Statutes, is created
991 to read:
992 216.1811 Approved operating budgets and appropriations for
993 the legislative branch.--
994 (1) The Governor and the Chief Financial Officer shall
995 each make changes to the original approved operating budgets for
996 operational and fixed capital expenditures relating to the
997 legislative branch as directed by the presiding officers of the
998 legislative branch.
999 (2) The Governor and the Chief Financial Officer shall
1000 each ensure that any balances of appropriations made to the
1001 legislative branch are carried forward as directed by the
1002 presiding officers of the legislative branch.
1003 Section 19. Paragraph (e) of subsection (2) of section
1004 216.1815, Florida Statutes, is amended to read:
1005 216.1815 Agency incentive and savings program.--

1006 (2) To be eligible to retain funds, an agency or the Chief
1007 Justice of the Supreme Court must submit a plan and an
1008 associated request to amend its approved operating budget to the
1009 Legislative Budget Commission specifying:
1010 (e) How the agency or the judicial branch will meet
1011 performance standards, including ~~established by the Legislature~~
1012 ~~and~~ those in its long-range program plan; and
1013 Section 20. Section 216.1827, Florida Statutes, is created
1014 to read:
1015 216.1827 Requirements for performance measures and
1016 standards.--
1017 (1) Agencies and the judicial branch shall maintain a
1018 comprehensive performance accountability system containing, at a
1019 minimum, a list of performance measures and standards that are
1020 adopted by the Legislature and subsequently amended pursuant to
1021 this section.
1022 (2)(a) Agencies and the judicial branch shall submit
1023 output and outcome measures and standards as well as historical
1024 baseline and performance data pursuant to s. 216.013.
1025 (b) Agencies and the judicial branch shall also submit
1026 performance data, measures, and standards to the Office of
1027 Program Policy Analysis and Government Accountability upon
1028 request for review of the adequacy of the legislatively approved
1029 measures and standards.
1030 (3)(a) An agency may submit requests to delete or amend
1031 its existing approved performance measures and standards or
1032 submit requests to create additional performance measures and
1033 standards to the Executive Office of the Governor for review and
1034 approval. The request shall document the justification for the
1035 change and ensure that the revision, deletion, or addition is
1036 consistent with legislative intent. Revisions or deletions to,

1037 or additions of performance measures and standards approved by
1038 the Executive Office of the Governor are subject to the review
1039 and objection procedure set forth in s. 216.177.
1040 (b) The Chief Justice of the Supreme Court may submit
1041 deletions or amendments of the judicial branch's existing
1042 approved performance measures and standards or may submit
1043 additional performance measures and standards to the Legislature
1044 accompanied with justification for the change and ensure that
1045 the revision, deletion, or addition is consistent with
1046 legislative intent. Revisions or deletions to, or additions of
1047 performance measures and standards submitted by the Chief
1048 Justice of the Supreme Court are subject to the review and
1049 objection procedure set forth in s. 216.177.
1050 (4)(a) The Legislature may create, amend, and delete
1051 performance measures and standards. The Legislature may confer
1052 with the Executive Office of the Governor for state agencies and
1053 the Chief Justice of the Supreme Court for the judicial branch
1054 prior to any such action.
1055 (b) The Legislature may require state agencies to submit
1056 requests for revisions, additions, or deletions to approved
1057 performance measures and standards to the Executive Office of
1058 the Governor for review and approval, subject to the review and
1059 objection procedure set forth in s. 216.177.
1060 (c) The Legislature may require the judicial branch to
1061 submit revisions, additions, or deletions to approved
1062 performance measures and standards to the Legislature, subject
1063 to the review and objection procedure set forth in s. 216.177.
1064 (d) Any new agency created by the Legislature is subject
1065 to the initial performance measures and standards established by
1066 the Legislature. The Legislature may require state agencies and

1067 the judicial branch to provide any information necessary to
1068 create initial performance measures and standards.
1069 Section 21. Subsection (3) is added to section 216.251,
1070 Florida Statutes, to read:
1071 216.251 Salary appropriations; limitations.--
1072 (3) An agency may not provide general salary increases or
1073 pay additives for a cohort of positions sharing the same job
1074 classification or job occupations which the Legislature has not
1075 authorized in the General Appropriations Act or other laws.
1076 Section 22. Subsection (3), paragraph (b) of subsection
1077 (4), and subsection (5) of section 216.292, Florida Statutes,
1078 are amended, and subsection (7) is added to that section, to
1079 read:
1080 216.292 Appropriations nontransferable; exceptions.--
1081 (3) The following transfers are authorized with the
1082 approval of the Executive Office of the Governor for the
1083 executive branch or the Chief Justice for the judicial branch,
1084 subject to the notice and objection ~~review~~ provisions of s.
1085 216.177:
1086 (a) The transfer of appropriations for operations from
1087 trust funds in excess of those provided in subsection (2), up to
1088 $1 million.
1089 (b) The transfer of positions between budget entities.
1090 (4) The following transfers are authorized with the
1091 approval of the Legislative Budget Commission. Unless waived by
1092 the chair and vice chair of the commission, notice of such
1093 transfers must be provided 14 days before the commission
1094 meeting:
1095 (b) The transfer of appropriations for operations from
1096 trust funds in excess of those authorized ~~provided~~ in subsection
1097 (2) or subsection (3) ~~this section that exceed the greater of 5~~

1098 ~~percent of the original approved budget or $1 million~~, as
1099 recommended by the Executive Office of the Governor or the Chief
1100 Justice of the Supreme Court.
1101 (5) A transfer of funds may not result in the initiation
1102 of a fixed capital outlay project that has not received a
1103 specific legislative appropriation, except that federal funds
1104 for fixed capital outlay projects for the Department of Military
1105 Affairs, which do not carry a continuing commitment on future
1106 appropriations by the Legislature, may be approved by the
1107 Executive Office of the Governor for the purpose received,
1108 subject to the notice~~, review,~~ and objection procedures set
1109 forth in s. 216.177.
1110 (7) The provisions of this section do not apply to the
1111 budgets for the legislative branch.
1112 Section 23. Effective upon this act becoming a law,
1113 subsections (1) and (3) and paragraph (a) of subsection (2) of
1114 section 216.301, Florida Statutes, as amended by section 40 of
1115 chapter 2005-152, Laws of Florida, are amended to read:
1116 216.301 Appropriations; undisbursed balances.--
1117 (1)(a) As of June 30th of each year, for appropriations
1118 for operations only, each department and the judicial branch
1119 shall identify in the state's financial system any incurred
1120 obligation which has not been disbursed, showing in detail the
1121 commitment or to whom obligated and the amounts of such
1122 commitments or obligations. Any appropriation not identified as
1123 an incurred obligation effective June 30th shall revert to the
1124 fund from which it was appropriated and shall be available for
1125 reappropriation by the Legislature.
1126 (b) The undisbursed release balance of any authorized
1127 appropriation, except an appropriation for fixed capital outlay,
1128 for any given fiscal year remaining on June 30 of the fiscal

1129 year shall be carried forward in an amount equal to the incurred
1130 obligations identified in paragraph (a). Any such incurred
1131 obligations remaining undisbursed on September 30 shall revert
1132 to the fund from which appropriated and shall be available for
1133 reappropriation by the Legislature. The Chief Financial Officer
1134 will monitor changes made to incurred obligations prior to the
1135 September 30 reversion to ensure generally accepted accounting
1136 principles and legislative intent are followed.
1137 (c) In the event an appropriate identification of an
1138 incurred obligation is not made and an incurred obligation is
1139 proven to be legal, due, and unpaid, then the incurred
1140 obligation shall be paid and charged to the appropriation for
1141 the current fiscal year of the state agency or the legislative
1142 or judicial branch affected.
1143 ~~(1)(a) Any balance of any appropriation, except an~~
1144 ~~appropriation for fixed capital outlay, which is not disbursed~~
1145 ~~but which is expended shall, at the end of each fiscal year, be~~
1146 ~~certified by the head of the affected state agency or the~~
1147 ~~judicial or legislative branches, on or before August 1 of each~~
1148 ~~year, to the Executive Office of the Governor, showing in detail~~
1149 ~~the obligees to whom obligated and the amounts of such~~
1150 ~~obligations. Any such encumbered balance remaining undisbursed~~
1151 ~~on September 30 of the same calendar year in which such~~
1152 ~~certification was made shall revert to the fund from which~~
1153 ~~appropriated, except as provided in subsection (3), and shall be~~
1154 ~~available for reappropriation by the Legislature. In the event~~
1155 ~~such certification is not made and an obligation is proven to be~~
1156 ~~legal, due, and unpaid, then the obligation shall be paid and~~
1157 ~~charged to the appropriation for the current fiscal year of the~~
1158 ~~state agency or the legislative or judicial branch affected.~~

1159 ~~(b) Any balance of any appropriation, except an~~
1160 ~~appropriation for fixed capital outlay, for any given fiscal~~
1161 ~~year remaining after charging against it any lawful expenditure~~
1162 ~~shall revert to the fund from which appropriated and shall be~~
1163 ~~available for reappropriation by the Legislature.~~
1164 (d) ~~(c)~~ Each department and the judicial branch shall
1165 maintain the integrity of the General Revenue Fund.
1166 Appropriations from the General Revenue Fund contained in the
1167 original approved budget may be transferred to the proper trust
1168 fund for disbursement. Any reversion of appropriation balances
1169 from programs which receive funding from the General Revenue
1170 Fund and trust funds shall be transferred to the General Revenue
1171 Fund within 15 days after such reversion, unless otherwise
1172 provided by federal or state law, including the General
1173 Appropriations Act. The Executive Office of the Governor or the
1174 Chief Justice of the Supreme Court shall determine the state
1175 agency or judicial branch programs which are subject to this
1176 paragraph. This determination shall be subject to the
1177 legislative consultation and objection process in this chapter.
1178 The Education Enhancement Trust Fund shall not be subject to the
1179 provisions of this section.
1180 (2)(a) The balance of any appropriation for fixed capital
1181 outlay which is not disbursed but expended, contracted, or
1182 committed to be expended prior to February 1 of the second
1183 fiscal year of the appropriation, or the third fiscal year if it
1184 is for an educational facility as defined in chapter 1013 or for
1185 a construction project of a state university, shall be certified
1186 by the head of the affected state agency ~~or the legislative~~ or
1187 judicial branch on February 1 to the Executive Office of the
1188 Governor, showing in detail the commitment or to whom obligated
1189 and the amount of the commitment or obligation. The Executive

1190 Office of the Governor for the executive branch and the Chief
1191 Justice for the judicial branch shall review and approve or
1192 disapprove, consistent with criteria jointly developed by the
1193 Executive Office of the Governor and the legislative
1194 appropriations committees, the continuation of such unexpended
1195 balances. The Executive Office of the Governor shall, no later
1196 than February 28 ~~20~~ of each year, furnish the Chief Financial
1197 Officer, the legislative appropriations committees, and the
1198 Auditor General a report listing in detail the items and amounts
1199 reverting under the authority of this subsection, including the
1200 fund to which reverted and the agency affected.
1201 ~~(3) The President of the Senate and the Speaker of the~~
1202 ~~House of Representatives may notify the Executive Office of the~~
1203 ~~Governor to retain certified forward balances from legislative~~
1204 ~~budget entities until June 30 of the following fiscal year.~~
1205 Section 24. Subsection (2) of section 252.37, Florida
1206 Statutes, is amended to read:
1207 252.37 Financing.--
1208 (2) It is the legislative intent that the first recourse
1209 be made to funds regularly appropriated to state and local
1210 agencies. If the Governor finds that the demands placed upon
1211 these funds in coping with a particular disaster declared by the
1212 Governor as a state of emergency are unreasonably great, she or
1213 he may make funds available by transferring and expending moneys
1214 appropriated for other purposes, by transferring and expending
1215 moneys out of any unappropriated surplus funds, or from the
1216 Budget Stabilization Fund. Following the expiration or
1217 termination of the state of emergency, the Governor may transfer
1218 moneys with a budget amendment, subject to approval by the
1219 Legislative Budget Commission, ~~process a budget amendment under~~
1220 ~~the notice and review procedures set forth in s. 216.177 to~~

1221 ~~transfer moneys~~ to satisfy the budget authority granted for such
1222 emergency.
1223 Section 25. Section 273.02, Florida Statutes, is amended
1224 to read:
1225 273.02 Record and inventory of certain property.--The word
1226 "property" as used in this section means equipment, fixtures,
1227 and other tangible personal property of a nonconsumable and
1228 nonexpendable nature. The Chief Financial Officer shall
1229 establish by rule the requirements for the recording of property
1230 in the state's financial systems and for the periodic review of
1231 property for inventory purposes.~~, the value or cost of which is~~
1232 ~~$1,000 or more and the normal expected life of which is 1 year~~
1233 ~~or more, and hardback-covered bound books that are circulated to~~
1234 ~~students or the general public, the value or cost of which is~~
1235 ~~$25 or more, and hardback-covered bound books, the value or cost~~
1236 ~~of which is $250 or more. Each item of property which it is~~
1237 ~~practicable to identify by marking shall be marked in the manner~~
1238 ~~required by the Auditor General. Each custodian shall maintain~~
1239 ~~an adequate record of property in his or her custody, which~~
1240 ~~record shall contain such information as shall be required by~~
1241 ~~the Auditor General. Once each year, on July 1 or as soon~~
1242 ~~thereafter as is practicable, and whenever there is a change of~~
1243 ~~custodian, each custodian shall take an inventory of property in~~
1244 ~~his or her custody. The inventory shall be compared with the~~
1245 ~~property record, and all discrepancies shall be traced and~~
1246 ~~reconciled. All publicly supported libraries shall be exempt~~
1247 ~~from marking hardback-covered bound books, as required by this~~
1248 ~~section. The catalog and inventory control records maintained by~~
1249 ~~each publicly supported library shall constitute the property~~
1250 ~~record of hardback-covered bound books with a value or cost of~~
1251 ~~$25 or more included in each publicly supported library~~

1252 ~~collection and shall serve as a perpetual inventory in lieu of~~
1253 ~~an annual physical inventory. All books identified by these~~
1254 ~~records as missing shall be traced and reconciled, and the~~
1255 ~~library inventory shall be adjusted accordingly.~~
1256 Section 26. Section 273.025, Florida Statutes, is created
1257 to read:
1258 273.025 Financial reporting for recorded property.--The
1259 Chief Financial Officer shall establish by rule the requirements
1260 for the capitalization of property that has been recorded in the
1261 state's financial systems.
1262 Section 27. Subsections (2) and (5) of section 273.055,
1263 Florida Statutes, are amended to read:
1264 273.055 Disposition of state-owned tangible personal
1265 property.--
1266 (2) Custodians shall maintain records to identify each
1267 property item as to disposition. Such records shall comply with
1268 rules issued by the Chief Financial Officer ~~Auditor General~~.
1269 (5) All moneys received from the disposition of state-
1270 owned tangible personal property or from any agreement entered
1271 into under this chapter must be retained by the custodian and
1272 may be disbursed for the acquisition of exchange and surplus
1273 property and for all necessary operating expenditures~~, and are~~
1274 ~~appropriated for those purposes~~. The custodian shall maintain
1275 records of the accounts into which the money is deposited.
1276 Section 28. Section 274.02, Florida Statutes, is amended
1277 to read:
1278 274.02 Record and inventory of certain property.--
1279 (1) The word "property" as used in this section means
1280 fixtures and other tangible personal property of a nonconsumable
1281 nature ~~the value of which is $1,000 or more and the normal~~
1282 ~~expected life of which is 1 year or more~~.

1283 (2) The Chief Financial Officer shall establish by rule
1284 the requirements for the recording of property and for the
1285 periodic review of property for inventory purposes. ~~Each item of~~
1286 ~~property which it is practicable to identify by marking shall be~~
1287 ~~marked in the manner required by the Auditor General. Each~~
1288 ~~governmental unit shall maintain an adequate record of its~~
1289 ~~property, which record shall contain such information as shall~~
1290 ~~be required by the Auditor General. Each governmental unit shall~~
1291 ~~take an inventory of its property in the custody of a custodian~~
1292 ~~whenever there is a change in such custodian. A complete~~
1293 ~~physical inventory of all property shall be taken annually, and~~
1294 ~~the date inventoried shall be entered on the property record.~~
1295 ~~The inventory shall be compared with the property record, and~~
1296 ~~all discrepancies shall be traced and reconciled.~~
1297 Section 29. Paragraph (b) of subsection (3) of section
1298 338.2216, Florida Statutes, is amended to read:
1299 338.2216 Florida Turnpike Enterprise; powers and
1300 authority.--
1301 (3)
1302 (b) Notwithstanding the provisions of s. 216.301 to the
1303 contrary and in accordance with s. 216.351, the Executive Office
1304 of the Governor shall, on July 1 of each year, certify forward
1305 all unexpended funds appropriated or provided pursuant to this
1306 section for the turnpike enterprise. Of the unexpended funds
1307 certified forward, any unencumbered amounts shall be carried
1308 forward. Such funds carried forward shall not exceed 5 percent
1309 of the original approved ~~total~~ operating budget as defined in s.
1310 216.181(1) of the turnpike enterprise. Funds carried forward
1311 pursuant to this section may be used for any lawful purpose,
1312 including, but not limited to, promotional and market
1313 activities, technology, and training. Any certified forward

1314 funds remaining undisbursed on September 30 ~~December 31~~ of each
1315 year shall be carried forward.
1316 Section 30. Subsection (4) of section 1011.57, Florida
1317 Statutes, is amended to read:
1318 1011.57 Florida School for the Deaf and the Blind; board
1319 of trustees; management flexibility.--
1320 (4) Notwithstanding the provisions of s. 216.301 to the
1321 contrary, ~~the Executive Office of the Governor shall, on July 1~~
1322 ~~of each year, certify forward~~ all unexpended funds appropriated
1323 for the Florida School for the Deaf and the Blind~~. The~~
1324 ~~unexpended amounts in any fund~~ shall be carried forward and
1325 included as the balance forward for that fund in the approved
1326 operating budget for the following year.
1327 Section 31. Section 215.29, Florida Statutes, is repealed.
1328 Section 32. Except as otherwise expressly provided in this
1329 act, this act shall take effect July 1, 2006.
1330
1331
1332 ========== T I T L E A M E N D M E N T ==========
1333 Remove the entire title and insert:
1334 An act relating to state financial matters; amending s.
1335 11.243, F.S.; providing for the moneys collected from the
1336 sale of the Florida Statutes or other publications to be
1337 deposited in a specified trust fund; amending s. 11.513,
1338 F.S.; requiring the Chief Justice of the Supreme Court to
1339 develop program monitoring plans; requiring that
1340 additional data be included in the plans for monitoring
1341 major programs of state agencies and the judicial branch
1342 and in the reviews of those programs; providing for the
1343 Office of Program Policy Analysis and Government
1344 Accountability to review agency and judicial branch

1345 performance standards and report to the Governor, the
1346 Legislature, and the Legislative Budget Commission;
1347 amending s. 11.151, F.S.; revising the annual
1348 appropriation to a certain legislative contingency fund;
1349 amending s. 20.435, F.S.; revising a provision relating to
1350 certain undisbursed balances of appropriations from the
1351 Biomedical Research Trust Fund; amending s. 215.18, F.S.;
1352 requiring that the Governor provide prior notice of
1353 transfers between certain funds; amending s. 215.3206,
1354 F.S.; replacing references to a 6-digit fund code in the
1355 Florida Accounting Information Resource Subsystem with a
1356 classification scheme consistent with the Department of
1357 Financial Services' financial systems; amending s.
1358 215.3208, F.S.; revising references to conform; amending
1359 s. 215.35, F.S.; revising a provision relating to the
1360 numbering of warrants issued by the Chief Financial
1361 Officer; amending s. 215.422, F.S.; replacing a reference
1362 to certain vouchers with the terms "invoice" or
1363 "invoices"; clarifying that agencies or the judicial
1364 branch record and approve certain invoices by a specified
1365 date; revising provisions relating to the Department of
1366 Financial Services' approval of payment of certain
1367 invoices; providing that a vendor who does not submit the
1368 appropriate federal taxpayer identification documentation
1369 to the department will be deemed an error on the part of
1370 the vendor; revising references to conform; amending s.
1371 215.97, F.S.; removing a reference to the appropriations
1372 act in a provision relating to the purposes of the Florida
1373 Single Audit Act; amending s. 216.011, F.S.; revising the
1374 definition of "operating capital outlay"; providing the
1375 Legislature certain authority relating to qualified

1376 expenditure category funds; defining the terms "incurred
1377 obligation" and "salary rate reserve" for purposes of
1378 state fiscal affairs, appropriations, and budgets;
1379 amending s. 216.013, F.S.; revising requirements for
1380 information regarding performance measures to be included
1381 in the long-range program plans of state agencies and the
1382 judicial branch; revising a provision relating to making
1383 adjustments to long-range program plans; amending s.
1384 216.023, F.S.; revising certain requirements for
1385 legislative budget requests; deleting a provision
1386 requiring agencies to maintain a certain performance
1387 accountability system and provide a list of performance
1388 measures; deleting a provision relating to adjustments to
1389 executive agency performance standards; deleting a
1390 provision relating to adjustments to judicial branch
1391 performance standards; amending s. 216.134, F.S.;
1392 providing for the responsibility of presiding over
1393 sessions of consensus estimating conferences; amending s.
1394 216.136, F.S.; revising provisions relating to the
1395 principals of consensus estimating conferences; revising
1396 the duties of certain agencies relating to the Criminal
1397 Justice Estimating Conference, the Social Services
1398 Estimating Conference, and the Workforce Estimating
1399 Conference; amending s. 216.177, F.S.; clarifying the
1400 circumstances under which the Executive Office of the
1401 Governor and the Chief Justice of the Supreme Court are
1402 required to provide notice to the chair and vice chair of
1403 the Legislative Budget Commission; amending s. 216.181,
1404 F.S.; providing that amendments to certain approved
1405 operating budgets are subject to objection procedures;
1406 requiring that state agencies submit to the chair and vice

1407 chair of the Legislative Budget Commission a plan for
1408 allocating any lump-sum appropriation in a budget
1409 amendment; creating s. 216.1811, F.S.; providing
1410 requirements for the Governor and the Chief Financial
1411 Officer relating to certain approved operating budgets for
1412 the legislative branch and appropriations made to the
1413 legislative branch; amending s. 216.1815, F.S.; revising
1414 certain requirements for the performance standards
1415 included in an amended operating budget plan and request
1416 submitted to the Legislative Budget Commission; creating
1417 s. 216.1827, F.S.; requiring that each state agency and
1418 the judicial branch maintain a performance accountability
1419 system; requiring agencies and the judicial branch to
1420 submit specified information to the Executive Office of
1421 the Governor and the Legislature or the Office of Program
1422 Policy Analysis and Government Accountability for review;
1423 providing guidelines for requests to delete or amend
1424 existing approved performance measures and standards;
1425 specifying authority of the Legislature relating to agency
1426 and judicial branch performance measures and standards;
1427 amending s. 216.251, F.S.; prohibiting an agency from
1428 providing salary increases or pay additives for certain
1429 positions without legislative authorization; amending s.
1430 216.292, F.S.; providing that certain transfers between
1431 budget entities are subject to objection procedures;
1432 clarifying provisions authorizing certain transfers of
1433 appropriations from trust funds; providing that
1434 requirements of specified provisions relating to
1435 appropriations being nontransferable do not apply to
1436 legislative branch budgets; amending s. 216.301, F.S.;
1437 revising the requirements for undisbursed balances of

1438 appropriations; revising a procedure for identifying and
1439 paying incurred obligations; removing a provision relating
1440 to notification to retain certain balances from
1441 legislative budget entities; amending s. 252.37, F.S.;
1442 providing that a transfer of moneys with a budget
1443 amendment following a state of emergency is subject to
1444 approval by the Legislative Budget Commission; amending s.
1445 273.02, F.S.; revising a definition; requiring the Chief
1446 Financial Officer to establish certain requirements by
1447 rule relating to the recording and inventory of certain
1448 state-owned property; creating s. 273.025, F.S.; requiring
1449 the Chief Financial Officer to establish by rule certain
1450 requirements relating to the capitalization of certain
1451 property; amending s. 273.055, F.S.; revising
1452 responsibility for rules relating to maintaining records
1453 as to disposition of state-owned tangible personal
1454 property; revising a provision relating to use of moneys
1455 received from the disposition of state-owned tangible
1456 personal property; amending s. 274.02, F.S.; revising a
1457 definition; requiring the Chief Financial Officer to
1458 establish by rule requirements relating to the recording
1459 and inventory of certain property owned by local
1460 governments; amending s. 338.2216, F.S.; revising
1461 requirements relating to unexpended funds appropriated or
1462 provided for the Florida Turnpike Enterprise; amending s.
1463 1011.57, F.S.; revising requirements relating to
1464 unexpended funds appropriated to the Florida School for
1465 the Deaf and the Blind; repealing s. 215.29, F.S.,
1466 relating to the classification of Chief Financial
1467 Officer's warrants; providing effective dates.

Bill No. **7235**

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: Fiscal Council
2 Representative(s) Kottkamp offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Subsection (6) of section 27.52, Florida
8 Statutes, is amended to read:
9 27.52 Determination of indigent status.--
10 (6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent
11 parent or legal guardian of an applicant who is a minor or an
12 adult tax-dependent person shall furnish the minor or adult tax-
13 dependent person with the necessary legal services and costs
14 incident to a delinquency proceeding or, upon transfer of such
15 person for criminal prosecution as an adult pursuant to chapter
16 985, a criminal prosecution in which the person has a right to
17 legal counsel under the Constitution of the United States or the
18 Constitution of the State of Florida. The failure of a parent or
19 legal guardian to furnish legal services and costs under this
20 section does not bar the appointment of legal counsel pursuant
21 to this section, s. 27.40, or s. 27.5303. When the public
22 defender, a private court-appointed conflict counsel, or a

23 private attorney is appointed to represent a minor or an adult
24 tax-dependent person in any proceeding in circuit court or in a
25 criminal or delinquency proceeding in any other court, the
26 parents or the legal guardian shall be liable for payment of the
27 fees, charges, and costs of the representation even if the
28 person is a minor being tried as an adult. Liability for the
29 fees, charges, and costs of the representation shall be imposed
30 in the form of a lien against the property of the ~~nonindigent~~
31 parents or legal guardian of the minor or adult tax-dependent
32 person. The lien is enforceable as provided in s. 27.561 or s.
33 938.29.
34 Section 2. Subsection (3) of section 27.561, Florida
35 Statutes, is amended to read:
36 27.561 Effect of nonpayment.--
37 (3) If it appears to the satisfaction of the court that
38 the default in the payment of the attorney's fees or costs is
39 not contempt, the court may enter an order allowing the
40 defendant-recipient or parent additional time for~~, or reducing~~
41 ~~the amount of,~~ payment ~~or revoking the assessed attorney's fees~~
42 ~~or costs, or the unpaid portion thereof, in whole or in part~~. If
43 the court allows additional time for payment, the defendant-
44 recipient or parent shall be enrolled in a payment plan pursuant
45 to s. 28.246(4).
46 Section 3. Paragraph (e) of subsection (12) of section
47 28.24, Florida Statutes, is amended to read:
48 28.24 Service charges by clerk of the circuit court.--The
49 clerk of the circuit court shall charge for services rendered by
50 the clerk's office in recording documents and instruments and in
51 performing the duties enumerated in amounts not to exceed those
52 specified in this section. Notwithstanding any other provision
53 of this section, the clerk of the circuit court shall provide

54 without charge to the state attorney, public defender, guardian
55 ad litem, public guardian, attorney ad litem, and court-
56 appointed counsel paid by the state, and to the authorized staff
57 acting on behalf of each, access to and a copy of any public
58 record, if the requesting party is entitled by law to view the
59 exempt or confidential record, as maintained by and in the
60 custody of the clerk of the circuit court as provided in general
61 law and the Florida Rules of Judicial Administration. The clerk
62 of the circuit court may provide the requested public record in
63 an electronic format in lieu of a paper format when capable of
64 being accessed by the requesting entity.
65
66 Charges
67
68 (12) For recording, indexing, and filing any instrument
69 not more than 14 inches by 81/2 inches, including required
70 notice to property appraiser where applicable:
71 (e) An additional service charge of $4 per page shall be
72 paid to the clerk of the circuit court for each instrument
73 listed in s. 28.222, except judgments received from the courts
74 and notices of lis pendens, recorded in the official records.
75 From the additional $4 service charge collected:
76 1. If the counties maintain legal responsibility for the
77 costs of the court-related technology needs as defined in s.
78 29.008(1)(f)2. and (h)<u>:</u>~~,~~
79 <u>a. 5</u> ~~10~~ cents shall be distributed to the Florida
80 Association of Court Clerks and Comptroller, Inc., for the cost
81 of development, implementation, operation, and maintenance of
82 the clerks' Comprehensive Case Information System, in which
83 system all clerks shall participate on or before January 1,
84 2006~~,~~<u>. The Florida Association of Court Clerks and Comptroller,</u>

85 Inc., shall provide for an annual operational audit, as defined
86 in s. 11.45(1)(g), of its financial accounts and records
87 relating to the Comprehensive Case Information System fees by an
88 independent certified public accountant. Such audit shall be
89 performed in accordance with Government Auditing Standards as
90 adopted by the State Board of Accountancy and include a
91 determination as to whether the fees distributed to the Florida
92 Association of Court Clerks and Comptroller were expended solely
93 for the purposes stated above. The annual audit report must be
94 submitted within 90 days after the end of the association's
95 fiscal year to the Governor's Office, Senate and House
96 appropriations committees, and the Auditor General for review.
97 However, at its discretion, the Joint Legislative Auditing
98 Committee may require the Auditor General or other entity to
99 conduct the audit.
100 b. $1.90 shall be retained by the clerk to be deposited in
101 the Public Records Modernization Trust Fund and used exclusively
102 for funding court-related technology needs of the clerk as
103 defined in s. 29.008(1)(f)2. and (h)~~; and~~.
104 c. Prior to April 1, 2007, $2 shall be distributed to the
105 board of county commissioners to be used exclusively to fund
106 court-related technology, and court technology needs as
107 described defined in s. 29.008(1)(f)2. and (h) for the state
108 trial courts, state attorney, and public defender in that
109 county; and $.05 shall be distributed to the Court Technology
110 Trust Fund to provide oversight of court-related technology
111 services provided by the counties.
112 d. Effective April 1, 2007, $2.05 shall be distributed to
113 the Court Technology Trust Fund to be used to prepare the
114 judicial circuit technology strategic plan required by s.
115 29.0087 and provide oversight of court-related technology

116 services provided by the counties and to be disbursed to
117 counties as state financial assistance to assist the counties
118 with the costs of providing court-related technology, and court
119 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
120 state trial courts, state attorney, and public defender in that
121 county. Counties shall agree to use funds in conformance with
122 the judicial circuit technology strategic plan required by s.
123 29.0087 as approved by the chief judge in order to be eligible
124 for state financial assistance from the Court Technology Trust
125 Fund. The amount provided to each county from the Court
126 Technology Trust Fund shall be equal to each county's percentage
127 of total collections of the additional recording fee required by
128 this section applied to the total amount available to be
129 distributed to counties. If a county is not eligible to receive
130 funds from the Court Technology Trust Fund, the funds that would
131 have otherwise been distributed to the county shall remain in
132 the Court Technology Trust Fund to be used as appropriated by
133 the Legislature.
134 e. If the counties maintain legal responsibility for the
135 costs of the court-related technology needs as defined in s.
136 29.008(1)(f)2. and (h), notwithstanding any other provision of
137 law, the county is not required to provide additional funding
138 beyond that provided herein for the court-related technology
139 needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All
140 court records and official records are the property of the State
141 of Florida, including any records generated as part of the
142 Comprehensive Case Information System funded pursuant to this
143 paragraph and the clerk of court is designated as the custodian
144 of such records, except in a county where the duty of
145 maintaining official records exists in a county office other
146 than the clerk of court or comptroller, such county office is

147 designated the custodian of all official records, and the clerk
148 of court is designated the custodian of all court records. The
149 clerk of court or any entity acting on behalf of the clerk of
150 court, including an association, shall not charge a fee to any
151 agency as defined in s. 119.011, the Legislature, or the State
152 Court System for copies of records generated by the
153 Comprehensive Case Information System or held by the clerk of
154 court or any entity acting on behalf of the clerk of court,
155 including an association. In order to protect the financial
156 investment made by the state in the Comprehensive Case
157 Information System, the receipt of the funding provided pursuant
158 to s. 28.24(12)(e)1. a., to the Florida Association of Court
159 Clerks and Comptroller, Inc., for the Comprehensive Case
160 Information System shall be contingent on the Florida
161 Association of Court Clerks and Comptroller, Inc., entering into
162 a memorandum of agreement with the state providing that
163 ownership of the Comprehensive Case Information System,
164 including all associated hardware, source code, executable
165 software, and data or databases stored by the Comprehensive Case
166 Information System, shall pass to the state in the event that
167 the Florida Association of Court Clerks and Comptroller, Inc.,
168 is dissolved, decides to discontinue providing the Comprehensive
169 Case Information System, or otherwise fails to maintain,
170 support, and provide the Comprehensive Case Information System
171 in accordance with the requirements of this section. Upon
172 entering into such memorandum of agreement, a copy of the
173 current version of the Comprehensive Case Information System
174 source code, executable software, data or databases stored by
175 the Comprehensive Case Information System, and documentation
176 shall be placed in escrow with the state named as beneficiary.
177 Upon the deployment of a new major release, or at least annually

178 if there is no new major release, the most current Comprehensive
179 Case Information System source code, executable software, data
180 or databases stored by the Comprehensive Case Information
181 System, and documentation shall be placed in escrow. This
182 Comprehensive Case Information System source code, executable
183 software, data or databases stored by the Comprehensive Case
184 Information System, and documentation shall be reviewed no less
185 than once a year and jointly by representatives of the state and
186 the Florida Association of Court Clerks and Comptroller, Inc.,
187 to insure currency and completeness. Upon any transfer of
188 ownership of the Comprehensive Case Information System to the
189 state, all rights to intellectual property owned by the Florida
190 Association of Court Clerks and Comptroller, Inc., relating to
191 the Comprehensive Case Information System shall transfer to the
192 state.
193 2. If the state becomes legally responsible for the costs
194 of court-related technology needs as defined in s.
195 29.008(1)(f)2. and (h), whether by operation of general law or
196 by court order, $4 shall be remitted to the Department of
197 Revenue for deposit into the General Revenue Fund.
198 Section 4. Paragraphs (h) and (i) are added to subsection
199 (2) of section 28.35, Florida Statutes, paragraph (e) of that
200 subsection is amended, subsections (4) through (7) of that
201 section are renumbered as subsections (5) through (8),
202 respectively, and a new subsection (4) is added to that section,
203 to read:
204 28.35 Florida Clerks of Court Operations Corporation.--
205 (2) The duties of the corporation shall include the
206 following:
207 (e) Developing and certifying a uniform system of
208 performance measures and applicable performance standards for

209 the functions specified in paragraph (5) ~~(4)~~ (a) and clerk
210 performance in meeting the performance standards. These measures
211 and standards shall be designed to facilitate an objective
212 determination of the performance of each clerk in accordance
213 with minimum standards for fiscal management, operational
214 efficiency, and effective collection of fines, fees, service
215 charges, and court costs. When the corporation finds a clerk has
216 not met the performance standards, the corporation shall
217 identify the nature of each deficiency and any corrective action
218 recommended and taken by the affected clerk of the court.
219 (h) Receiving reports from each clerk of court in a format
220 specified by the corporation that allows reconciliation of the
221 expenses of a clerk to the clerk's certified budget.
222 (i) Providing information regarding the budgets and
223 expenditures of clerks and any other fiscal data related to the
224 corporation and performance of court-related clerk duties upon
225 request by a committee of the Legislature, the Governor, or the
226 Office of the State Courts Administrator. The contract between
227 the corporation and the Department of Financial Services shall
228 provide that the failure of the corporation to comply with this
229 paragraph shall result in the withholding by the department of
230 not less than 5 percent of the total funding provided to the
231 corporation pursuant to the terms of the contract. Clerks of
232 court shall provide any information requested by the corporation
233 in accordance with this paragraph.
234 (4) The corporation shall provide notice to the
235 appropriations committees of the Senate and the House of
236 Representatives of any change to a certified budget within 20
237 days of such change. Clerks of court shall provide information
238 to the corporation regarding any change to a certified budget
239 within 10 days of such change.

240 Section 5. Subsections (1) through (5) of section 28.36,
241 Florida Statutes, are amended, and subsection (8) is added to
242 that section, to read:
243 28.36 Budget procedure.--There is hereby established a
244 budget procedure for the court-related functions of the clerks
245 of the court.
246 (1) Only those functions on the standard list developed
247 pursuant to s. 28.35(5)~~(4)~~(a) may be funded from fees, service
248 charges, court costs, and fines retained by the clerks of the
249 court. No clerk may use fees, service charges, court costs, and
250 fines in excess of the maximum budget amounts as established in
251 subsection (5).
252 (2) For the period July 1, 2004, through September 30,
253 2004, and for each county fiscal year ending September 30
254 thereafter, each clerk of the court shall prepare a budget
255 relating solely to the performance of the standard list of
256 court-related functions pursuant to s. 28.35(5)~~(4)~~(a).
257 (3) Each proposed budget shall further conform to the
258 following requirements:
259 (a) On or before August 15 for each fiscal year
260 thereafter, the proposed budget shall be prepared, summarized,
261 and submitted by the clerk in each county to the Clerks of Court
262 Operations Corporation in the manner and form prescribed by the
263 corporation. The proposed budget must provide detailed
264 information on the anticipated revenues available and
265 expenditures necessary for the performance of the standard list
266 of court-related functions of the clerk's office developed
267 pursuant to s. 28.35(5)~~(4)~~(a) for the county fiscal year
268 beginning the following October 1.
269 (b) The proposed budget must be balanced~~,~~ such that the
270 total of the estimated revenues available equals ~~must equal~~ or

271 exceeds ~~exceed~~ the total of the anticipated expenditures. These
272 revenues include the following: cash balances brought forward
273 from the prior fiscal period; revenue projected to be received
274 from fees, service charges, court costs, and fines for court-
275 related functions during the fiscal period covered by the
276 budget; and supplemental revenue that may be requested pursuant
277 to subsection (4). Both proposed and certified budgets shall
278 clearly identify expenditures by object and subobject
279 classifications as specified in the uniform accounting system
280 chart of accounts promulgated by the Department of Financial
281 Services in accordance with s. 218.33 and the number of full-
282 time equivalent positions. A budget shall specifically list any
283 nonrecurring expenditures, including, but not limited to,
284 employee bonuses and equipment purchases. The budget shall also
285 specify details of any general changes to salaries and benefits,
286 such as cost-of-living increases in salaries and improvements in
287 benefits. ~~The anticipated expenditures must be itemized as~~
288 ~~required by the corporation, pursuant to contract with the Chief~~
289 ~~Financial Officer.~~
290 (c) The proposed budget may include a contingency reserve
291 not to exceed 10 percent of the total budget, provided that,
292 overall, the proposed budget does not exceed the limits
293 prescribed in subsection (5).
294 (4) If a clerk of the court estimates that available funds
295 plus projected revenues from fines, fees, service charges, and
296 costs for court-related services are insufficient to meet the
297 anticipated expenditures for the standard list of court-related
298 functions in s. 28.35(5) ~~(4)~~(a) performed by his or her office,
299 the clerk must report the revenue deficit to the Clerks of Court
300 Operations Corporation in the manner and form prescribed by the
301 corporation pursuant to contract with the Chief Financial

302 Officer. The corporation shall verify that the proposed budget
303 is limited to the standard list of court-related functions in s.
304 28.35(5)~~(4)~~(a).
305 (a) If the corporation verifies that the proposed budget
306 is limited to the standard list of court-related functions in s.
307 28.35(5)~~(4)~~(a) and a revenue deficit is projected, a clerk
308 seeking to retain revenues pursuant to this subsection shall
309 increase all fees, service charges, and any other court-related
310 clerk fees and charges to the maximum amounts specified by law
311 or the amount necessary to resolve the deficit, whichever is
312 less. If, after increasing fees, service charges, and any other
313 court-related clerk fees and charges to the maximum amounts
314 specified by law, a revenue deficit is still projected, the
315 corporation shall, pursuant to the terms of the contract with
316 the Chief Financial Officer, certify a revenue deficit and
317 notify the Department of Revenue that the clerk is authorized to
318 retain revenues, in an amount necessary to fully fund the
319 projected revenue deficit, which he or she would otherwise be
320 required to remit to the Department of Revenue for deposit into
321 the Department of Revenue Clerks of the Court Trust Fund
322 pursuant to s. 28.37. If a revenue deficit is projected for that
323 clerk after retaining all of the projected collections from the
324 court-related fines, fees, service charges, and costs, the
325 Department of Revenue shall certify the amount of the revenue
326 deficit amount to the Executive Office of the Governor and
327 request release authority for funds appropriated for this
328 purpose from the Department of Revenue Clerks of the Court Trust
329 Fund. Notwithstanding provisions of s. 216.192 related to the
330 release of funds, the Executive Office of the Governor may
331 approve the release of funds appropriated to resolve projected
332 revenue deficits in accordance with the notice, review, and

333 objection procedures set forth in s. 216.177 and shall provide
334 notice to the Chief Financial Officer. The Department of Revenue
335 is directed to request monthly distributions from the Chief
336 Financial Officer in equal amounts to each clerk certified to
337 have a revenue deficit, in accordance with the releases approved
338 by the Governor.
339 (b) If the Chief Financial Officer finds the court-related
340 budget proposed by a clerk includes functions not included in
341 the standard list of court-related functions in s.
342 28.35(5)~~(4)~~(a), the Chief Financial Officer shall notify the
343 clerk of the amount of the proposed budget not eligible to be
344 funded from fees, service charges, costs, and fines for court-
345 related functions and shall identify appropriate corrective
346 measures to ensure budget integrity. The clerk shall then
347 immediately discontinue all ineligible expenditures of court-
348 related funds for this purpose and reimburse the Clerks of the
349 Court Trust Fund for any previously ineligible expenditures made
350 for non-court-related functions, and shall implement any
351 corrective actions identified by the Chief Financial Officer.
352 (5)(a) For the county fiscal year October 1, 2004, through
353 September 30, 2005, the maximum annual budget amount for the
354 standard list of court-related functions of the clerks of court
355 in s. 28.35(5)~~(4)~~(a) that may be funded from fees, service
356 charges, court costs, and fines retained by the clerks of the
357 court shall not exceed:
358 1. One hundred and three percent of the clerk's estimated
359 expenditures for the prior county fiscal year; or
360 2. One hundred and five percent of the clerk's estimated
361 expenditures for the prior county fiscal year for those clerks
362 in counties that for calendar years 1998-2002 experienced an
363 average annual increase of at least 5 percent in both population

364 and case filings for all case types as reported through the
365 Summary Reporting System used by the state courts system.
366 (b) For the county fiscal year 2005-2006, the maximum
367 budget amount for the standard list of court-related functions
368 of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may be funded
369 from fees, service charges, court costs, and fines retained by
370 the clerks of the court shall be the approved budget for county
371 fiscal year 2004-2005 adjusted by the projected percentage
372 change in revenue between the county fiscal years 2004-2005 and
373 2005-2006.
374 (c) For the county fiscal years 2006-2007 and thereafter,
375 the maximum budget amount for the standard list of court-related
376 functions of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may
377 be funded from fees, service charges, court costs, and fines
378 retained by the clerks of the court shall be established by
379 first rebasing the prior fiscal year budget to reflect the
380 actual percentage change in the prior fiscal year revenue and
381 then adjusting the rebased prior fiscal year budget by the
382 projected percentage change in revenue for the proposed budget
383 year. The rebasing calculations and maximum annual budget
384 calculations shall be as follows:
385 1. For county fiscal year 2006-2007, the approved budget
386 for county fiscal year 2004-2005 shall be adjusted for the
387 actual percentage change in revenue between the two 12-month
388 periods ending June 30, 2005, and June 30, 2006. This result is
389 the rebased budget for the county fiscal year 2005-2006. Then
390 the rebased budget for the county fiscal year 2005-2006 shall be
391 adjusted by the projected percentage change in revenue between
392 the county fiscal years 2005-2006 and 2006-2007. This result
393 shall be the maximum annual budget amount for the standard list
394 of court-related functions of the clerks of court in s.

395 28.35(5)~~(4)~~(a) that may be funded from fees, service charges,
396 court costs, and fines retained by the clerks of the court for
397 each clerk for the county fiscal year 2006-2007.
398 2. For county fiscal year 2007-2008, the rebased budget
399 for county fiscal year 2005-2006 shall be adjusted for the
400 actual percentage change in revenue between the two 12-month
401 periods ending June 30, 2006, and June 30, 2007. This result is
402 the rebased budget for the county fiscal year 2006-2007. The
403 rebased budget for county fiscal year 2006-2007 shall be
404 adjusted by the projected percentage change in revenue between
405 the county fiscal years 2006-2007 and 2007-2008. This result
406 shall be the maximum annual budget amount for the standard list
407 of court-related functions of the clerks of court in s.
408 28.35(5)~~(4)~~(a) that may be funded from fees, service charges,
409 court costs, and fines retained by the clerks of the court for
410 county fiscal year 2007-2008.
411 3. For county fiscal years 2008-2009 and thereafter, the
412 maximum budget amount for the standard list of court-related
413 functions of the clerks of court in s. 28.35(5)~~(4)~~(a) that may
414 be funded from fees, service charges, court costs, and fines
415 retained by the clerks of the court shall be calculated as the
416 rebased budget for the prior county fiscal year adjusted by the
417 projected percentage change in revenues between the prior county
418 fiscal year and the county fiscal year for which the maximum
419 budget amount is being authorized. The rebased budget for the
420 prior county fiscal year shall always be calculated by adjusting
421 the rebased budget for the year preceding the prior county
422 fiscal year by the actual percentage change in revenues between
423 the 12-month period ending June 30 of the year preceding the
424 prior county fiscal year and the 12-month period ending June 30
425 of the prior county fiscal year.

426 (8) Each clerk shall record and report actual expenditures
427 in a format specified by the Clerks of Court Operations
428 Corporation that allows reconciliation to the clerk's budget as
429 certified by the corporation. The clerk shall submit reports of
430 such expenditures to the corporation upon request but at least
431 quarterly.
432 Section 6. Subsection (4) of section 29.008, Florida
433 Statutes, is amended, and subsection (5) is added to that
434 section, to read:
435 29.008 County funding of court-related functions.--
436 (4)(a)1. A county may be determined by the Administration
437 Commission not to be in compliance with its responsibility to
438 fund court-related functions and to be subject to withholding of
439 funds by the Department of Revenue if:
440 a. The total amount budgeted or expended by the county for
441 any item specified in paragraphs (1)(c) or (d) or subsection (3)
442 in the upcoming, current, or previous county fiscal year, as
443 appropriate, or the total amount budgeted or expended for any
444 item specified in paragraphs (1)(a), (e), (f), (g), or (h) minus
445 non-recurring expenditures for that same item by the county in
446 the upcoming, current, or previous county fiscal year, as
447 appropriate, is less than the base year spending plus 1.5
448 percent growth per year. Base year spending shall be determined
449 as follows:
450 i. For each item specified in (1)(c) or (d) or subsection
451 (3), the base year spending shall be the total amount spent for
452 that item in county fiscal year 2002-2003.
453 ii. For each item specified in (1)(a), (e), (f), (g), or
454 (h), the base year spending shall be the total amount spent for
455 that item in county fiscal year 2002-2003 minus non-recurring
456 expenditures for that item in county fiscal year 2002-2003;

457

458 and

459 b. The chief judge certifies that deficiencies will or do
460 exist in the functioning of the circuit court due to the lack of
461 sufficient budget or expenditures for that item.

462 2. The process for determining whether a county is not in
463 compliance with its funding responsibilities shall be as
464 follows:

465 a. The chief judge shall identify in writing the specific
466 deficiencies the chief judge certifies will be experienced or
467 have been experienced by the circuit court associated with the
468 county's lack of sufficient funding for that item, the
469 recommended corrections, and an estimate of the funding required
470 for such corrections and shall furnish this statement to the
471 board of county commissioners.

472 b. The board shall provide a response in writing to the
473 chief judge. If the board chooses not to amend its budget or
474 make expenditures to provide funding sufficient to equal or
475 exceed the funding for the item in the base year plus 1.5
476 percent growth per year, or remedy the specific deficiencies
477 identified by the chief judge, whichever is less, within 30 days
478 after receiving written notice of such action by the board, the
479 chief judge may notify the Administration Commission of the
480 alleged deficiency and explain the expected impact on the
481 ability of the court to perform the court's constitutional and
482 statutory functions. The notice shall set forth, in the form and
483 manner prescribed by the Executive Office of the Governor and
484 approved by the Administration Commission, the specific
485 deficiencies; estimate of the funding required to resolve the
486 deficiencies; expenditures made by the county in the base year
487 for the items; and amount budgeted or amount expended for the

488 items. The notice shall be provided to the Executive Office of
489 the Governor and the board. The board shall have 5 days from
490 receipt of the notice to provide to the Executive Office of the
491 Governor a reply to the notice, and the board shall provide a
492 copy of such reply to the chief judge.
493 c. Upon receipt of the notice, the Executive Office of the
494 Governor shall provide for a budget hearing at which the matters
495 presented in the notice and the reply shall be considered. A
496 report of the findings and recommendations of the Executive
497 Office of the Governor on such matters shall be promptly
498 submitted to the Administration Commission, which, within 30
499 days, shall approve the action of the board as to each separate
500 item or direct the Department of Revenue to withhold revenue
501 sharing funds as provided in paragraph (c) in an amount
502 determined by the Administration Commission to be sufficient to
503 remedy the deficiency; however, in no case shall the amount
504 withheld, when combined with the amount budgeted or expended, as
505 appropriate, be greater than the minimum required to be budgeted
506 or expended by a county under subparagraph 1. to avoid being
507 determined not to be in compliance with its responsibilities to
508 fund court-related functions. The determination of the
509 Administration Commission shall be final and shall be provided
510 in writing to the chief judge, the board, and the Department of
511 Revenue.
512 (b) A county may be determined by the Administration
513 Commission not to be in compliance with its funding
514 responsibilities pursuant to the receipt of funds under s.
515 28.24(12)(e)1.d. and to be subject to withholding of funds by
516 the Department of Revenue. The process for determining whether
517 a county is not in compliance with its funding responsibilities
518 shall be as follows:

519 1. The chief judge shall certify in writing that the
520 county has not complied with its responsibilities pursuant to
521 the receipt of funds under s. 28.24(12)(e)1.d. and identify the
522 recommended corrections and shall furnish this statement to the
523 board of county commissioners.
524 2. The board shall provide a response in writing to the
525 chief judge. If the board chooses not to make expenditures to
526 comply with its funding responsibilities under s.
527 28.24(12)(e)1.d., within 30 days after receiving written notice
528 of such action by the board, the chief judge may notify the
529 Administration Commission of the alleged lack of compliance. The
530 notice shall set forth, in the form and manner prescribed by the
531 Executive Office of the Governor and approved by the
532 Administration Commission, the specific actions taken by the
533 board which are not in compliance with the funding
534 responsibilities under s. 28.24(12)(e)1.d., the recommended
535 corrections, and the total funding received by the county
536 pursuant to s. 28.24(12)(e)1.d. for the fiscal year addressed by
537 the judicial circuit technology strategic plan. The notice shall
538 be provided to the Executive Office of the Governor and the
539 board. The board shall have 5 days from receipt of the notice to
540 provide to the Executive Office of the Governor a reply to the
541 notice, and the board shall provide a copy of such reply to the
542 chief judge.
543 3. Upon receipt of the notice, the Executive Office of the
544 Governor shall provide for a budget hearing at which the matters
545 presented in the notice and the reply shall be considered. A
546 report of the findings and recommendations of the Executive
547 Office of the Governor on such matters shall be promptly
548 submitted to the Administration Commission, which, within 30
549 days, shall approve the action of the board or direct the

550 Department of Revenue to withhold revenue sharing funds as
551 provided in paragraph (c) in an amount determined by the
552 Administration Commission to compensate for the county's lack of
553 compliance with its funding responsibilities pursuant to s.
554 28.24(12)(e)1.d. The determination of the Administration
555 Commission shall be final and shall be provided in writing to
556 the chief judge, the board, and the Department of Revenue.
557 (c)1. If the Administration Commission determines that the
558 board shall provide additional funding to fulfill its
559 responsibilities under paragraphs (a) or (b), ~~Except for~~
560 ~~revenues used for the payment of principal or interest on bonds,~~
561 ~~tax anticipation certificates, or any other form of indebtedness~~
562 ~~as allowed under s. 218.25(1),(2) or (4)~~, it shall direct the
563 Department of Revenue ~~shall~~ to withhold revenue sharing receipts
564 distributed pursuant to part II of chapter 218, except for
565 revenues used for the payment of principal or interest on bonds,
566 tax anticipation certificates, or any other form of indebtedness
567 as allowed under s. 218.25(1), (2), or (4), from that ~~any~~ county
568 determined to be not in compliance as provided in this
569 subsection. ~~with the county funding obligations for items~~
570 ~~specified in paragraphs (1)(a), (c), (d), (e), (f), (g), and (h)~~
571 ~~and subsection (3). The department shall withhold an amount~~
572 ~~equal to the difference between the amount spent by the county~~
573 ~~for the particular item in county fiscal year 2002-2003, the~~
574 ~~base year, plus 3 percent, and the amount budgeted by the county~~
575 ~~for these obligations in county fiscal year 2004-2005, if the~~
576 ~~latter is less than the former. Every year thereafter, the~~
577 ~~department shall withhold such an amount if the amount budgeted~~
578 ~~in that year is less than the base year plus 1.5 percent growth~~
579 ~~per year. On or before December 31, 2004, counties shall send to~~
580 ~~the department a certified copy of their budget documents for~~

581 ~~the respective 2 years, separately identifying expenditure~~
582 ~~amounts for each county funding obligation specified in~~
583 ~~paragraphs (1) (a), (c), (d), (e), (f), (g), and (h) and~~
584 ~~subsection (3). Each year thereafter, on or before December 31~~
585 ~~of that year, each county shall send a certified copy of its~~
586 ~~budget document to the department~~.
587 ~~(b) Beginning in fiscal year 2005-2006, additional amounts~~
588 ~~shall be withheld pursuant to paragraph (a), if the amount spent~~
589 ~~in the previous fiscal year on the items specified in paragraphs~~
590 ~~(1)(a), (c), (d), (e), (f), (g), and (h), and subsection (3) is~~
591 ~~less than the amount budgeted for those items. Each county shall~~
592 ~~certify expenditures for these county obligations for the prior~~
593 ~~fiscal year to the department within 90 days after the end of~~
594 ~~the fiscal year.~~
595 2.~~(c)~~ The department shall transfer the withheld payments
596 to the General Revenue Fund within 60 days of the determination
597 by the Administrative Commission ~~of each year~~. These payments
598 are hereby appropriated to the Department of Revenue to pay for
599 these responsibilities on behalf of the county.
600 (d) For counties subject to withholding of funds by the
601 Department of Revenue for fiscal years 2004-2005 and 2005-2006:
602 1. If the chief judge does not certify in writing by
603 October 31, 2006, that deficiencies exist in the functioning of
604 the circuit court due to the lack of sufficient budgeting by the
605 county for an item defined in (1)(a), (c), (d), (e), (f), (g),
606 (h) and (3), the Department of Revenue shall not withhold the
607 funds which would otherwise be withheld from such counties.
608 2. If the chief judge certifies in writing to the county
609 and to the Department of Revenue by October 31, 2006, that
610 deficiencies exist in the functioning of the circuit court due
611 to the lack of sufficient budget, the Department of Revenue

612 shall withhold funds for those items defined in (1)(a), (c),
613 (d), (e), (f), (g), (h) and (3) that the chief judge certifies
614 in writing are deficient and for which the county did not budget
615 sufficient funds. However, in calculating whether sufficient
616 funds were budgeted for fiscal years 2004-2005 and 2005-2006,
617 the department shall exclude from its calculations of spending
618 for the base year and fiscal years 2004-2005 and 2005-2006 any
619 non-recurring expenditures made by a county for an item
620 specified in (1)(a), (e), (f), (g), and (h). Counties shall
621 submit to the department by September 30, 2006, information
622 about such non-recurring expenditures in the form and manner
623 specified by the department.
624 (e) For purposes of this subsection, "non-recurring
625 expenditures" shall be limited to expenditures for furnishings,
626 equipment, land acquisition, and other one-time major purchases
627 or upgrades. This subsection does not relieve a county of the
628 obligation to make non-recurring expenditures when such non-
629 recurring expenditures are warranted.
630 (5) For purposes of this section, the term "salaries"
631 includes wages, benefits, expenses, and perquisites consistent
632 with those that are paid for or provided by a county to its
633 employees.
634 Section 7. Subsection (1) of section 29.0081, Florida
635 Statutes, is amended to read:
636 29.0081 County funding of additional court personnel.--
637 (1) A county and the chief judge of a judicial circuit
638 that includes that county may enter into an agreement under
639 which the county funds personnel positions, including providing
640 wages, benefits, expenses, and perquisites consistent with those
641 that are paid for or provided by a county to its employees, to
642 assist in the operation of the circuit.

643 Section 8. Paragraph (d) is added to subsection (5) of
644 section 29.0086, Florida Statutes, and subsection (9) of that
645 section is amended, to read:
646 29.0086 Article V Technology Board.--
647 (5) The board shall:
648 (d) By December 15, 2006, provide a report to the
649 Governor, the President of the Senate, the Speaker of the House
650 of Representatives, and the Chief Justice of the Supreme Court.
651 The report shall contain at a minimum:
652 1. Recommended statutory language that would provide
653 policy guidance for the judicial circuit technology strategic
654 plans to be developed and the data integration to be promoted by
655 the Judicial Circuit Article V Technology Advisory Councils.
656 2. A description of any further progress made on efforts
657 to develop a catalog of common data elements and recommendations
658 for the maintenance and enhancement of this database.
659 (9) This section is repealed effective January 1, 2007
660 ~~July 1, 2006~~.
661 Section 9. Section 29.0087, Florida Statutes, is created
662 to read:
663 29.0087 Judicial Circuit Article V Technology Advisory
664 Councils.--
665 (1) There shall be established in each judicial circuit a
666 Judicial Circuit Article V Technology Advisory Council.
667 (a) The membership of the council shall include:
668 1. The chief judge of the circuit court, or his or her
669 designee, who shall serve as chair.
670 2. The state attorney of the circuit or his or her
671 designee.
672 3. The public defender of the circuit or his or her
673 designee.

674 4. A sheriff from a county in the circuit selected by the
675 chief judge, or the sheriff's designee, who shall be appointed
676 to an initial term of 1 year and shall serve 2-year terms
677 thereafter.
678 5. A clerk from a county in the circuit selected by the
679 chief judge, or the clerk's designee, who shall be appointed to
680 an initial term of 1 year and shall serve 2-year terms
681 thereafter.
682 6. A member of a board of county commissioners from a
683 county in the circuit selected by the chief judge, or the
684 member's designee, who shall be appointed to an initial term of
685 2 years and shall serve 2-year terms thereafter.
686 7. A member in good standing of The Florida Bar practicing
687 in the circuit, appointed by the chief judge.
688 (b)1. There shall be no limit to the number of terms a
689 member may serve. For multicounty circuits, to the extent
690 possible, the members provided in subparagraphs (a)4.-6. shall
691 be from different counties.
692 2. Members of the advisory council shall serve without
693 compensation but are entitled to per diem and reimbursement for
694 travel expenses in accordance with s. 112.061. Such per diem and
695 reimbursement for travel expenses shall be paid by the entity
696 employing the member, except for the member of The Florida Bar,
697 whose per diem and reimbursement for travel expenses shall be
698 paid by the judicial circuit.
699 (c) The judicial circuit trial court technology officer
700 and such other judicial circuit employees as are necessary shall
701 serve as staff to the advisory council. Employees of the
702 entities represented by the members of the advisory council may
703 also provide staff support to the advisory council at the
704 request of the judicial circuit trial court technology officer.

705 (d) The first meeting of the advisory council shall be
706 held no later than September 30, 2006. The advisory council
707 shall meet at the call of the chair but no less frequently than
708 quarterly.
709 (2) The duties of the advisory council shall include:
710 (a) Developing an initial judicial circuit technology
711 strategic plan and subsequent updated judicial circuit
712 technology strategic plans to address court-related technology
713 and court technology needs as defined in s. 29.008(1)(f)2. and
714 (h). The initial judicial circuit technology strategic plan or
715 subsequent updated judicial circuit technology strategic plans
716 shall be provided to the chief judge no later than March 31 of
717 each year.
718 (b) Promoting secure and reliable data integration,
719 interoperability, and access among the information systems under
720 the control of the chief judge, state attorney, and public
721 defender; the clerks of court, sheriffs, and counties of the
722 circuit; and the various state agencies involved in the justice
723 system and the other court systems of the state.
724 Section 10. Subsections (4) and (6) of section 44.103,
725 Florida Statutes, are amended to read:
726 44.103 Court-ordered, nonbinding arbitration.--
727 (4) An arbitrator or, in the case of a panel, the chief
728 arbitrator~~,~~ shall have such power to administer oaths or
729 affirmation and to conduct the proceedings as the rules of court
730 shall provide. The proceedings shall be conducted informally.
731 Presentation of testimony and evidence shall be kept to a
732 minimum and matters shall be presented to the arbitrators
733 primarily through the statements and arguments of counsel. ~~At~~
734 ~~the request of~~ Any party to the arbitration may petition the
735 court in the underlying action, for good cause shown, to

736 authorize the~~, such~~ arbitrator to ~~shall~~ issue subpoenas for the
737 attendance of witnesses and the production of books, records,
738 documents, and other evidence at the arbitration and may
739 petition ~~apply to~~ the court for orders compelling such
740 attendance and production at the arbitration. Subpoenas shall be
741 served and shall be enforceable in the manner provided by law.
742 (6) Upon motion made by either party within 30 days after
743 entry of a judgment, the court may assess costs against the
744 party requesting a trial de novo, including arbitration costs,
745 court costs, reasonable attorney's fees, and other reasonable
746 costs, such as investigation expenses and expenses for expert or
747 other testimony that were incurred after the arbitration hearing
748 and continuing through the trial of the case, in accordance with
749 the guidelines for taxation of costs as adopted by the Supreme
750 Court. Such costs may be assessed if:
751 (a) The plaintiff, having filed for a trial de novo,
752 obtains a judgment at trial that is at least 25 percent less
753 than the arbitration award. In such an instance, the costs and
754 attorney's fees assessed pursuant to this subsection shall be
755 set off against the award. When the costs and attorney's fees
756 assessed pursuant to this subsection total more than the amount
757 of the judgment, the court shall enter judgment for the
758 defendant against the plaintiff for the amount of the costs and
759 attorney's fees, less the amount of the award to the plaintiff.
760 For purposes of a determination under this paragraph, the term
761 "judgment" means the amount of the net judgment entered plus all
762 taxable costs pursuant to the guidelines for taxation of costs
763 as adopted by the Supreme Court, any postarbitration collateral
764 source payments received or due as of the date of the judgment,
765 and any postarbitration settlement amounts by which the verdict
766 was reduced; or

767 (b) The defendant, having filed for a trial de novo, has a
768 judgment entered against the defendant that is a least 25
769 percent more than the arbitration award. For purposes of a
770 determination under this paragraph, the term "judgment" means
771 the amount of the net judgment entered plus any postarbitration
772 settlement amounts by which the verdict was reduced. ~~The party~~
773 ~~having filed for a trial de novo may be assessed the arbitration~~
774 ~~costs, court costs, and other reasonable costs of the party,~~
775 ~~including attorney's fees, investigation expenses, and expenses~~
776 ~~for expert or other testimony or evidence incurred after the~~
777 ~~arbitration hearing if the judgment upon the trial de novo is~~
778 ~~not more favorable than the arbitration decision.~~
779 Section 11. Subsection (3) of section 218.245, Florida
780 Statutes, as amended by section 44 of chapter 2005-236, Laws of
781 Florida, is amended to read:
782 218.245 Revenue sharing; apportionment.--
783 (3) Revenues attributed to the increase in distribution to
784 the Revenue Sharing Trust Fund for Municipalities pursuant to s.
785 212.20(6)(d)6. from 1.0715 percent to 1.3409 percent provided in
786 chapter 2003-402, Laws of Florida, shall be distributed to each
787 eligible municipality and any unit of local government which is
788 consolidated as provided by s. 9, Art. VIII of the State
789 Constitution of 1885, as preserved by s. 6(e), Art. VIII, 1968
790 revised constitution, as follows: each eligible local
791 government's allocation shall be based on the amount it received
792 from the half-cent sales tax under s. 218.61 in the prior state
793 fiscal year divided by the total receipts under s. 218.61 in the
794 prior state fiscal year for all eligible local governments;
795 provided, however, for the purpose of calculating this
796 distribution, the amount received from the half-cent sales tax
797 under s. 218.61 in the prior state fiscal year by a unit of

798 local government which is consolidated as provided by s. 9, Art.
799 VIII of the State Constitution of 1885, as amended, and as
800 preserved by s. 6(e), Art. VIII, of the Constitution as revised
801 in 1968, shall be reduced by 42 ~~50~~ percent for such local
802 government and for the total receipts. For eligible
803 municipalities that began participating in the allocation of
804 half-cent sales tax under s. 218.61 in the previous state fiscal
805 year, their annual receipts shall be calculated by dividing
806 their actual receipts by the number of months they participated,
807 and the result multiplied by 12.
808 Section 12. Subsection (13) of section 318.18, Florida
809 Statutes, is amended to read:
810 318.18 Amount of civil penalties.--The penalties required
811 for a noncriminal disposition pursuant to s. 318.14 are as
812 follows:
813 (13) In addition to any penalties imposed for noncriminal
814 traffic infractions pursuant to this chapter or imposed for
815 criminal violations listed in s. 318.17, a board of county
816 commissioners or any unit of local government which is
817 consolidated as provided by s. 9, Art. VIII of the State
818 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the
819 Constitution of 1968:
820 (a) May impose by ordinance a surcharge of up to $15 for
821 any infraction or violation to fund state court facilities. The
822 court shall not waive this surcharge. Up to 25 percent of the
823 revenue from such surcharge may be used to support local law
824 libraries provided that the county or unit of local government
825 provides a level of service equal to that provided prior to July
826 1, 2004, which shall include the continuation of library
827 facilities located in or near the county courthouse or annexes.

828 (b) That imposed increased fees or service charges by
829 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
830 purpose of securing payment of the principal and interest on
831 bonds issued by the county before July 1, 2003, to finance state
832 court facilities, may impose by ordinance a surcharge for any
833 infraction or violation for the exclusive purpose of securing
834 payment of the principal and interest on bonds issued by the
835 county before July 1, 2003, to fund state court facilities until
836 the date of stated maturity. The court shall not waive this
837 surcharge. Such surcharge may not exceed an amount per violation
838 calculated as the quotient of the maximum annual payment of the
839 principal and interest on the bonds as of July 1, 2003, divided
840 by the number of traffic citations for county fiscal year 2002-
841 2003 certified as paid by the clerk of the court of the county.
842 Such quotient shall be rounded up to the next highest dollar
843 amount. The bonds may be refunded only if savings will be
844 realized on payments of debt service and the refunding bonds are
845 scheduled to mature on the same date or before the bonds being
846 refunded.
847
848 A county may not impose both of the surcharges authorized under
849 paragraphs (a) and (b) concurrently. The county ~~clerk of court~~
850 shall report, no later than 30 days after the end of the
851 quarter, the amount of funds collected, the amount of funds
852 expended, and the uses of the funds under this subsection during
853 each quarter of the fiscal year. The county ~~clerk~~ shall submit
854 the report, in a format developed by the Office of State Courts
855 Administrator, to the chief judge of the circuit, the Governor,
856 the President of the Senate, and the Speaker of the House of
857 Representatives.

858 Section 13. Section 903.286, Florida Statutes, is amended
859 to read:
860 903.286 Return of cash bond; requirement to withhold
861 unpaid fines, fees, and court costs.--Notwithstanding the
862 provisions of s. 903.31(2), the clerk of the court shall
863 withhold from the return of a cash bond posted on behalf of a
864 criminal defendant by a person other than a bail bond agent
865 licensed pursuant to chapter 648 sufficient funds to pay any
866 unpaid court fees, court costs, and criminal penalties. The
867 clerk of the court shall provide notice to the person posting
868 the cash bond prior to the posting of such bond that the
869 proceeds are subject to withholding to pay any unpaid court
870 fees, court costs, and criminal penalties. In the event that
871 sufficient funds are not available to pay all unpaid court fees,
872 court costs, and criminal penalties, the clerk of the court
873 shall immediately obtain payment from the defendant or enroll
874 the defendant in a payment plan pursuant to s. 28.246. However,
875 the clerk may not withhold any unpaid court fees, court costs,
876 and criminal penalties from a cash bond posted prior to July 1,
877 2005, by a person other than the defendant.
878 Section 14. Subsections (1) and (2) of section 938.27,
879 Florida Statutes, are amended to read:
880 938.27 Judgment for costs on conviction.--
881 (1) In all criminal cases, convicted persons or parents of
882 adjudicated juveniles are liable for payment of the documented
883 costs of prosecution, including investigative costs incurred by
884 law enforcement agencies, by fire departments for arson
885 investigations, and by investigations of the Department of
886 Financial Services or the Office of Financial Regulation of the
887 Financial Services Commission~~, if requested by such agencies~~.

888 These costs shall be included and entered in the judgment
889 rendered against the convicted person or adjudicated juvenile.
890 (2)(a) If the court allows additional time for payment of
891 such costs, the convicted person or the parents of the
892 adjudicated juvenile shall be enrolled in a payment plan
893 pursuant to s. 28.246(4) ~~The court shall require the defendant~~
894 ~~to pay the costs within a specified period or in specified~~
895 ~~installments~~.
896 ~~(b) The end of such period or the last such installment~~
897 ~~shall not be later than:~~
898 ~~1. The end of the period of probation or community~~
899 ~~control, if probation or community control is ordered;~~
900 ~~2. Five years after the end of the term of imprisonment~~
901 ~~imposed, if the court does not order probation or community~~
902 ~~control; or~~
903 ~~3. Five years after the date of sentencing in any other~~
904 ~~case.~~
905
906 ~~However, in no event shall the obligation to pay any unpaid~~
907 ~~amounts expire if not paid in full within the period specified~~
908 ~~in this paragraph.~~
909 (b) ~~(c)~~ If not otherwise provided by the court under this
910 section, costs shall be paid immediately.
911 Section 15. Paragraph (a) of subsection (1) of section
912 938.29, Florida Statutes, is amended to read:
913 938.29 Legal assistance; lien for payment of attorney's
914 fees or costs.--
915 (1)(a) A defendant determined to be guilty of a criminal
916 act or found to have committed a delinquent act by a court or
917 jury or through a plea of guilty or nolo contendere, regardless
918 of adjudication, and who has received the assistance of the

919 public defender's office~~, a special assistant public defender,~~
920 or a court-appointed ~~conflict~~ attorney shall be liable for
921 payment of attorney's fees and costs. The court shall determine
922 the amount of the obligation. Such costs shall include, but not
923 be limited to, the cost of depositions; cost of transcripts of
924 depositions, including the cost of defendant's copy, which
925 transcripts are certified by the defendant's attorney as having
926 served a useful purpose in the disposition of the case;
927 investigative costs; witness fees; the cost of psychiatric
928 examinations; or other reasonable costs specially incurred by
929 the state and the clerk of court for the defense of the
930 defendant in criminal prosecutions. Costs shall not include
931 expenses inherent in providing a constitutionally guaranteed
932 jury trial or expenditures in connection with the maintenance
933 and operation of government agencies that must be made by the
934 public irrespective of specific violations of law. Any costs
935 assessed pursuant to this paragraph shall be reduced by any
936 amount assessed against a defendant pursuant to s. 938.05.
937 Section 16. Subsections (4) and (5) of section 948.15,
938 Florida Statutes, are renumbered as subsections (5) and (6),
939 respectively, present subsection (3) is renumbered as subsection
940 (4), paragraph (e) of that subsection is amended, and a new
941 subsection (3) is added to that section, to read:
942 948.15 Misdemeanor probation services.--
943 (3)(a) The entity providing probation services for
944 offenders sentenced by the county court shall establish a
945 process to collect payments for all offender fees, fines, and
946 costs imposed by the court, restitution owed by the misdemeanor
947 probationer, and the cost of supervision. The entity providing
948 probation services shall provide any funds collected in

949 accordance with this subsection to the payee to whom they are
950 owed within 30 days.
951 (b) For programs provided by a county with its own
952 employees, if a payment made by the misdemeanor probationer is
953 not sufficient to cover the total installment required under a
954 payment plan imposed by the court plus any additional payments
955 that are outstanding, the payment made by the offender shall be
956 allocated proportionally among any fees, fines, and costs
957 imposed by the court, restitution owed by the misdemeanor
958 probationer, and the cost of supervision, based on the
959 percentage that the sum owed for each type of payment comprises
960 of the total installment owed for all types of payment.
961 (4) ~~(3)~~ Any private entity providing services for the
962 supervision of misdemeanor probationers must contract with the
963 county in which the services are to be rendered. In a county
964 with a population of less than 70,000, the county court judge,
965 or the administrative judge of the county court in a county that
966 has more than one county court judge, must approve the contract.
967 Terms of the contract must state, but are not limited to:
968 (e) Procedures for handling the collection in accordance
969 with subsection (3) of all payments owed by an offender ~~fees and~~
970 ~~restitution~~.
971
972 In addition, the entity shall supply the chief judge's office
973 with a quarterly report summarizing the number of offenders
974 supervised by the private entity, payment of the required
975 contribution under supervision or rehabilitation, and the number
976 of offenders for whom supervision or rehabilitation will be
977 terminated. All records of the entity must be open to inspection
978 upon the request of the county, the court, the Auditor General,

979 the Office of Program Policy Analysis and Government
980 Accountability, or agents thereof.
981 Section 17. Section 939.185, Florida Statutes, is
982 renumbered as section 938.195, Florida Statutes.
983 Section 18. Subsection (3) of section 775.083, Florida
984 Statutes, is renumbered as subsection (2) of that section, and
985 present subsection (2) of that section is transferred to section
986 938.065, Florida Statutes, which is created, and amended to
987 read:
988 938.065 County crime prevention programs.--
989 ~~(2) In addition to the fines set forth in subsection (1),~~
990 Court costs shall be assessed and collected in each instance a
991 defendant pleads nolo contendere to, or is convicted of, or
992 adjudicated delinquent for, a felony, a misdemeanor, or a
993 criminal traffic offense under state law, or a violation of any
994 municipal or county ordinance if the violation constitutes a
995 misdemeanor under state law. The court costs imposed by this
996 section shall be $50 for a felony and $20 for any other offense
997 and shall be deposited by the clerk of the court into an
998 appropriate county account for disbursement for the purposes
999 provided in this subsection. A county shall account for the
1000 funds separately from other county funds as crime prevention
1001 funds. The county, in consultation with the sheriff, must expend
1002 such funds for crime prevention programs in the county,
1003 including safe neighborhood programs under ss. 163.501-163.523.
1004 Section 19. Subsections (1), (2), and (4) of section
1005 938.17, Florida Statutes, are amended to read:
1006 938.17 County delinquency prevention; juvenile assessment
1007 centers and school board suspension programs.--
1008 (1) Prior to the use of costs received pursuant to s.
1009 938.195 ~~939.185~~, the sheriff's office of the county must be a

1010 partner in a written agreement with the Department of Juvenile
1011 Justice to participate in a juvenile assessment center or with
1012 the district school board to participate in a suspension
1013 program.
1014 (2) Assessments collected by clerks of the circuit courts
1015 comprised of more than one county shall remit the funds
1016 collected pursuant to s. 938.195 ~~939.185~~ to the county in which
1017 the offense at issue was committed for deposit and disbursement.
1018 (4) A sheriff's office that receives proceeds pursuant to
1019 s. 938.195 ~~939.185~~ shall account for all funds annually by
1020 August 1 in a written report to the juvenile justice county
1021 council if funds are used for assessment centers, and to the
1022 district school board if funds are used for suspension programs.
1023 Section 20. Subsection (7) of section 938.19, Florida
1024 Statutes, is amended to read:
1025 938.19 Teen courts.--
1026 (7) A teen court administered in a county that adopts an
1027 ordinance to assess court costs under this section may not
1028 receive court costs collected under s. 938.195(1)(a)4.
1029 ~~939.185(1)(a)4.~~
1030 Section 21. Paragraph (d) of subsection (6) of section
1031 948.08, Florida Statutes, is amended to read:
1032 948.08 Pretrial intervention program.--
1033 (6)
1034 (d) Any entity, whether public or private, providing a
1035 pretrial substance abuse education and treatment intervention
1036 program under this subsection must contract with the county or
1037 appropriate governmental entity, and the terms of the contract
1038 must include, but need not be limited to, the requirements
1039 established for private entities under s. 948.15(4) ~~(3)~~.

1040 Section 22. Subsection (3) of section 948.16, Florida
1041 Statutes, is amended to read:
1042 948.16 Misdemeanor pretrial substance abuse education and
1043 treatment intervention program.--
1044 (3) Any public or private entity providing a pretrial
1045 substance abuse education and treatment program under this
1046 section shall contract with the county or appropriate
1047 governmental entity. The terms of the contract shall include,
1048 but not be limited to, the requirements established for private
1049 entities under s. 948.15(4)~~(3)~~.
1050 Section 23. Paragraph (d) of subsection (1) of section
1051 985.306, Florida Statutes, is amended to read:
1052 985.306 Delinquency pretrial intervention program.--
1053 (1)
1054 (d) Any entity, whether public or private, providing
1055 pretrial substance abuse education, treatment intervention, and
1056 a urine monitoring program under this section must contract with
1057 the county or appropriate governmental entity, and the terms of
1058 the contract must include, but need not be limited to, the
1059 requirements established for private entities under s.
1060 948.15(4)~~(3)~~. It is the intent of the Legislature that public or
1061 private entities providing substance abuse education and
1062 treatment intervention programs involve the active participation
1063 of parents, schools, churches, businesses, law enforcement
1064 agencies, and the department or its contract providers.
1065 Section 24. This act shall take effect July 1, 2006.
1066
1067
1068 ========== T I T L E A M E N D M E N T ==========
1069 Remove the entire title and insert:

1070 An act relating to continuing implementation of Constitutional
1071 Revision 7 to Article V; amending s. 27.52, F.S.; providing for
1072 liability for fees, costs, and charges of representation in
1073 delinquency proceedings; expanding a provision imposing a lien;
1074 amending s. 27.561, F.S.; deleting authorization for a court to
1075 reduce or revoke attorney's fees or costs under certain
1076 circumstances; requiring defendant-recipients or parents
1077 defaulting on payment of attorney's fees or costs to enroll in a
1078 payment plan under certain circumstances; amending s. 28.24,
1079 F.S.; decreasing a portion of a fee distributed to the Florida
1080 Association of Court Clerks and Comptroller, Inc., used to fund
1081 court-related technology needs; increasing a portion of a fee
1082 used to fund court-related technology needs and court technology
1083 needs and redirecting its distribution from the boards of county
1084 commissioners to the Court Technology Trust Fund; requiring the
1085 Florida Association of Court Clerks, Inc., to provide for an
1086 annual audit of the funding for the Comprehensive Case
1087 Information System; authorizing the Joint Legislative Auditing
1088 Committee to provide for an annual audit of the funding for the
1089 Comprehensive Case Information System; specifying additional
1090 uses of the fee; providing criteria and requirements for use and
1091 distribution of funds in the trust fund; requiring the transfer
1092 of ownership of the Comprehensive Case Information System under
1093 certain conditions; requiring the placement in escrow of source
1094 code, executable software, data and databases, and documentation
1095 relating to the Comprehensive Case Information System; amending
1096 s. 28.35, F.S.; providing additional duties of the Florida
1097 Clerks of Court Operations Corporation; providing requirements
1098 for the corporation relating to certain budget amendments;
1099 amending s. 28.36, F.S.; correcting cross-references; providing
1100 expenditure requirements for certain budgets; providing

1101 expenditure recording and reporting requirements for clerks;
1102 amending s. 29.008, F.S.; specifying methodology, criteria, and
1103 procedures for determining noncompliance of counties in funding
1104 court-related functions; providing duties of a chief judge, the
1105 board of county commissioners, the Executive Office of the
1106 Governor, and the Administration Commission; revising provisions
1107 for withholding certain revenue sharing receipts by the
1108 Department of Revenue; providing a definition; amending s.
1109 29.0086, F.S.; providing an additional reporting requirement of
1110 the Article V Technology Board; providing for future repeal of
1111 the Article V Technology Board; creating s. 29.0087, F.S.;
1112 establishing in each judicial circuit a Judicial Circuit Article
1113 V Technology Advisory Council; providing for membership;
1114 providing for terms; providing for serving without compensation;
1115 providing for per diem and travel expenses; providing for staff
1116 for the councils; providing for meetings; providing purposes and
1117 duties; amending s. 44.103, F.S.; providing additional
1118 requirements and procedures for court-ordered nonbinding
1119 arbitration proceedings; authorizing courts to assess certain
1120 costs against parties requesting de novo trials after
1121 arbitration; providing cost assessment criteria; providing a
1122 definition; amending s. 218.245, F.S.; revising apportionment
1123 criteria for revenue sharing distributions for certain local
1124 governments; amending s. 318.18, F.S.; revising reporting
1125 requirements for infraction or violation surcharge funds used to
1126 finance court facilities; amending s. 903.286, F.S.; revising
1127 authority of the clerk of court to withhold funds from return of
1128 certain cash bonds for unpaid court fees, court costs, and
1129 criminal penalties; providing notice requirements of such
1130 withheld funds; amending s. 938.27, F.S.; requiring convicted
1131 persons or parents of adjudicated juveniles to enroll in certain

1132 prosecution cost-payment plans; deleting certain cost-payment
1133 criteria; deleting a requirement for deposit and use of costs
1134 collected by the state attorney; amending s. 938.29, F.S.;
1135 revising certain provisions for liability for payment of
1136 attorney's fees and costs; amending s. 948.15, F.S.; requiring
1137 misdemeanor probation service providers to establish a process
1138 for collecting certain payments; providing for allocating
1139 certain payments among outstanding obligations; renumbering s.
1140 939.185, F.S., as s. 938.195, F.S.; creating s. 938.065, F.S.,
1141 by transferring and amending s. 775.083(2), F.S.; providing for
1142 financing county crime prevention programs from certain court
1143 costs; amending ss. 938.17, 938.19, 948.08, 948.16, and 985.306,
1144 F.S.; correcting cross-references; providing an effective date.

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: Fiscal Council
2 Representative(s) Seiler offered the following:
3
4 **Amendment to Amendment (1) by Representative Kottkamp (with**
5 **directory and title amendments)**
6 Insert between line(s) 6 and 7:
7 Section 1. Paragraph (c) of subsection (1) and subsection
8 (2) of section 27.51, Florida Statutes, are amended to read:
9 27.51 Duties of public defender.--
10 (1) The public defender shall represent, without
11 additional compensation, any person determined to be indigent
12 under s. 27.52 and:
13 (c) Who is a child taken into custody for a felony or
14 misdemeanor or for criminal contempt or is facing delinquency
15 proceedings under chapter 985 ~~Alleged to be a delinquent child~~
16 ~~pursuant to a petition filed~~ before a circuit court;
17 (2) Except as provided in s. 985.203, the court may not
18 appoint the public defender to represent, even on a temporary
19 basis, any person who is not indigent. The court, however, may
20 appoint private counsel in capital cases as provided in ss.
21 27.40 and 27.5303.

22 Section 2. Subsection (1), paragraph (a) of subsection
23 (2), and subsection (6) of section 27.52, Florida Statutes, are
24 amended to read:
25 27.52 Determination of indigent status.--
26 (1) APPLICATION TO THE CLERK.--A person 18 years of age or
27 older seeking appointment of a public defender under s. 27.51
28 based upon an inability to pay must apply to the clerk of the
29 court for a determination of indigent status using an
30 application form developed by the Florida Clerks of Court
31 Operations Corporation with final approval by the Supreme Court.
32 An additional affidavit need not be filed if appointment is
33 being sought under s. 27.51(1)(f) and the public defender or
34 private court-appointed counsel had already been appointed for a
35 matter arising under s. 27.51(1)(a)-(e). No affidavit of
36 indigency shall be required of a minor.
37 (a) The application must include, at a minimum, the
38 following financial information:
39 1. Net income, consisting of total salary and wages, minus
40 deductions required by law, including court-ordered support
41 payments.
42 2. Other income, including, but not limited to, social
43 security benefits, union funds, veterans' benefits, workers'
44 compensation, other regular support from absent family members,
45 public or private employee pensions, unemployment compensation,
46 dividends, interest, rent, trusts, and gifts.
47 3. Assets, including, but not limited to, cash, savings
48 accounts, bank accounts, stocks, bonds, certificates of deposit,
49 equity in real estate, and equity in a boat or a motor vehicle
50 or in other tangible property.
51 4. All liabilities and debts.

52 5. If applicable, the amount of any bail paid for the
53 applicant's release from incarceration and the source of the
54 funds.
55
56 The application must include a signature by the applicant which
57 attests to the truthfulness of the information provided. The
58 application form developed by the corporation must include
59 notice that the applicant may seek court review of a clerk's
60 determination that the applicant is not indigent, as provided in
61 this section.
62 (b) An applicant shall pay a $40 application fee to the
63 clerk for each application for court-appointed counsel filed.
64 The applicant shall pay the fee within 7 days after submitting
65 the application. If the applicant does not pay the fee prior to
66 the disposition of the case, the clerk shall notify the court,
67 and the court shall:
68 1. Assess the application fee as part of the sentence or
69 as a condition of probation; or
70 2. Assess the application fee pursuant to s. 938.29.
71 (c) Notwithstanding any provision of law, court rule, or
72 administrative order, the clerk shall assign the first $40 of
73 any fees or costs paid by an indigent person as payment of the
74 application fee. A person found to be indigent may not be
75 refused counsel or other required due process services for
76 failure to pay the fee.
77 (d) All application fees collected by the clerk under this
78 section shall be transferred monthly by the clerk to the
79 Department of Revenue for deposit in the Indigent Criminal
80 Defense Trust Fund administered by the Justice Administrative
81 Commission, to be used to as appropriated by the Legislature.
82 The clerk may retain 2 percent of application fees collected

83 monthly for administrative costs prior to remitting the
84 remainder to the Department of Revenue.
85 (e)1. The clerk shall assist a person who appears before
86 the clerk and requests assistance in completing the application,
87 and the clerk shall notify the court if a person is unable to
88 complete the application after the clerk has provided
89 assistance.
90 2. The law enforcement officer or booking officer who
91 commits a defendant to custody shall immediately advise the
92 defendant of the right to counsel. If the defendant requests
93 counsel or advises the officer that he or she cannot afford
94 counsel, the officer shall immediately and effectively place the
95 defendant in communication with the Office of the Public
96 Defender of the circuit in which the arrest is made or the
97 booking takes place. If the person seeking appointment of a
98 public defender is incarcerated, the public defender is
99 responsible for providing the application to the person and
100 assisting him or her in its completion and is responsible for
101 submitting the application to the clerk on the person's behalf.
102 The public defender may enter into an agreement for jail
103 employees, pretrial services employees, or employees of other
104 criminal justice agencies to assist the public defender in
105 performing functions assigned to the public defender under this
106 subparagraph.
107 (2) DETERMINATION BY THE CLERK.--The clerk of the court
108 shall determine whether an applicant seeking appointment of a
109 public defender is indigent based upon the information provided
110 in the application and the criteria prescribed in this
111 subsection.
112 (a)1. An applicant, including an applicant who is ~~a minor~~
113 ~~or~~ an adult tax-dependent person, is indigent if the applicant's
114 income is equal to or below 200 percent of the then-current

115 federal poverty guidelines prescribed for the size of the
116 household of the applicant by the United States Department of
117 Health and Human Services or if the person is receiving
118 Temporary Assistance for Needy Families-Cash Assistance,
119 poverty-related veterans' benefits, or Supplemental Security
120 Income (SSI).
121 2. There is a presumption that the applicant is not
122 indigent if the applicant owns, or has equity in, any intangible
123 or tangible personal property or real property or the expectancy
124 of an interest in any such property having a net equity value of
125 $2,500 or more, excluding the value of the person's homestead
126 and one vehicle having a net value not exceeding $5,000.
127
128
129 ========== T I T L E A M E N D M E N T ==========
130 Remove line(s) 1073 and 1074 and insert:
131 An act relation to continuing implementation of Constitutional
132 Revision 7 to Article V; amending s. 27.51, F.S.; revising
133 certain criteria for persons to be represented by the public
134 defender without additional compensation; providing an exception
135 to a prohibition against a court appointing the public defender
136 to represent a person who is not indigent; amending s. 27.52,
137 F.S.; providing an age limitation on persons seeking appointment
138 of a public defender based upon an inability to pay; specifying
139 conditions under which an additional affidavit need not be
140 filed; providing requirements for a law enforcement officer or
141 booking officer committing a defendant to custody; providing
142 for

Bill No. **7235**

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: Fiscal Council
2 Representative(s) Seiler offered the following:
3
4 **Amendment to Amendment (1) by Representative Kottkamp (with**
5 **directory and title amendments)**
6 Insert between line(s) 435 and 436:
7 (1) Counties are required by s. 14, Art. V of the State
8 Constitution to fund the cost of communications services,
9 existing radio systems, existing multiagency criminal justice
10 information systems, and the cost of construction or lease,
11 maintenance, utilities, and security of facilities for the
12 circuit and county courts, public defenders' offices, state
13 attorneys' offices, guardian ad litem offices, and the offices
14 of the clerks of the circuit and county courts performing court-
15 related functions. For purposes of this section, the term
16 "circuit and county courts" shall include the offices and
17 staffing of the guardian ad litem programs. The county
18 designated under s. 35.05(1) as the headquarters for each
19 appellate district shall fund these costs for the appellate
20 division of the public defender's office in that county. For
21 purposes of implementing these requirements, the term:
22 (f) "Communications services" are defined as any
23 reasonable and necessary transmission, emission, and reception

24 of signs, signals, writings, images, and sounds of intelligence
25 of any nature by wire, radio, optical, audio equipment, video
26 equipment, or other electromagnetic systems and includes all
27 facilities and equipment owned, leased, or used by judges,
28 clerks, public defenders, state attorneys, and all staff of the
29 state courts system, state attorneys' offices, public defenders'
30 offices, and clerks of the circuit and county courts performing
31 court-related functions. Such system or services shall include,
32 but not be limited to:
33 1. Telephone system infrastructure, including computer
34 lines, telephone switching equipment, and maintenance, and
35 facsimile equipment, wireless communications, cellular
36 telephones, pagers, and video teleconferencing equipment and
37 line charges. Each county shall continue to provide access to a
38 local carrier for local and long distance service and shall pay
39 toll charges for local and long distance service.
40 2. All computer networks, systems and equipment, including
41 computer hardware and software, modems, printers, wiring,
42 network connections, maintenance, support staff or services
43 including any county-funded support staff located in the offices
44 of the circuit court, county courts, state attorneys, and public
45 defenders, training, supplies, and line charges necessary for an
46 integrated computer system to support the operations and
47 management of the state courts system, the offices of the public
48 defenders, the offices of the state attorneys, and the offices
49 of the clerks of the circuit and county courts and the
50 capability to connect those entities and reporting data to the
51 state as required for the transmission of revenue, performance
52 accountability, case management, data collection, budgeting, and
53 auditing purposes. The integrated computer system shall be
54 operational by July 1, 2006, and, at a minimum, permit the
55 exchange of financial, performance accountability, case

56 management, case disposition, and other data across multiple
57 state and county information systems involving multiple users at
58 both the state level and within each judicial circuit and be
59 able to electronically exchange judicial case background data,
60 sentencing scoresheets, and video evidence information stored in
61 integrated case management systems over secure networks. Once
62 the integrated system becomes operational, counties may reject
63 requests to purchase communication services included in this
64 subparagraph not in compliance with standards, protocols, or
65 processes adopted by the board established pursuant to s.
66 29.0086.
67 3. Courier messenger and subpoena services.
68 4. Auxiliary aids and services for qualified individuals
69 with a disability which are necessary to ensure access to the
70 courts. Such auxiliary aids and services include, but are not
71 limited to, sign language interpretation services required under
72 the federal Americans with Disabilities Act other than services
73 required to satisfy due-process requirements and identified as a
74 state funding responsibility pursuant to ss. 29.004, 29.005,
75 29.006, and 29.007, real-time transcription services for
76 individuals who are hearing impaired, and assistive listening
77 devices and the equipment necessary to implement such
78 accommodations.
79
80
81 ========== D I R E C T O R Y A M E N D M E N T ==========
82 Remove line(s) 432 and 433 and insert:
83 Section 6. Paragraph (f) of subsection (1) and subsection
84 (4) of section 29.008, Florida Statutes, are amended, and
85 subsection (5) is added to that
86
87

88 ========== T I T L E A M E N D M E N T ==========

89 Remove line(s) 1105 and insert:

90 s. 29.008, F.S.; revising a definition; specifying methodology,

91 criteria, and

92

Bill No. **7235**

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: Fiscal Council
2 Representative(s) Seiler offered the following:
3
4 **Amendment to Amendment (1) by Representative Kottkamp (with**
5 **title amendments)**
6 Insert between line(s) 1052 and 1053:
7 Section 23. Subsections (1), (2), and (3) of section
8 985.203, Florida Statutes, are amended to read:
9 985.203 Right to counsel.--
10 (1) A child is entitled to representation by legal counsel
11 at all stages of any proceedings under this part. If the ~~child~~
12 ~~and the~~ parents or other legal guardian is ~~are~~ indigent ~~and~~
13 ~~unable to employ counsel for the child~~, the court shall appoint
14 counsel pursuant to s. 27.52. However, if a parent or legal
15 guardian is also the alleged victim in the case, the court shall
16 appoint counsel to represent the child without requiring an
17 affidavit from the parent or legal guardian. Determination of
18 indigence and costs of representation shall be as provided by
19 ss. 27.52 and 938.29. Legal counsel representing a child ~~who~~
20 ~~exercises the right to counsel~~ shall be allowed to provide
21 advice and counsel to the child at any time subsequent to the
22 child's arrest, including prior to a detention hearing while in
23 secure detention care. A child shall be represented by legal

24 counsel at all stages of all court proceedings unless the right
25 to counsel is freely, knowingly, and intelligently waived by the
26 child after the child has been given a meaningful opportunity to
27 confer with counsel. If the child appears without counsel, the
28 court shall appoint counsel if the parents or legal guardian is
29 indigent ~~advise the child of his or her rights with respect to~~
30 ~~representation of court appointed counsel~~.
31 (2) If the parents or legal guardian of an indigent child
32 is ~~are~~ not indigent but refuses ~~refuse~~ to employ counsel, the
33 court shall appoint counsel pursuant to s. 27.52 to represent
34 the child at the detention hearing and until counsel is
35 provided. Costs of representation are hereby imposed as provided
36 by ss. 27.52 and 938.29. Thereafter, the court shall not appoint
37 counsel for an indigent child with nonindigent parents or legal
38 guardian but shall order the parents or legal guardian to obtain
39 private counsel. A parent or legal guardian of an indigent child
40 who has been ordered to obtain private counsel for the child and
41 who willfully fails to follow the court order shall be punished
42 by the court in civil contempt proceedings. If a nonindigent
43 parent or legal guardian is also the alleged victim in the case,
44 the court shall not order that parent or legal guardian to
45 obtain private counsel but shall appoint counsel pursuant to s.
46 27.52 to represent the indigent child.
47 (3) An indigent child with nonindigent parents or legal
48 guardian may have counsel appointed pursuant to s. 27.52 if the
49 parents or legal guardian has ~~have~~ willfully refused to obey the
50 court order to obtain counsel for the child and has ~~have~~ been
51 punished by civil contempt and then still has ~~have~~ willfully
52 refused to obey the court order. Costs of representation are
53 hereby imposed as provided by ss. 27.52 and 938.29.
54
55 ========== T I T L E A M E N D M E N T ==========

56 Remove line(s) 1146 and insert:

57 costs; amending s. 985.203, F.S.; revising provisions providing

58 for a child's right to counsel; amending ss. 938.17, 938.19,

59 948.08, 948.16, and 985.306,

Amendment Packet B

Fiscal Council

Joe Negron, Chair
Fred Brummer, Vice Chair

Friday, April 21, 2006
11:15 a.m. – 1:00 p.m.
212 Knott

Allan G. Bense
Speaker

Joe Negron
Chair

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: Fiscal Council
2 Representative(s) Benson offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between line(s) 72 and 73 insert:
6 Section 2. Section 282.318, Florida Statutes, is amended
7 to read:
8 282.318 Security of data and information technology
9 resources.--
10 (1) This section may be cited as the "Security of Data and
11 Information Technology Resources Act."
12 (2)~~(a)~~ The Department of Management Services, hereafter
13 referred to as the department ~~The State Technology Office~~, in
14 consultation with each agency head, is responsible for
15 coordinating, assessing, and recommending minimum operating
16 procedures for ~~and accountable for~~ assuring an adequate level of
17 security for ~~all~~ data and information technology resources. To
18 assist the department in carrying ~~of each agency and, to carry~~
19 out this responsibility, each agency shall, at a minimum:

20 (a)~~1.~~ Designate an information security manager who shall
21 administer the security program of each agency for its data and
22 information technology resources.
23 (b)~~2.~~ Conduct, and ~~periodically~~ update every 3 years, a
24 comprehensive risk analysis to determine the security threats to
25 the data, information, and information technology resources of
26 each agency. The risk analysis information is confidential and
27 exempt from the provisions of s. 119.07(1), except that such
28 information shall be available to the Auditor General in
29 performing his or her postauditing duties.
30 (c)~~3.~~ Develop, and periodically update, written internal
31 policies and procedures that are consistent with the standard
32 operating procedures recommended by the department to assure the
33 security of the data and information technology resources of
34 each agency. The internal policies and procedures which, if
35 disclosed, could facilitate the unauthorized modification,
36 disclosure, or destruction of data or information technology
37 resources are confidential information and exempt from the
38 provisions of s. 119.07(1), except that such information shall
39 be available to the Auditor General in performing his or her
40 postauditing duties.
41 (d)~~4.~~ Implement appropriate cost-effective safeguards to
42 reduce, eliminate, or recover from the identified risks to the
43 data and information technology resources of each agency.
44 (e)~~5.~~ Ensure that periodic internal audits and evaluations
45 of each security program for the data, information, and
46 information technology resources of the agency are conducted.
47 The results of such internal audits and evaluations are
48 confidential information and exempt from the provisions of s.
49 119.07(1), except that such information shall be available to

50 the Auditor General in performing his or her postauditing
51 duties.
52 (f)~~6.~~ Include appropriate security requirements~~, as~~
53 ~~determined by the State Technology Office, in consultation with~~
54 ~~each agency head,~~ in the written specifications for the
55 solicitation of information technology resources which are
56 consistent with the standard security operating procedures as
57 recommended by the department.
58 ~~(b)~~ In those instances in which the department ~~State~~
59 ~~Technology Office~~ develops state contracts for use by state
60 agencies, the department ~~office~~ shall include appropriate
61 security requirements in the specifications for the solicitation
62 for state contracts for procuring information technology
63 resources.
64 (3) In order to ensure the security of data, information,
65 and information technology resources, the department shall
66 establish the Office of Information Security and shall designate
67 a Chief Information Security Officer as the head of the office.
68 The office shall coordinate its activities with the Agency Chief
69 Information Officers Council as established in s. 282.315. The
70 office is responsible for developing a strategic plan for
71 information technology security which shall be submitted by
72 December 1, 2006, to the Executive Office of the Governor, the
73 President of the Senate, and the Speaker of the House of
74 Representatives; developing standards and templates for
75 conducting comprehensive risk analyses and information security
76 audits by state agencies; assisting agencies in their compliance
77 with the provisions of this section; establishing minimum
78 standards for the recovery of information technology following a
79 disaster; and conducting training for agency information

80 security managers. This subsection shall expire on June 30,
81 2007.
82 Section 3. The Legislature finds that infrastructure
83 enhancements and improvements to the radio system used by state
84 law enforcement agencies will provide increased protection to
85 the residents of this state and should be considered for
86 additional funding. In order to ensure continued, improved
87 communication and protection by state and local law enforcement
88 personnel, the recommendations of the Joint Task Force on State
89 Agency Law Enforcement Communications, dated February 2005, or
90 any subsequent recommendations of the joint task force, should
91 be implemented contingent upon the appropriation of funds.
92 Section 4. For fiscal year 2006-2007, seven positions are
93 authorized and $750,000 nonrecurring is appropriated from the
94 General Revenue Fund to the Department of Management Services
95 for personnel and other expenses related to the Office of
96 Information Security.
97
98
99 ========== T I T L E A M E N D M E N T ==========
100 Remove line(s) 16-17 and insert:
101 regulatory fees by the Legislature; amending s. 282.318, F.S.;
102 requiring the Department of Management Services to recommend
103 minimum operating procedures for the security of data and
104 information technology resources; requiring each agency to
105 conduct certain procedures to assure the security of data,
106 information, and information technology resources; requiring
107 that the results of certain internal audits and evaluations be
108 available to the Auditor General; requiring the department to
109 establish an Office of Information Security and to designate a

110 Chief Information Security Officer; requiring the office to
111 develop a strategic plan; providing that the office is
112 responsible for certain procedures and standards; providing
113 legislative findings with respect to the provision of additional
114 funds for enhancements and improvements to the radio system used
115 by state law enforcement agencies; providing an appropriation;
116 providing an effective date.
117