Fiscal Council

Joe Negron, Chair
Fred Brummer, Vice Chair

Monday, April 17, 2006
4:15 p.m.– 5:15 p.m.
212 Knott

Allan G. Bense
Speaker

Joe Negron
Chair

Florida House of Representatives

Fiscal Council

Allan Bense
Speaker

Joe Negron
Chair

AGENDA
Monday, April 17, 2006
4:15 p.m. – 5:15 p.m.
212 Knott Building

I. Meeting Call to Order

II. Opening Remarks by Chair

III. Consideration of the following bill(s):

HB 995 Agency Inspectors General by Bean
HB 1161 Okeechobee County by Machek
HB 1123 CS Government Accountability by Sansom, Rubio, Cannon
HB 1315 Department of Transportation by Russell
HB 1363 CS Affordable Housing by Davis, M.
HB 1473 CS Energy by Hasner
HB 1623 CS Youth and Young Adults with Disabilities by Bean
HB 7121 CS Disaster Preparedness Response and Recovery by Domestic Security Committee
HB 7225 Property and Casualty Insurance by Insurance Committee
HB 7227 Florida Hurricane Damage Prevention Endowment Trust Fund by Insurance Committee
HB 7155 State Financial Matters by Governmental Operations Committee

IV. Closing Remarks and Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
2) Fiscal Council		Dobbs	Kelly
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

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

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

The bill provides an effective date of October 1, 2006 for section 1 except for paragraph 20.055(6)(b), F.S.. Section 1 for paragraph 20.055(6)(b), F.S., becomes effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

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

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

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

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

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

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

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

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

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

C. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The cost of this change will depend upon the determination of what constitutes an "impartial hearing".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The counties will be required to send return receipt letters to delinquent filers at a cost of $1.85 per letter.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

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

Rulemaking concerns
The bill provides that the Chief Inspector General, part of the Executive Office of the Governor, shall create "specific procedures by which all inspectors general will implement" the hearing process

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

described in the bill. Such procedures may require development through the administrative rulemaking process described in s. 120.54, F.S., in order to be valid assertions of agency action.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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

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

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

HB 1161

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

The bill has no state fiscal impact.

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

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

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

Effect of Proposed Changes

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

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

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

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

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

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

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

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[2] This section designates special deputy sheriffs appointed by the sheriff: (a) to attend elections on election days; (b) to perform undercover investigative work; (c) for specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only; (d) for special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners; (e) to aid in preserving law and order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck, or a similar accident; (f) to raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy; (g) to serve as a parking enforcement specialist pursuant to s. 316.640(2), F.S.

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

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

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

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

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

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

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

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

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

The board must submit its written findings and recommendations to the sheriff within five days after the hearing. It may make any recommended disposition, including, but not limited to, oral or verbal reprimand, suspension, reduction of rank, termination of employment, sustention or reversal of the original decision, or recommendation of a more severe disposition. The sheriff is required to notify the employee of the decision of the career service appeal board. However, the sheriff has the right to make a final determination in the matter. In the event an employee is exonerated, he or she must be reinstated without prejudice or penalty.

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

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

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

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

C. SECTION DIRECTORY:

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

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

Section 3: Provides for status as permanent employees; and prohibits actions to circumvent this act.

Section 4: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 18, 2006

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

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, the bill will have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 CS Government Accountability
SPONSOR(S): Sansom and others
TIED BILLS: HB 1125 **IDEN./SIM. BILLS:** SB 2460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 2 N, w/CS	Mitchell	Williamson
2) Fiscal Council		Belcher	Kelly
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Government Accountability Act. The bill provides definitions, establishes the Legislative Sunset Advisory Committee (LSAC), provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for the abolition and continuation of state agencies and advisory committees, creates procedures after termination, requires review and monitoring, and provides a savings clause.

The bill will have a fiscal impact on the Legislature for the expenses of the LSAC and its assigned legislative staff.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides a schedule to abolish state agencies, examining and licensing boards, councils, advisory councils, committees, task forces, coordinating councils, commissions or boards of trustees. This bill creates a legislative committee to review these entities and report its findings and recommendations.

B. EFFECT OF PROPOSED CHANGES:

The Florida Legislature previously abolished boards, committees, commissions, councils, and agencies, as well as regulations of businesses and professions, pursuant to a schedule and subject to legislative review.

Regulatory Reform Act of 1976/Regulatory Sunset Act

In enacting the Regulatory Reform Act of 1976, the Florida Legislature set forth a schedule to repeal provisions of law that regulated professions, occupations, businesses, or industries.[1] Codified as sections 11.61 and 11.6105, Florida Statutes, the Regulatory Reform Act of 1976 established criteria for the Legislature to consider in determining whether to reestablish a program or function and also provided for the appointment of a select joint committee to assist in implementation.

In 1981, the Regulatory Reform Act of 1976 was substantially reworded and changed to the Regulatory Sunset Act.[2] The Regulatory Sunset Act required each appropriate substantive committee to review programs and functions 15 months prior to the date set for repeal and to make a recommendation regarding continuation, modification, or repeal.

The Legislature repealed the Regulatory Sunset Act in 1991.[3]

Sundown Act

Section 11.611, Florida Statutes, was previously the Sundown Act.[4] The Sundown Act, enacted in 1978, originally provided for the 1979 repeal of boards, committees, commissions, and councils which had not held a meeting after January 1, 1975.[5] The Sundown Act also provided for the 1982 repeal of all other boards, committees, commissions, and councils.[6] The Sundown Act required the Legislature to review these boards, committees, councils, and commissions to determine if any should be reestablished for the public interest.[7] The Sundown Act prohibited boards, committees, commissions, and councils from being established for more than six years.[8]

The Sundown Act was substantially reworded in 1982.[9] The revised Sundown Act contained criteria for the Legislature to consider in determining whether to reestablish an advisory body, commission, or

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[1] Ch. 76-318, Laws of Fla.; additional programs and functions added by ch. 77-457, Laws of Fla.
[2] Ch. 81-318, Laws of Fla.
[3] Ch. 91-429, Laws of Fla. § 4 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). *See also* ch. 96-318, Laws of Fla., § 33.
[4] Section 11.6115, Florida Statutes, codified additional provisions related to the Sundown Act.
[5] Ch. 78-323, Laws of Fla.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ch. 82-46, Laws of Fla.

board of trustees. The revised Sundown Act also set forth a revised schedule for abolishment and review.

The Legislature repealed the Sundown Act in 1991.[10]

Explanation for the Previous Repeal of the Sunset and Sundown Acts

The bill analysis from the repeal of the Regulatory Sunset and Sundown Acts provides the following explanation for their repeal:

> "This committee [Senate Committee on Governmental Operations] first studied the Regulatory Sunset Act and the Sundown Act in 1988. At that time, the committee was directed to assess the laws and their implementation, and to evaluate their accomplishments. The 1988 report considered the overall costs and benefits of the review process of entities subject to repeal under the Sunset and Sundown laws. As well, the prior report identified high tangible costs associated with Sunset and Sundown reviews. The benefits of the laws, while generally acknowledged by both legislative and executive agency staff, were found to be intangible, and therefore difficult to quantify.
>
> The review of the Sunset and Sundown laws revealed that approximately 240 Sunset reviews have occurred between 1977 and 1991. Since then, an estimated 20 regulatory laws have been repealed, and 50 new ones have been created.
>
> There have been approximately 280 Sundown reviews conducted since 1978. Ninety advisory bodies have been repealed since 1978, and an estimated 150 have been created. Of the 90 advisory bodies that have been repealed, 9 were repealed in 1978 without prior reviews, as the law provided, because they have not met in the 5 years prior to the passage of the Sundown Act.
>
> Staff's review found that Sunset reviews are usually more complicated and time-consuming than Sundown reviews. This is due to the technical nature of many laws which regulate professions and industries.
>
> Based on the 1991 review of these laws, and the data available to measure the costs of the reviews, it was concluded that the costs are high. The review also finds, however, that some benefits of the laws are recognized by legislative and agency staff because the laws serve as one mechanism for oversight of executive branch entities. The benefits, which are intangible, are difficult to quantify, while the costs of implementing the laws are very real, and are thus much easier to measure.
>
> The 1991 interim project further indicates that the initial reviews conducted of Sunset and Sundown entities are generally perceived to be more useful, in terms of the substantive results they yield, than are second and other subsequent reviews. Further, although the results of second and other subsequent reviews are generally less substantive, such subsequent reviews require the same amount of time (i.e., 525 analyst-hours for Sunset reviews and 152 analyst-hours for Sundown reviews) as do first-time Sunset and Sundown reviews. The amount of time required of executive agency staff and of legislators is also the same for second and subsequent reviews, even though the benefits gained from the reviews appear to be far less than are those gained in first-time reviews. The review also found that, in 1987, many second-cycle Sunset and Sundown reviews began. This means that many of the reviews conducted since 1987 have been second or third-time reviews for Sunset and Sundown entities.

[10] Ch. 91-429, Laws of Fla. § 5 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). *See also* ch. 96-318, Laws of Fla., § 33.

The findings of this review also suggest that general oversight by legislative staff of executive agencies and of the statutes which govern them has decreased as staff has been required to perform an increasing number of Sunset and Sundown reviews assigned by law. Since general oversight responsibilities are of a more discretionary nature, reviews which are required by statute necessarily take precedence over projects which are discretionary."[11]

This bill analysis recognizes the value of the review process, particularly the initial review. The bill analysis also specifies the staff effort required to perform the analysis and reviews for sunset and sundown.

Florida Government Accountability Act

HB 1123 creates the Florida Government Accountability Act. The bill recreates chapter 21, Florida Statutes,[12] provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for abolition and continuation, creates procedures after termination, requires review and monitoring, and provides a savings clause.

Definitions

The bill provides definitions for "state agency" and "agency". This definition not only includes departments,[13] but also any other administrative unit of state government scheduled for termination and prior review under the Florida Government Accountability Act.

The bill defines "committee" as the Legislative Sunset Advisory Committee.

The bill defines "advisory committee" as "any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees."[14] Advisory committee also includes "any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government."

Legislative Sunset Advisory Committee: Membership

The bill creates the Legislative Sunset Advisory Committee ("LSAC") with the following composition:

- Five members of the Senate;
- One public member appointed by the President of the Senate;
- Five members of the Florida House of Representatives; and
- One public member appointed by the Speaker of the House of Representatives.

The bill contains several other provisions related to appointment:

(1) Each appointing authority is permitted to designate himself or herself as one of the legislative appointees;
(2) If a legislative member ceases to be a member of the house from which he or she was appointed, the member vacates his or her membership on the committee; and
(3) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

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[11] Fla. S. Comm. on Gov. Over., SB 28-D (1991) Staff Analysis (Dec. 11, 1991) (on file with comm.).
[12] Chapter 21, Florida Statutes, previously contained provisions related to the State Auditing Department. Most of the provisions were repealed pursuant to chapters 69-82 and 69-106, Laws of Florida.
[13] Fla. Stat. 20.03(2)
[14] The bill references the definitions in sections 20.03(3), (7), (8), (9), (10), or (12), Florida Statutes.

Each member serves a term of two years and a public member may not serve more than two consecutive two-year terms. The bill further provides that a member is considered to have served a term only if the member has served more than half a term. The bill prohibits an individual from serving as the public member if he or she is regulated by a state agency that the LSAC will review during the term for which the individual would serve or if he or she is employed by, participates in the management of, or directly or indirectly has more than a 10-percent interest in a business entity or other organization regulated by a state agency the LSAC will review during the term for which the individual would serve. The bill makes it grounds for removal to not meet these eligibility criteria, but not impacting the validity of any action taken by the LSAC if a ground for removal existed.

LSAC: Organization

The bill requires initial appointments to be made no later than November 30, 2006, and subsequent appointments shall be made not later than January 15 of the year following each organization session of the Legislature.

The bill provides that the LSAC will have a chair and vice chair, each from a different chamber, that alternates each year between the Senate and the House. A Senate appointee serves as chair during odd-numbered years and as vice-chair during even-numbered years. A House appointee serves as chair during even-numbered years and as vice-chair during odd-numbered years.

The bill sets a quorum for the LSAC as seven members and requires a recorded vote of seven for a final action or recommendation.

The bill permits each member of the LSAC to be reimbursed for actual and necessary expenses incurred in performing LSAC duties. Reimbursement for legislative members coming from the appointing chamber and reimbursement for public members coming from LSAC funds.

The bill allows each chamber to employ staff to work for the chair and vice chair on matters related to LSAC activities.

Schedule to Abolish State Agencies/Advisory Committees

The bill provides a schedule to abolish certain state agencies and their advisory committees:

2008	2009	2010	2011
Advisory committees for the Fish and Wildlife Conservation Commission	Department of Children and Family Services	Advisory committees for the Florida Community College System	Agency for Health Care Administration
Department of Agriculture and Consumer Services	Department of the Lottery	Advisory committees for the State University System	Agency for Persons with Disabilities
Department of Citrus, including the Citrus Commission	Department of Management Services	Agency for Workforce Innovation	Department of Elderly Affairs
Department of Community Affairs	Department of State	Department of Education	Department of Health
Department of Environmental Protection			
Department of			

2008	2009	2010	2011
Highway Safety and Motor Vehicles			
Water management districts.			

2012	2013	2014	2015
Department of Business and Professional Regulation	Advisory committees for the State Board of Administration	Department of Corrections	Executive Office of the Governor
Department of Transportation	Department of Financial Services, including the Financial Services Commission	Department of Juvenile Justice	Florida Public Service Commission
Department of Veterans' Affairs	Department of Revenue	Department of Law Enforcement	
		Department of Legal Affairs	
		Justice Administrative Commission	
		Parole Commission	

Agency and Advisory Committee Reports and Requests for Assistance

Based on this schedule, the bill requires agencies and their advisory committees to report to the Legislature not later than October 20th of even-numbered years and not later than July 31st of odd-numbered years. The agency must address the specified review criteria and provide any other appropriate or requested information.

The bill allows the LSAC to request the assistance of state agencies and officers. The bill specifically authorizes the LSAC and its designated staff to inspect, copy, and investigate the books, records, papers, documents, data operation, and physical plant of any public agency or advisory committee, including confidential and exempt information.

Review Criteria

The bill requires agencies and advisory committees to address, and the LSAC to consider, fourteen criteria for determining whether a public need exists for the continuation of a state agency or its advisory committees or the performance of the functions of the agency or its advisory committees.

These are the criteria:

(1) The efficiency with which the agency or advisory committee operates.
(2) An identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities.
(3) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public.
(4) The extent to which the advisory committee is needed and is used.
(5) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

(6) Whether the agency has recommended to the Legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates.
(7) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.
(8) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.
(9) The extent to which the agency has complied with applicable requirements of an agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals; or state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses.
(10) The extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section.
(11) The extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees.
(12) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 287, Florida Statutes, and section 24, Article I of the Florida Constitution and follows records management practices that enable the agency to respond efficiently to requests for public information.
(13) The effect of federal intervention or loss of federal funds if the agency is abolished.
(14) Whether any advisory committee or any other part of the agency exercises its powers and duties independently of the direct supervision of the agency head in violation of section 6, Article IV of the Florida Constitution.

LSAC Responsibilities

The bill creates several responsibilities for the LSAC which must be completed by March 1 of each year.

Review. The LSAC is required to review the agency evaluations regarding these criteria.

Public Hearings. The LSAC must complete all public hearings concerning the application of these criteria to the agency and its advisory committees. The scope of the public hearings is not limited to this criteria

Consultation. The LSAC has to consult with the Legislative Budget Commission, the Planning and Budgeting Office in the Executive Office of the Governor, the Auditor General, and the Chief Financial Officer, or their successors, on the application of these criteria to the agencies and its advisory committees.

Report. The LSAC must report its specific findings regarding these criteria, make recommendations, and provide other information necessary for a complete evaluation of each agency and its advisory committees.

Recommendations. The LSAC must make three types of recommendations:
(1) on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;
(2) on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review;
(3) on appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended; and

(4) on legislation necessary to carry out the LSAC's recommendations.

Subpoena Powers

The bill allows the President of the Senate or the Speaker of the House of Representatives to issue subpoenas, which may be served on a witness at any place in the state, to compel the attendance of witnesses and the production of books, records, papers, and other objects necessary or proper for the purposes of the LSAC proceedings. The bill allows the LSAC to request the issuance of a subpoena.

The bill requires testimony taken under subpoena to be reduced to writing and given under oath subject to the penalties of perjury.

The bill provides that a witness who attends a LSAC proceeding under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state.

Abolition and Continuation

An advisory committee is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law. A state agency and its advisory committees may be continued by the Legislature for a period not to exceed eight years. The Legislature may address only one state agency and its advisory committees and functions in a bill, unless more than one agency, advisory committee, or function is to be consolidated.

The bill specifically authorizes the Legislature to abolish a state agency or advisory committee on a date earlier than that scheduled in this chapter or to consider any other legislation related to a state agency or advisory committee which is scheduled to be abolished.

Procedure after Termination

The bill contains provisions related to concluding business, remaining funds, property, and indebtedness.

Concluding Agency Business. Any state agency that is abolished may continue in existence until July 1 of the following year in order to conclude its business. Abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year unless the law provides otherwise. The terminated agency must cease all activities at the expiration of the one-year period and all rules that have been adopted expire, unless otherwise provided by law.

Funds. The bill provides that any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on July 1 of the year following abolishment. Unless otherwise provided by law, all money in a dedicated fund of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment is transferred to the General Revenue Fund and any part of law dedicating the money to a specific fund of an abolished agency becomes void on July 1 of the year immediately following abolishment.

Property. Property and records in the custody of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment shall be transferred to the Department of Management Services, unless otherwise provided by law.

Indebtedness. The bill recognizes the Legislature's continuing obligation to pay bonded indebtedness and all other obligations incurred by a state agency abolished under this chapter. The bill provides that the Florida Government Accountability Act does not impair or impede the payment of bonded indebtedness and other obligations. The bill specifically declares the outstanding bonded indebtedness or other outstanding obligations of an abolished state agency

valid and enforceable in accordance with their terms and subject to all applicable terms and conditions. The bill requires the Department of Management Services, unless otherwise provided by law, to continue to carry out all covenants contained in the bonds and in all other obligations. The bill requires the designated state agency to provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and to provide payment from the sources of payment of all other obligations until the bonds and interest on the bonds are paid in full and all other obligations are performed and paid in full. If provided, all funds established by laws or proceedings and bonds or other obligations shall remain with the Chief Financial Officer or the previously designated trustee. If the proceedings do not provide that the funds remain with the Chief Financial Officer or the previously designated trustee, the funds shall be transferred to the designated state agency.

LSAC Review and Monitoring

The bill requires the President of the Senate and the Speaker of the House of Representatives to forward all bills that create new state agencies or advisory committees to the LSAC for review and for written comments addressing:

(1) Whether the proposed regulatory and other functions of the state agency or advisory committee could be administered by one or more existing state agencies or advisory committees;

(2) Whether the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(3) Whether the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(4) Whether the bill provides for adequate protection against conflicts of interest within the state agency or advisory committee.

The bill also requires LSAC staff to monitor legislation that affects agencies and advisory committees which have undergone review. LSAC staff also are required to periodically report to the members of the LSAC on proposed changes that would modify prior recommendations of the LSAC.

Savings Clause

The bill contains a savings clause which provides that abolition of a state agency does not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition, except as otherwise expressly provided by law.

C. SECTION DIRECTORY:

Section 1: Creates chapter 21, Florida Statutes, the Florida Government Accountability Act, the Legislative Sunset Advisory Committee, and related sunset provisions for state agencies and advisory committees.

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:

There will be operating expenses for the LSAC and its assigned legislative staff. The estimated cost totals $1.1 million from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If a state agency or advisory committee is abolished, the state may realize some cost savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Advisory Committees of Constitutional Officers, Agencies, or Entities

There may be a constitutional conflict to the extent that this bill abolishes or attempts to abolish advisory committees created under the authority of a constitutional officer, agency, or entity rather than those authorized by statute, which the Legislature has the discretion to abolish.

Previous Constitutional Attacks

The authority of the Legislature to implement a similar provision related to abolishing regulatory programs was upheld after the court dismissed a challenge to the constitutionality of the Regulatory Reform Act of 1976.[15]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Placement in Chapter 21, Florida Statutes

[15] *Alterman Transp. Lines, Inc. v. State*, 405 So.2d 456 (Fla. 1st DCA 1981).

Chapter 11, Florida Statutes, provides for legislative organization, procedures, and staffing. The sponsor may wish to place the Florida Government Accountability Act in chapter 11, Florida Statutes, rather than recreating chapter 21, Florida Statutes.

Public Members on a Legislative Committee

Public members generally are not appointed to serve on standing legislative committees. Even though this committee is an "advisory" committee, some of its powers appear to be similar to those which are normally reserved to committees composed only of legislators, i.e. the power to keep a bill creating an agency from being implemented. Also, it is not clear whether a public member is prohibited from serving as the chair or vice-chair of a committee. The sponsor may wish to address these issues.

Abbreviated Timeframes after Election Years

The schedule set forth in the bill creates potentially short timeframes for the LSAC to do its required work in years after election years. That is, the bill requires appointment no later than January 15th of the year following an organizational session, but the LSAC must hold public hearings and issue reports by March 1st, potentially a month and a half. The sponsor may wish to address this abbreviated timeframe by scheduling the sunsets on a biennial basis for even numbered years. This approach will provide the LSAC members and staff sufficient time to review and report all aspects of the agencies and advisory committees scheduled for sunset.

Interaction with Existing Legislative Entities and Structures

The bill does not clearly provide how the LSAC will interact with existing legislative committees and structures such as standing committees, fiscal committees, the Joint Legislative Auditing Committee, and the Office of Program Policy and Government Accountability. Although there is a "consulting" requirement, the sponsor may wish to clarify the intended interaction.

No Distinction between Sunset (Regulatory) and Sundown (Structural/Functional) Review

Unlike the Sunset and Sundown Reviews, this bill combines the structural and functional review of an agency and its advisory committees with regulatory review. The sponsor may wish to address this issue if there is a different intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Governmental Operations Committee adopted two amendments. Amendment 1 changed the authority of the Legislative Sunset Advisory Committee to inspect records, documents, and files to more closely mirror the authority of other legislative committees. Amendment 2 changed the process by which the Legislative Sunset Advisory Committee reviews bills that create agencies or advisory committees; depending on when the "creation" bill is filed considered, the amendment requires the Legislative Sunset Advisory Committee to review the bill within three weeks after the regular session of the Legislature convenes or during any special session. 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 government accountability; creating ch.
7 21, F.S., the Florida Government Accountability Act;
8 providing definitions; creating the Legislative Sunset
9 Advisory Committee; providing for appointment,
10 qualifications, and terms of committee members; providing
11 for vacancies; providing for organization and procedure;
12 authorizing reimbursement for certain expenses; providing
13 for employment of staff; providing a schedule for
14 abolishing state agencies and advisory committees;
15 requiring the committee to conduct prior review and
16 recommend whether to abolish an agency and its advisory
17 committees as scheduled; providing for public hearings;
18 requiring agency and committee reports; providing review
19 criteria; specifying recommendation options; providing for
20 continuation, by law, under certain circumstances;
21 providing for legislative consideration of proposals with
22 respect to such recommendations; providing procedures
23 after termination; providing for issuance of subpoenas;

24 authorizing reimbursement for travel and per diem for
25 witnesses; providing for assistance of and access to state
26 agencies; providing applicability with respect to certain
27 rights, penalties, liabilities, and proceedings; providing
28 for review of proposed legislation creating a new agency
29 or advisory committee; providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Chapter 21, Florida Statutes, consisting of
34 sections 21.001, 21.002, 21.003, 21.004, 21.005, 21.006, 21.007,
35 21.008, 21.009, 21.0111, 21.012, 21.0125, 21.013, 21.015,
36 21.016, 21.017, 21.018, 21.019, 21.0211, and 21.022, is created
37 to read:
38 CHAPTER 21
39 GOVERNMENT ACCOUNTABILITY
40 21.001 Short title.--This chapter may be cited as the
41 "Florida Government Accountability Act."
42 21.002 Definitions.--As used in this chapter:
43 (1) "State agency" or "agency" means a department as
44 defined in s. 20.03(2) or any other administrative unit of state
45 government scheduled for termination and prior review under this
46 chapter.
47 (2) "Advisory committee" means any examining and licensing
48 board, council, advisory council, committee, task force,
49 coordinating council, commission, or board of trustees as
50 defined in s. 20.03(3), (7), (8), (9), (10), or (12) or any
51 group, by whatever name, created to provide advice or

52 recommendations to one or more agencies, departments, divisions,
53 bureaus, boards, sections, or other units or entities of state
54 government.
55 (3) "Committee" means the Legislative Sunset Advisory
56 Committee.
57 21.003 Legislative Sunset Advisory Committee.--
58 (1) The Legislative Sunset Advisory Committee is created
59 and shall consist of five members of the Senate, one public
60 member appointed by the President of the Senate, and five
61 members of the House of Representatives, and one public member
62 appointed by the Speaker of the House of Representatives. Each
63 appointing authority may designate himself or herself as one of
64 the legislative appointees.
65 (2) An individual is not eligible for appointment as a
66 public member if the individual or the individual's spouse is:
67 (a) Regulated by a state agency that the committee will
68 review during the term for which the individual would serve; or
69 (b) Employed by, participates in the management of, or
70 directly or indirectly has more than a 10-percent interest in a
71 business entity or other organization regulated by a state
72 agency the committee will review during the term for which the
73 individual would serve.
74 (3) It is a ground for removal of a public member from the
75 committee if the member does not have the qualifications
76 required by subsection (2) for appointment to the committee at
77 the time of appointment or does not maintain the qualifications
78 while serving on the committee. The validity of the committee's
79 action is not affected by the fact that it was taken when a

80 ground for removal of a public member from the committee
81 existed.
82 (4) Legislative and public members shall serve terms of 2
83 years. A public member may not serve more than two consecutive
84 2-year terms; and, for purposes of this prohibition, a member is
85 considered to have served a term only if the member has served
86 more than half of the term.
87 (5) Initial appointments shall be made not later than
88 November 30, 2006, and subsequent appointments shall be made not
89 later than January 15 of the year following each organization
90 session of the Legislature.
91 (6) If a legislative member ceases to be a member of the
92 house from which he or she was appointed, the member vacates his
93 or her membership on the committee.
94 (7) If a vacancy occurs, the appropriate appointing
95 authority shall appoint a person to serve for the remainder of
96 the unexpired term in the same manner as the original
97 appointment.
98 (8) The committee shall have a chair and vice chair as
99 presiding officers. The chair and vice chair must alternate each
100 year between the two membership groups appointed by the
101 President of the Senate and the Speaker of the House of
102 Representatives. The chair and vice chair may not be from the
103 same membership group. The President of the Senate shall
104 designate a presiding officer from his appointed membership
105 group who shall preside as chair during the odd-numbered year
106 and as vice chair during the even-numbered year, and the Speaker
107 of the House of Representatives shall designate the other

108 presiding officer from his appointed membership group who shall
109 preside as chair during the even-numbered year and as vice chair
110 during the odd-numbered year.
111 (9) Seven members of the committee constitute a quorum. A
112 final action or recommendation may not be made unless approved
113 by a recorded vote of a majority of the committee's full
114 membership.
115 (10) Each member of the committee is entitled to
116 reimbursement for actual and necessary expenses incurred in
117 performing committee duties. Each legislative member is entitled
118 to reimbursement from the appropriate fund of the member's
119 respective house. Each public member is entitled to
120 reimbursement from funds appropriated for use by the committee.
121 21.004 Staff.--The Senate and the House of Representatives
122 may each employ staff to work for the chair and vice chair of
123 the committee on matters related to committee activities.
124 21.005 Schedule for abolishing state agencies and advisory
125 committees.--The following state agencies, including their
126 advisory committees, or the following advisory committees of
127 agencies are abolished according to the following schedule:
128 (1) Abolished July 1, 2008:
129 (a) Advisory committees for the Fish and Wildlife
130 Conservation Commission.
131 (b) Department of Agriculture and Consumer Services.
132 (c) Department of Citrus, including the Citrus Commission.
133 (d) Department of Community Affairs.
134 (e) Department of Environmental Protection.
135 (f) Department of Highway Safety and Motor Vehicles.

136 (g) Water managements districts.
137 (2) Abolished July 1, 2009:
138 (a) Department of Children and Family Services.
139 (b) Department of the Lottery.
140 (c) Department of Management Services.
141 (d) Department of State.
142 (3) Abolished July 1, 2010:
143 (a) Advisory committees for the Florida Community College
144 System.
145 (b) Advisory committees for the State University System.
146 (c) Agency for Workforce Innovation.
147 (d) Department of Education.
148 (4) Abolished July 1, 2011:
149 (a) Agency for Health Care Administration.
150 (b) Agency for Persons with Disabilities.
151 (c) Department of Elderly Affairs.
152 (d) Department of Health.
153 (5) Abolished July 1, 2012:
154 (a) Department of Business and Professional Regulation.
155 (b) Department of Transportation.
156 (c) Department of Veterans' Affairs.
157 (6) Abolished July 1, 2013:
158 (a) Advisory committees for the State Board of
159 Administration.
160 (b) Department of Financial Services, including the
161 Financial Services Commission.
162 (c) Department of Revenue.
163 (7) Abolished July 1, 2014:

164 (a) Department of Corrections.
165 (b) Department of Juvenile Justice.
166 (c) Department of Law Enforcement.
167 (d) Department of Legal Affairs.
168 (e) Justice Administrative Commission.
169 (f) Parole Commission.
170 (8) Abolished July 1, 2015:
171 (a) Executive Office of the Governor.
172 (b) Florida Public Service Commission.
173 21.006 Agency report to committee.--Not later than October
174 30 of each even-numbered year and not later than July 31 of each
175 odd-numbered year of the year preceding the year in which a
176 state agency and its advisory committees are scheduled to be
177 abolished, the agency shall report to the committee:
178 (1) Information regarding the application to the agency of
179 the criteria in s. 21.0111.
180 (2) Any other information that the agency considers
181 appropriate or that is requested by the committee.
182 21.007 Committee duties.--Not later than March 1 of the
183 year in which a state agency is scheduled to be abolished, the
184 committee shall:
185 (1) Review and take action necessary to verify the reports
186 submitted by the agency under s. 21.006.
187 (2) Consult with the Legislative Budget Commission, the
188 Planning and Budgeting Office in the Executive Office of the
189 Governor, the Auditor General, and the Chief Financial Officer,
190 or their successors, on the application to the agency of the
191 criteria provided in s. 21.0111.

192 (3) Conduct a performance evaluation of the agency based
193 on the criteria provided in s. 21.0111 and prepare a written
194 report.
195 (4) Review the implementation of committee recommendations
196 contained in the reports presented to the Legislature during the
197 preceding legislative session.
198 21.008 Public hearings.--Not later than March 1 of the
199 year in which a state agency and its advisory committees are
200 scheduled to be abolished, the committee shall have finished
201 conducting all public hearings concerning, but not limited to,
202 the application to the agency and its advisory committees of the
203 criteria provided in s. 21.0111.
204 21.009 Committee report.--
205 (1) By March 1 of each year, the committee shall present
206 to the President of the Senate, the Speaker of the House of
207 Representatives, and the Governor a report on the agencies and
208 advisory committees scheduled to be abolished that year.
209 (2) In the report, the committee shall include:
210 (a) Its specific findings regarding each of the criteria
211 prescribed by s. 21.0111.
212 (b) Its recommendations based on the matters prescribed by
213 s. 21.012.
214 (c) Other information the committee considers necessary
215 for a complete evaluation of each agency and its advisory
216 committees.
217 21.0111 Criteria for review.--The committee shall consider
218 the following criteria in determining whether a public need
219 exists for the continuation of a state agency or its advisory

220 committees or for the performance of the functions of the agency
221 or its advisory committees:
222 (1) The efficiency with which the agency or advisory
223 committee operates.
224 (2) An identification of the objectives intended for the
225 agency or advisory committee and the problem or need that the
226 agency or advisory committee was intended to address, the extent
227 to which the objectives have been achieved, and any activities
228 of the agency in addition to those granted by statute and the
229 authority for these activities.
230 (3) An assessment of less restrictive or alternative
231 methods of providing any regulatory function for which the
232 agency is responsible while adequately protecting the public.
233 (4) The extent to which the advisory committee is needed
234 and is used.
235 (5) The extent to which the jurisdiction of the agency and
236 the programs administered by the agency overlap or duplicate
237 those of other agencies and the extent to which the programs
238 administered by the agency can be consolidated with the programs
239 of other state agencies.
240 (6) Whether the agency has recommended to the Legislature
241 statutory changes calculated to be of benefit to the public
242 rather than to an occupation, business, or institution that the
243 agency regulates.
244 (7) The promptness and effectiveness with which the agency
245 disposes of complaints concerning persons affected by the
246 agency.

247 (8) The extent to which the agency has encouraged
248 participation by the public in making its rules and decisions as
249 opposed to participation solely by those it regulates and the
250 extent to which the public participation has resulted in rules
251 compatible with the objectives of the agency.
252 (9) The extent to which the agency has complied with
253 applicable requirements of:
254 (a) An agency of the Federal Government or of this state
255 regarding equality of employment opportunity and the rights and
256 privacy of individuals.
257 (b) State law and applicable rules of any state agency
258 regarding purchasing goals and programs for historically
259 underutilized businesses.
260 (10) The extent to which changes are necessary in the
261 enabling statutes of the agency so that the agency can
262 adequately comply with the criteria listed in this section.
263 (11) The extent to which the agency issues and enforces
264 rules relating to potential conflicts of interest of its
265 employees.
266 (12) The extent to which the agency complies with public
267 records and public meetings requirements under chapters 119 and
268 287 and s. 24, Art. I of the State Constitution and follows
269 records management practices that enable the agency to respond
270 efficiently to requests for public information.
271 (13) The effect of federal intervention or loss of federal
272 funds if the agency is abolished.
273 (14) Whether any advisory committee or any other part of
274 the agency exercises its powers and duties independently of the

275 direct supervision of the agency head in violation of s. 6, Art.
276 IV of the State Constitution.
277 21.012 Recommendations.--In its report on a state agency,
278 the committee shall:
279 (1) Make recommendations on the abolition, continuation,
280 or reorganization of each affected state agency and its advisory
281 committees and on the need for the performance of the functions
282 of the agency and its advisory committees.
283 (2) Make recommendations on the consolidation, transfer,
284 or reorganization of programs within state agencies not under
285 review when the programs duplicate functions performed in
286 agencies under review.
287 (3) Recommend appropriation levels for each state agency
288 and advisory committee for which abolition or reorganization is
289 recommended under subsection (1) or subsection (2).
290 (4) Include drafts of legislation necessary to carry out
291 the committee's recommendations under subsection (1) or
292 subsection (2).
293 21.0125 Monitoring of recommendations.--During each
294 legislative session, the staff of the committee shall monitor
295 legislation affecting agencies that have undergone review under
296 this chapter and shall periodically report to the members of the
297 committee on proposed changes that would modify prior
298 recommendations of the committee.
299 21.013 Abolition of advisory committees.--An advisory
300 committee is abolished on the date set for abolition of the
301 agency unless the advisory committee is expressly continued by
302 law.

303 21.015 Continuation by law.--
304 (1) During the regular session immediately before a state
305 agency and its advisory committees are scheduled to be
306 abolished, the Legislature, by law, may continue the agency or
307 any of its advisory committees for a period not to exceed 8
308 years.
309 (2) This chapter does not prohibit the Legislature from:
310 (a) Abolishing a state agency or advisory committee on a
311 date earlier than that scheduled in this chapter; or
312 (b) Considering any other legislation relative to a state
313 agency or advisory committee scheduled to be abolished under
314 this chapter.
315 21.016 Legislative consideration.--
316 (1) Except as provided by subsection (2), the Legislature
317 may not consider in one bill the continuation, transfer, or
318 modification of more than one state agency and the agency's
319 functions and advisory committees.
320 (2) If more than one agency, advisory committee, or
321 function is to be consolidated, the Legislature may consider in
322 one bill only the agencies or advisory committees to be
323 consolidated.
324 (3) A bill to continue a state agency, to transfer its
325 functions, or to consolidate it with another agency must mention
326 the affected agencies in the title of the bill.
327 21.017 Procedure after termination.--
328 (1) A state agency that is abolished may continue in
329 existence until July 1 of the following year to conclude its
330 business. Unless the law provides otherwise, abolishment does

331 not reduce or otherwise limit the powers and authority of the
332 state agency during the concluding year. A state agency is
333 terminated and shall cease all activities at the expiration of
334 the 1-year period. Unless the law provides otherwise, all rules
335 that have been adopted by the state agency expire at the
336 expiration of the 1-year period.
337 (2) Any unobligated and unexpended appropriations of an
338 abolished agency or advisory committee lapse on July 1 of the
339 year following abolishment.
340 (3) Except as provided by subsection (5) or as otherwise
341 provided by law, all money in a dedicated fund of an abolished
342 state agency or advisory committee on July 1 of the year
343 immediately following abolishment is transferred to the General
344 Revenue Fund. The part of the law dedicating the money to a
345 specific fund of an abolished agency becomes void on July 1 of
346 the year immediately following abolishment.
347 (4) If not otherwise provided by law, property and records
348 in the custody of an abolished state agency or advisory
349 committee on July 1 of the year immediately following
350 abolishment shall be transferred to the Department of Management
351 Services.
352 (5) The Legislature recognizes the state's continuing
353 obligation to pay bonded indebtedness and all other obligations,
354 including lease, contract, and other written obligations,
355 incurred by a state agency abolished under this chapter, and
356 this chapter does not impair or impede the payment of bonded
357 indebtedness and all other obligations, including lease,
358 contract, and other written obligations, in accordance with

359 their terms. If an abolished state agency has outstanding bonded
360 indebtedness or other outstanding obligations, including lease,
361 contract, and other written obligations, the bonds and all other
362 obligations, including lease, contract, and other written
363 obligations, remain valid and enforceable in accordance with
364 their terms and subject to all applicable terms and conditions
365 of the laws and proceedings authorizing the bonds and all other
366 obligations, including lease, contract, and other written
367 obligations. If not otherwise provided by law, the Department of
368 Management Services shall continue to carry out all covenants
369 contained in the bonds and in all other obligations, including
370 lease, contract, and other written obligations, and the
371 proceedings authorizing them, including the issuance of bonds,
372 and the performance of all other obligations, including lease,
373 contract, and other written obligations, to complete the
374 construction of projects or the performance of other
375 obligations, including lease, contract, and other written
376 obligations. The designated state agency shall provide payment
377 from the sources of payment of the bonds in accordance with the
378 terms of the bonds and shall provide payment from the sources of
379 payment of all other obligations, including lease, contract, and
380 other written obligations, in accordance with their terms,
381 whether from taxes, revenues, or otherwise, until the bonds and
382 interest on the bonds are paid in full and all other
383 obligations, including lease, contract, and other written
384 obligations, are performed and paid in full. If the proceedings
385 so provide, all funds established by laws or proceedings
386 authorizing the bonds or authorizing other obligations,

387 including lease, contract, and other written obligations, shall
388 remain with the Chief Financial Officer or the previously
389 designated trustees. If the proceedings do not provide that the
390 funds remain with the Chief Financial Officer or the previously
391 designated trustees, the funds shall be transferred to the
392 designated state agency.
393 21.018 Subpoena power.--
394 (1) The President of the Senate or the Speaker of the
395 House of Representatives may issue process to compel the
396 attendance of witnesses and the production of books, records,
397 papers, and other objects necessary or proper for the purposes
398 of the committee proceedings. The process may be served on a
399 witness at any place in this state.
400 (2) If a majority of the committee directs the issuance of
401 a subpoena, the chair shall request that the President of the
402 Senate or the Speaker of the House of Representatives issue the
403 subpoena.
404 (3) Testimony taken under subpoena must be reduced to
405 writing and given under oath subject to the penalties of
406 perjury.
407 (4) A witness who attends a committee proceeding under
408 process is entitled to the same mileage and per diem as a
409 witness who appears before a grand jury in this state.
410 21.019 Assistance of and access to state agencies.--
411 (1) The committee may request the assistance of state
412 agencies and officers. When assistance is requested, a state
413 agency or officer shall assist the committee.

414 (2) In order to carry out its functions under this
415 chapter, the committee and its designated staff members are
416 empowered with the right and authority to inspect, copy, and
417 investigate the books, records, papers, documents, data,
418 operation, and physical plant of any public agency or advisory
419 committee in this state, including any confidential or exempt
420 information.
421 21.0211 Saving provision.--Except as otherwise expressly
422 provided by law, abolition of a state agency does not affect
423 rights and duties that matured, penalties that were incurred,
424 civil or criminal liabilities that arose, or proceedings that
425 were begun before the effective date of the abolition.
426 21.022 Review of proposed legislation creating a new
427 agency or advisory committee.--
428 (1) Each bill filed in the Senate or the House of
429 Representatives that would create a new state agency or a new
430 advisory committee to a state agency shall be forwarded by the
431 President of the Senate or the Speaker of the House of
432 Representatives, as applicable, to the committee.
433 (2) The committee shall review the bill to determine if:
434 (a) The proposed regulatory and other functions of the
435 state agency or advisory committee could be administered by one
436 or more existing state agencies or advisory committees;
437 (b) The form of regulation, if any, proposed by the bill
438 is the least restrictive form of regulation that will adequately
439 protect the public;
440 (c) The bill provides for adequate public input regarding
441 any regulatory function proposed by the bill; and

442 (d) The bill provides for adequate protection against
443 conflicts of interest within the state agency or advisory
444 committee.
445 (3) For any bill to be considered during the regular
446 session of the Legislature, the committee shall review the bill
447 no later than 3 weeks after the regular session convenes and
448 shall forward written comments from the review of the
449 legislation required under subsection (2) to the sponsor of the
450 bill and to the chair of the substantive committee to which the
451 bill is referred.
452 (4) For any bill to be considered during a special session
453 of the Legislature, the committee shall review the bill during
454 the special session and forward written comments from the review
455 of the legislation required under subsection (2) to the sponsor
456 of the bill and to the chair of the substantive committee to
457 which the bill is referred.
458 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1315 Department of Transportation
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1350 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N	Pugh	Miller
2) Fiscal Council		McAuliffe	Kelly
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

Section 338.227, F.S., authorizes the Florida Department of Transportation (FDOT) to issue bonds to pay all or a part of Florida Turnpike Enterprise projects, which are part of the agency's Five-Year Work Program approved each year by the Legislature. Section 338.2275, F.S., limits to $4.5 billion the total amount of turnpike bonds that may be issued.

The transportation work program is required to be developed within the estimated available resources. However, the Turnpike's long-range project plan through fiscal year 2010-2011 indicates that the estimated total costs will exceed the statutory bond cap by nearly $1 billion.

HB 1315 increases the Turnpike Enterprise's revenue bond cap from $4.5 billion in bonds issued to $6 billion in bonds outstanding. This change not only gives the Turnpike Enterprise more immediate bond capacity, but creates a "line of credit" to issue more bonds as the Turnpike pays down its balance.

The bill has no immediate fiscal impact on state government, nor does it raise any apparent constitutional or other legal issues.

HB 1315 takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 1315 does not implicate any House principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

A part of FDOT, the Florida Turnpike Enterprise is a 450-mile system of limited-access toll highways. The turnpike's 2006-2010 Work Program is funded largely through revenue bonds, backed by toll revenues. According to FDOT staff, every $1 in recurring toll revenues from the Turnpike can be leveraged to generate $14 to pay for project costs.

Section 338.227, F.S., authorizes FDOT to issue bonds to pay all or a part of the legislatively approved turnpike projects, and section 338.2275, F.S., limits the total amount of bonds that may be issued to $4.5 billion. According to FDOT, nearly $2.336 billion in Turnpike bonds have been issued over the years, leaving $2.164 billion within the statutory cap to be authorized. However, the Turnpike's long-range project plan through fiscal year 2010-2011 indicates that the estimated costs of the projects exceed the statutory bond cap by about $950 million.

Section 339.135(3), F.S., requires FDOT to base its Five-Year Work Program on a "complete, balanced financial plan." To comply with the law, the Turnpike will have to either eliminate or scale back proposed projects, adopt a "pay-as-you go" approach to financing future projects, or seek a change in law to raise the bond cap.

The Legislature last raised the Turnpike bond cap in 2003, from $3 billion to $4.5 billion.

Current Turnpike projects include completion of the Western Beltway, Part C; adding 150 lane miles through widening of the Turnpike System at a cost of nearly $1 billion; adding four new interchanges and improving three other interchanges at a cost of $200 million to improve access to the Turnpike System; and converting the Sawgrass Expressway to a fully electronic, open-road tolling facility and adding SunPass Express lanes at other locations.

Projects proposed for the Turnpike's 2007-2011 Work Program, if the bond cap is increased, include nearly $370 million for additional lanes on various sections of the Homestead Extension-Florida Turnpike (HEFT) and $467 million for additional lanes along the Turnpike Mainline and the Veterans Expressway.

Potential future projects under review by Turnpike staff include another phase of the Suncoast Parkway; extensions of the Polk Parkway, State Road 417 in Volusia County, and the Sawgrass Expressway in Broward County to link with I-95; express lanes on the HEFT and the interstates; and the Port of Miami tunnel.

Effect of Program Changes

This bill would raise the cap on Turnpike bonds from $4.5 billion to $6 billion, and change the limitation to a maximum amount outstanding, in effect providing for a "line of credit" that the Turnpike can utilize for long-term planning.

FDOT staff has said this cap increase will allow the Turnpike to complete currently planned projects and to continue to build tolled facilities to handle future transportation needs.

C. SECTION DIRECTORY:

Section 1: Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to $6 billion of bonds outstanding. Deletes obsolete language.

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" below.

2. Expenditures:

   See "D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HB 1315 raises the Florida Turnpike Enterprise's bond cap from an absolute $4.5 billion in bonds to a limit of $6 billion in bonds outstanding. That means as the Turnpike retires bond issues, it can issue more, as long as it doesn't exceed $6 billion owed at any time.

To the extent that additional Turnpike bonds are issued, they will have to be repaid. The Turnpike Enterprise pledges toll revenues as debt service for the bonds it issues.

Any increase in the Turnpike bond cap will not impact the state of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   HB 1315 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

FDOT and the Turnpike Enterprise have sufficient rulemaking authority to implement the provisions of this bill.

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 Department of Transportation;
3 amending s. 338.2275, F.S.; deleting obsolete provisions;
4 revising the maximum amount of bonds that are available
5 for turnpike projects; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (1) of section 338.2275, Florida
10 Statutes, is amended to read:
11 338.2275 Approved turnpike projects.--
12 (1) Legislative approval of the department's tentative
13 work program that contains the turnpike project constitutes
14 approval to issue bonds as required by s. 11(f), Art. VII of the
15 State Constitution. No more than $6 billion of bonds may be
16 outstanding to fund approved turnpike projects. ~~Turnpike~~
17 ~~projects approved to be included in future tentative work~~
18 ~~programs include, but are not limited to, projects contained in~~
19 ~~the 2003-2004 tentative work program. A maximum of $4.5 billion~~
20 ~~of bonds may be issued to fund approved turnpike projects.~~
21 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1363 CS Affordable Housing
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee	9 Y, 0 N, w/CS	Grayson	Grayson
2) Local Government Council	7 Y, 0 N, w/CS	Grayson	Hamby
3) Fiscal Council		Darity	Kelly
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 1363 addresses the issue of affordable housing in Florida by creating the Community Workforce Housing Innovation Program (CWHIP), and by creating law and amending existing law to provide financial and regulatory incentives for the provision of affordable housing. The CWHIP will provide grants and incentives to affordable rental and home ownership projects that target: high-cost counties, including certain areas of critical state concern and certain areas formerly so designated; high growth counties; certain public-private partnerships; workforce housing; essential service personnel; and innovative projects. These terms are defined in the bill. The bill provides standards and guidelines for the CWHIP and for the involvement of the Florida Housing Finance Corporation (Corporation). Approved projects are eligible for certain incentives including: expedited permitting and approvals of development orders; impact fee reductions or alternative fee payment methods; increased density levels of 16 units per acre or higher; reduction of open space and setback requirements; and modification of street requirements and concurrency requirements. The bill provides for the Corporation to review and develop strategies for expanding affordable home ownership across the state.

The bill further provides a new definition of "extremely low income" residents with incomes below 30 percent of area median income and a series of changes to existing state and local housing programs to incentivize the development of very low income housing. The bill provides $32 million for down payment assistance for essential services personnel such as teachers, nurses, construction trades workers and others defined by local governments. The bill expands the Community Contribution Tax Credit Program. The bill provides for local governments and the state to inventory and make available surplus lands for affordable housing. The bill authorizes school boards to provide housing and housing assistance to its teachers and other instructional personnel. Specified independent special districts are authorized to provide housing and housing assistance for eligible persons as are special fire control districts. The bill creates "The Manny Diaz Property Tax Relief Initiative" which directs property appraisers to appraise affordable housing properties based upon rental income. The bill makes development of elderly housing more affordable, and provides relief for disabled veterans from paying certain license and permit fees on housing. The bill provides threshold bonuses for the provision of workforce housing for both the guidelines that determine when an activity constitutes a development of regional impact and when changes constitute a substantial deviation requiring additional review.

Fiscal impacts include: Eliminating the cap of $243 million on documentary stamp tax revenue allocated into the Housing Trust funds which was to take effect in 2007, providing a $20 million state appropriation from the State Housing Trust Fund, and a $32 million state appropriation from the Local Government Housing Trust Fund.

The bill may raise concerns relating to an unconstitutional delegation of legislative authority in conflict with s. 1, Art. III, State Constitution. [See: CONSTITUTIONAL ISSUES].

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates new programs, provides additional rulemaking authority for the Florida Housing Finance Corporation, and increases the workload of other governmental organizations.

Ensure lower taxes - The bill will provide increased tax incentives for persons who donate to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households and for donations made to eligible sponsors for all other projects that qualify under the Community Contribution Tax Credit Program. The bill provides 100 percent service-connected permanently and totally disabled veterans confined to wheelchairs an exemption on any license or permit fee to make improvement to their residences.

Promote Personal Responsibility and Empower Families - This bill reduces the match required by the Elderly Housing Community Loan Program (EHCL) from 15 percent to 5 percent of the loan amount received. Because the maximum loan amount was significantly increased during the last legislative session, the match required of the sponsoring agencies was also significantly increased. Reduction of the required match rate may allow more sponsors to take advantage of the higher loan amounts now available, thereby increasing and improving the stock of housing available for the low-income elderly. The bill creates a new program to provide subsidized financing and down payment assistance for affordable housing for essential services personnel. The bill also provides assistance for persons with extremely-low-incomes. The bill increases the opportunities of local governments, governmental entities, and private organizations to support, assist, and encourage families in circumstances occasioning need.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

The state has committed significant resources over the last decade to addressing the severe housing problems facing very-low and low-income residents of this state. The Corporation's programs are funded in part with revenues generated by the documentary stamp tax, which are most often coupled with federal funding. These "affordable housing" programs have traditionally targeted families making 60 percent or less of area median income (AMI) in the rental programs, and those making 80 percent or less of AMI in the home ownership programs.

Multifamily rental projects are funded by the Corporation through the State Apartment Incentives Loan Program (SAIL); the Multifamily Mortgage Revenue Bond (MMRB) program, which provide funding by issuing revenue bonds; and through allocation of federal Low Income Housing Tax Credits (LIHTC), which provides an equity infusion to multifamily affordable housing projects. The multifamily rental programs typically target those making 60 percent or less of the AMI. Home ownership programs consist of down payment assistance, funded by documentary stamp funds and federal funds, along with mortgage loans funded by federal funds and the Single Family Mortgage Revenue Bond (SFMRB) program. Also, the Corporation allocates documentary stamp funds to local governments through the State Housing Initiatives Partnership Program (SHIP). The large majority of SHIP funds are directed by statute toward home ownership activities, generally serving those with incomes up to 120 percent AMI.

Federal housing programs, especially those administered by HUD, typically serve those with the lowest incomes. In recent years, budgets for many of these programs have been cut, putting increasing pressure on state and local governments to provide for persons at the lowest income levels. In the current market, the need for affordable housing has outstripped the production capacity of the existing federal, state, and local affordable housing programs.

Due to dramatic increases in housing costs coupled with modest rises in incomes, many low-income and moderate-income Florida families can no longer afford safe, decent and affordable rental and single family housing. In addition to the needs of the very-low and low-income families noted above, recent steep increases in real estate prices have also effectively priced moderate income families out of the market. Florida is experiencing a critical shortage of housing for individuals who are employed in essential service occupations, such as teachers, police, hospital workers, and others who do not qualify for existing affordable housing programs. As a result, many communities are finding it increasingly difficult to recruit, employ, and retain personnel necessary to provide essential public services to Florida's communities.

The need for "workforce housing" to meet existing and future housing needs for working families whose incomes, from 80 percent to 150 percent AMI, typically make them ineligible for existing housing programs, has recently become increasingly evident.

According to the bill sponsor, the bill is designed to stimulate the construction of home ownership and rental housing in high cost and high growth counties to meet the needs of extremely-low, very-low, low and moderate-income families along this continuum and in particular, essential services personnel who are facing tremendous difficulties living in the communities in which they work.

FLORIDA HOUSING FINANCE CORPORATION (CORPORATION) PROGRAMS

The Corporation administers a number of multifamily, single family and special programs that help low-income Floridians obtain safe, decent affordable housing that might otherwise be unavailable to them. The rental housing programs include the Multifamily Mortgage Revenue Bond, Low Income Housing Tax Credits, State Apartment Incentive Loan, Elderly Housing Community Loan, Florida Affordable Housing Guarantee and Home Investment Partnerships programs.

Homeownership programs include the First Time Homebuyer Program, the Homeownership Loan Program and down payment assistance programs such as the Homeownership Assistance Program, HOME Down Payment Assistance, Homeownership Assistance for Moderate Income, and Three Percent Cash Assistance. In addition, the Corporation offers the Mortgage Credit Certificate program; and several Special Programs including the Predevelopment Loan Program, State Housing Initiatives Partnership, Demonstration Loans and the Affordable Housing Catalyst Program. The programs further addressed below are implicated in HB 1363.

State Assistance Initiative Loan Program: The State Apartment Incentive Loan Program (SAIL)[1], created in 1992, provides mortgage loans or loan guarantees to sponsors providing affordable housing to very-low income individuals. SAIL is funded by the State Housing Trust Fund and administered by the Corporation.

The Florida Housing Finance Corporation has the authority to underwrite and make state apartment incentive loans or loan guarantees, at an interest rate of three percent to nine percent, to sponsors that:

- Use tax-exempt financing for the first mortgage and at least 20 percent of the units in the project are set aside for persons or families who have incomes which meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937;
- Use taxable financing for the first mortgage and at least 20 percent of the units in the project are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, which shall be adjusted by the corporation for family size;
- Use the federal low-income housing tax credit, and the project meets the tenant income eligibility requirements of s. 42 of the Internal Revenue Code of 1986; or
- Locate a project in a county that includes, or has included within the previous five years, an area of critical state concern designated or ratified by the Legislature for which the Legislature has declared

[1] s. 420.5087, F.S.

its intent to provide affordable housing, and 100 percent of the units in the project are set aside for person or families who have income below 120 percent of the state or local median income, whichever is higher.

Very-Low Income Fund Reservation: Section 420.5087(3), F.S., requires that during the first 6 months a percentage of SAIL funds be reserved for each of the following groups: commercial fishing workers and farmworkers, families, persons who are homeless, and elderly persons. The percentage of SAIL funds reserved for each group is determined by using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability, but the reservation of funds to commercial fishing workers and farmworkers, families, and the elderly may not be less than 10 percent of the funds available at that time. Currently, 24 percent of the total SAIL funds are reserved for the elderly.

Elderly Housing Community Loan Program (EHCL): Section 420.5087(3)(d), F.S., requires that 10 percent of the amount reserved for the elderly be reserved to provide loans to sponsors of housing for the elderly to provide for building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. This part of the program is referred to as the Elderly Housing Community Loan Program (EHCL). Under the EHCL Program, sponsors are required to match the loan amount received at a rate of 15 percent. Funds received from matching are used to supplement the loan amount received to pay the cost of repair or improvement for which these funds are available.

According to the Florida Housing Finance Corporation, the match requirement is used to leverage state funds and make more fiscally prudent investments. Prior to the increase in the available loan amount, sponsors were awarded additional points during the loan application process for exceeding the minimum match requirement by a certain percentage. With the current increased loan amount and match rate, this process is no longer being used. However, under general operating policy, sponsors are still encouraged to match at the highest percentage possible, which can exceed the minimum percentage amount set in statute.

Prior to 2005, loans under the EHCL Program were capped at $200,000 with the requirement of a minimum match of 15 percent from the sponsor. During the 2005 legislative session, the Legislature increased the maximum loan amount from $200,000 to $750,000. The increase in the maximum loan amount had the practical effect of increasing the potential match requirement from $30,000 to $112,500.

Florida Housing Ownership Assistance Program (HAP): The HAP Construction Loan provides a five-year, zero percent interest construction loan to eligible developers for the lesser of 33 percent of the total development cost or $1,000,000. Eligible developers include nonprofit developers and nonprofit sponsors, established pursuant to ch. 617, F.S., and local governments and public housing authorities, with preference given to Corporation certified community based organizations, and to developments that have received funding from Florida Housing's Predevelopment Loan Program.

A minimum of 30 percent of the homes must be sold to eligible homebuyers who have an adjusted income that does not exceed 50 percent of the AMI, and a minimum of another 30 percent of the homes must be sold to eligible homebuyers who have an adjusted income that does not exceed 80 percent AMI. Any remaining homes must be sold to persons or households that have an adjusted income that does not exceed 150 percent AMI.

The HAP Permanent Loan Program provides a zero percent interest nonamortized second mortgage loan to eligible homebuyers purchasing a home built by a participating developer. In order to be eligible, a person's or household's adjusted income cannot exceed 80 percent AMI. This loan is available in an aggregate amount not to exceed the lesser of $30,000, 25 percent of the purchase price of the home, or the amount necessary to meet credit underwriting criteria, based on the monthly mortgage payment

to income underwriting ratio. The term of the loan is the lesser of 30 years or the term of the first mortgage, and is due upon maturity, sale, refinancing or rental of the property.

State Housing Initiatives Partnership Program: The Corporation administers the State Housing Initiatives Partnership program (SHIP), which provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to serve very-low, low and moderate income families.

SHIP funds are distributed on an entitlement basis to all 67 counties and 48 Community Development Block Grant entitlement cities in Florida. The minimum allocation is $350,000 and the maximum allocation is over $9 million. In order to participate, local governments must establish a local housing assistance program by ordinance; develop a local housing assistance plan and housing incentive strategy; amend land development regulations or establish local policies to implement the incentive strategies; form partnerships and combine resources in order to reduce housing costs; and ensure that rent or mortgage payments within the targeted areas do not exceed 30 percent of the AMI limits, unless authorized by the mortgage lender.

A minimum of 65 percent of the funds must be spent on eligible homeownership activities; a minimum of 75 percent of funds must be spent on eligible construction activities; at least 30 percent of the funds must be reserved for very-low income households (up to 50 percent of the AMI); an additional 30 percent may be reserved for low income households (up to 80 percent of AMI); and the remaining funds may be reserved for moderate-income households (up to 120 percent of AMI). It is important to note that no more than five percent of SHIP funds may be used for administrative expenses. However, if a local government makes a finding of need by resolution, a local government may use up to 10 percent for administrative expenses. Funding for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. Funds are allocated to local governments each month on a population-based formula. These funds are derived from the collection of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Total actual disbursements are dependent upon the appropriation of these documentary stamp collections.

COMMUNITY CONTRIBUTION TAX CREDITS

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program to encourage private sector participation in revitalization and housing projects. The program offers a tax incentive (a corporate income tax credit, insurance premium tax credit or a sales tax refund) equal to 50 percent of the amount donated up to $200,000 annually to sponsors who have been approved to participate in the program. Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons.

The Office of Tourism, Trade and Economic Development (OTTED) is responsible for administering the program by reviewing sponsor project proposals and tax credit applications. To date, 167 sponsors/projects have been approved to participate in the program. After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years. Unused credits against sales taxes may be carried forward for three years.

The Florida Legislature has amended the dollar cap and the expiration date of the program on numerous occasions. The program began with a $3 million per year cap that currently is designated at $12 million. The expiration of the program has been extended from 2005 to June 30, 2015. According to the OTTED, Habitat for Humanity is the primary recipient of donations for housing projects under the Community Contribution Tax Credit Program.

EFFECT OF PROPOSED CHANGES

HB 1363 addresses the issue of affordable housing in Florida by creating the Community Workforce Housing Innovation Program, and by creating law and amending existing law to provide financial and regulatory incentives for the provision of affordable housing. The bill addresses various aspects of the income spectrum from extremely-low-income persons, defined as a person or family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state, to those persons earning less than 150 percent of AMI. The effects of this bill are described in greater detail below under the headings Community Workforce Housing Innovation Program; and Other Financial and Regulatory Incentives; and Miscellaneous.

COMMUNITY WORKFORCE HOUSING INNOVATION PROGRAM

The bill creates the Community Workforce House Innovation Program (CWHIP) which incentivizes public-private partnerships and the use of joint resources to provide affordable rental and homeownership opportunities for essential service personnel, in high-cost and high-growth counties, to persons with medium incomes.

Florida Housing Finance Corporation (Corporation): The bill provides the Corporation with authority to provide CWHIP loans, subject to the availability of appropriated funds. The loans may be forgivable and are available to applicants for construction or rehabilitation of rental or home ownership workforce housing in targeted high-cost and high-growth counties, areas of critical state concern, or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation. The bill directs the Corporation to establish a funding process and selection criteria to distribute the annually appropriated funds which may be used with other Corporation and private-sector resources. The bill also directs the Corporation to provide incentives for local governments to use local affordable housing funds to assist in meeting the affordable housing needs of this program's eligible persons.

Definitions and funding targets: The bill requires CWHIP to target specified areas, and directly or indirectly defines several terms, including those targets, as outlined below. Further, the bill provides that the Corporation must seek to achieve a 70 percent high-cost, 30 percent high-growth ratio in its annual project funding. [2]

- "High-cost counties" is defined as those counties in which the median sales price of a single-family home using the most recent county level statistics is above the state median sales price of a single-family home; areas of critical state concern for which the Legislature has declared its intent to provide affordable housing, and areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation. The bill requires the Corporation to annually develop the list of high-cost counties.
- "High-growth counties" is defined as those counties that demonstrate significantly high rates of growth in K-12 public school students and a substantial number of open teaching positions currently and projected for the next school year. To qualify, a county's school district must have been in the top 10 school districts in the state for fastest student population growth as a percentage rate of increase for the previous 5 years, as defined by the Department of Education. Prioritized are those school districts that have the greatest number of teaching position vacancies.
- "Areas of critical state concern" is indirectly defined as those areas designated under s. 380.05, F.S., for which the Legislature has declared its intent to provide affordable housing.[3] One of the five

[2] Newly created s. 420.9075(4), F.S., combines definitions, program targets, and direction for use of appropriated funding. The subsection may benefit from redrafting.

[3] Established in Chapter 380.05, Florida Statutes, the Area of Critical State Concern (ACSC) program protects resources and public facilities of major statewide significance. Designated Areas of Critical State Concern are: City of Apalachicola;

designated ACSC areas appears to comply with this indirect definition: Florida Keys ACSC (s. 380.0552, F.S.).

- "Public-private partnerships" is defined to include substantial involvement of at least one county, municipality, or public sector entity (examples given are: school districts, special districts, and other units of local government) and at least one not-for-profit of for-profit project partner. Partnerships are encouraged to include one or more private sector business or charitable entities.
- "Workforce housing" is defined as housing affordable to natural persons or families whose total annual household income does not exceed 150 percent of the AMI, adjusted for household size or a higher area median income in areas of critical state concern or in areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation.
- "Essential services personnel" is defined to include those personnel, as defined locally by each county and eligible municipality within its local housing assistance plan pursuant to s. 420.9075, F.S., who are in need of affordable housing and who are employed in areas in which they are considered essential service personnel, including but not limited to teachers and educators, police and fire personnel, skilled construction trades personnel and health care personnel, and other job categories in which the personnel are defined as essential services personnel within the local housing assistance plan. [See: DRAFTING ISSUES OR OTHER COMMENTS].
- "Innovative projects" is indirectly defined to include new construction or rehabilitation of existing housing, mixed-income housing, or commercial and housing mixed-use elements.

Targets: The bill mandates that the Corporation target the following:

- High-cost and high-growth counties; areas of critical state concern meeting specified criteria; and areas designated as an area of critical state concern for at least 20 consecutive years prior to designation.
- Public-private partnerships, as defined in the bill.
- Workforce housing, as defined in the bill.
- Essential services personnel in need of affordable housing, as defined in the bill.
- Innovative projects, as defined in the bill.

Supplemental Program: The bill provides that the CWHIP must supplement and not supplant existing affordable housing programs funded under ch. 420, F.S., relating to housing.

Annual Review and Report: The bill requires the Corporation to conduct an annual review of the success of the CWHIP; and to ascertain whether the program is meeting the housing needs of high-cost and high-growth counties. Additionally, the bill requires the Corporation to review ways to improve public and private sector incentives and barriers to affordable and community workforce housing. The Corporation is required to submit any recommendations for strengthening the program to the Governor, the Speaker of the House of Representatives, and the President of the Senate within 2 months of the end of the Corporation's fiscal year. The bill authorizes the Corporation to request assistance in these matters from the Department of Community Affairs (DCA) or the Affordable Housing Study Commission[4].

Approved Applicant Benefits: Approved applicants are eligible for the following to ensure the financial viability, successful development, and ongoing maintenance of the housing developments:

City of Key West; Green Swamp; Florida Keys (Monroe County); and the Big Cypress Swamp (Miami-Dade, Monroe and Collier counties). In ACSCs, Department of Community Affairs (DCA) staff review all local development projects and may appeal to the Administration Commission any local development orders that are inconsistent with state guidelines. The DCA is also responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed by local governments within the designated areas.

[4] The Affordable Housing Study Commission was created in 1986 pursuant to the provisions of s. 420.609, F.S. Each year the Commission makes public policy recommendations to the Governor and Legislature to stimulate community development and revitalization to promote the production, preservation, and maintenance of safe, decent affordable housing for all Floridians.

- Expedited approval of development orders and development permits.
- Reduction of impact fees by 50 percent, waiver of impact fees, or alternative method of fee payment.
- Increased density up to 16 units per acre or higher, except in coastal high hazard areas.
- Reserved infrastructure capacity in the local comprehensive plan.
- Allowance of additional housing units in residential zoning districts.
- Reduction of open space and set back requirements.
- Allowance of zero-lot-line configurations.
- Reduction of traffic concurrency requirements by up to 25 percent.
- Priority eligibility for local transportation infrastructure funding by metropolitan planning organizations.

Local government acceptance of these incentives is conditioned upon:

- The applicant's receipt of a letter of support from the local government; or
- Within 60 days after local government's receipt of applicant's plan, a vote of "no objection" regarding the project is taken by the local governing body. The local government and project applicant, with approval of the Corporation, may agree to modify the project incentives and size of development, during the 60 day period.

If the local government votes not to accept the project in the county, then the Corporation will remove the application from its approved funding list.

Grant Eligibility: The bill provides that the Corporation, subject to appropriations, has the authority to provide grants for construction or rehabilitation of rental or single-family community workforce housing, providing that the applicant meet at least one of the following criteria:

- Sets aside at least 80 percent of the units for workforce housing and sets aside at least 50 percent of the units as prioritized for essential services personnel.
- For rental projects:
  - Up to 120 percent AMI - rents for all workforce housing units serving those with incomes up to 120 percent of AMI shall be restricted at the appropriate income level using the restricted rents for the federal low-income housing tax credit program.
  - Up to 150 percent of AMI - rents for workforce housing units serving those with incomes up to 150 percent of AMI shall be restricted to those established by the Corporation, not to exceed 40 percent of the maximum household income adjusted to unit size.
- For home ownership:
  - Limits the sales price of a detached, townhome or condominium unit to not more than the median sales price for that type of unit in that county and requires that all eligible purchasers of home ownership units occupy the home as their primary residence.
- Demonstrate that the program applicant is a public-private partnership of at least one local government or special district public entity and one private not-for-profit or for-profit partner.
- Demonstrate how the applicant will use the regulatory incentives and includes any local government letters of support for the incentives outlined in newly created s. 420.9075(8)(b)1., F.S.
- Demonstrate that the applicant possesses title to or site control of land and evidences availability of required infrastructure.
- Provides supporting research or facts of rental or home ownership workforce housing demand and need.
- Have at least 15 percent, evidenced by a letter of commitment, of the total development cost provided by grants, donations of land, or contributions from other sources.
- Demonstrate accessibility to employment opportunities or a plan to provide transportation access to such opportunities.

- Demonstrate a marketing and sales plan to ensure residents fit the income requirements and program workforce demands.
- Provide a development cost pro forma for the project.
- Demonstrate the applicant's affordable housing development and management experience.
- Demonstrate the long-term affordability of the rental or homeownership units.

Review Committee: The bill requires the Corporation to establish a review committee and scoring system for evaluation and competitive ranking of submitted applications. The ranking is required to ensure an opportunity for a greater number of high-cost, high-growth counties to receive project funding.

Interest Rate: The bill provides that the Corporation may award loans with a one percent interest rate which may be forgiven if the project continues to meet rental or ownership criteria outlined in the newly created s. 420.9075(4), F.S. The Corporation is required to develop rules and guidelines to set the terms under which the accrued loan interest may be forgiven.

Maximum Administrative Overhead: The bill authorizes the Corporation to use no more than two percent of the annual appropriation for administration and compliance monitoring.

Down Payment Assistance Program: The bill requires the Corporation to develop and implement a CWHIP down payment assistance program. There are no standards or guidelines provided to the Corporation regarding this program. Such authorization appears to be an unauthorized delegation of legislative authority in conflict with s. 1, Art. III, State Constitution. [See: CONSTITUTIONAL ISSUES].

Required Recommendations: The Corporation is required to develop recommendations for increasing the development or innovative affordable home ownership projects serving very-low, low and moderate-income residents of this state. The recommendations may include expansion of support for non-profit home builders such as Habitat for Humanity and other charitable housing organizations, public housing authorities, and for profit housing developers. Recommendations must assess the value of public-private partnerships, increased local and state funding for non-profit housing organizations, and the possible conversion of existing affordable multifamily rental apartments to affordable home ownership units for projects in high-cost counties and counties with areas of critical state concern. Recommendations must also examine how to guarantee long term affordability for home ownership. The bill provides that the Corporation may request the assistance of the Affordable Housing Study Commission in these efforts.

OTHER FINANCIAL AND REGULATORY INCENTIVES

Appropriations: The bill contains two appropriations for FY 2006-2007 to the Corporation as follows:

- $20 million from the State Housing Trust Fund to provide funds to teachers eligible for affordable housing pursuant to ss. 420.5088 or 420.5089, F.S., and to assist in teacher retention and recruitment as a response to the state's teacher shortage.
- $32 million from the Local Government Housing Trust Fund to assist in production of housing units for extremely low-income persons.

Housing Trust Fund Cap State Housing Trust Fund: The bill eliminates the $243 million cap on documentary stamp revenues allocated into the State Housing Trust Fund which is set to take effect on July 1, 2007.

Low-Income Housing Tax Credit/Assessment: The bill provides that if a capitalization rate is used to assess just valuation for an affordable housing property, then the appraiser must use a capitalization rate that is comparable to a rate used for non-affordable, market-based properties.

Assessment of Affordable Housing Property: The bill creates "The Manny Diaz Affordable Housing Property Tax Relief Initiative" for the purpose of assessing just valuation of certain affordable housing properties serving persons with incomes defined as low, moderate, and very low. The bill requires property appraisers, for assessment purposes, to recognize the actual rent income from rent-restricted units in such properties and to utilize an income approach for the assessment of the rents from such units. The bill specifies three types of properties to which this approach applies.

Affordable Housing Property Exemption for Nonprofit Entity Ownership: Current law provides a property exemption for affordable housing property owned entirely by a nonprofit entity. The bill defines the phrase "ownership by a nonprofit entity" as either:

- A corporation not for profit; or
- A Florida limited partnership the sole general partner of which is either a corporation not for profit or a Florida limited liability company the sole member of which is a corporation not for sale.

Community Contribution Tax Credits: The bill increases the total amount of community contribution tax credits which may be granted all programs approved under ss. 212.08, 220.183 and 624.5105, F.S., by $1 million. It amends ss. 212.08, 220.183 and 624.5105, F.S., respectively, in a substantially identical fashion, to provide new allocations of the available $13 million in tax credits: (1) an annual allocation of $10 million of tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19)[5] and (28),[6] F.S., and (2) a $3 million annual allocation for all other projects.

The bill also eliminates the requirement that the Office of Tourism, Trade, and Economic Development reserve specific percentages of certain annual tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for certain households and for other projects. These sections of the bill also eliminate provisions that allow tax credits that are unused for home ownership or all other projects to be used for any approved project after the first six months of the state fiscal year.

Elderly Housing Community Loan Program: The State Apartment Incentive Loan Program (SAIL) is administered by the Corporation. The Elderly Housing Community Loan Program (EHCL) is a loan program within SAIL in which a portion of SAIL funds are reserved to loan to sponsors of housing for the elderly to provide for specific repairs and improvements.

The bill reduces the minimum match requirement to which a sponsor must commit in order to receive a loan under the EHCL Program from 15 percent to 5 percent of the loan amount. In the 2005 legislative session, the Legislature raised the maximum loan amount available under the EHCL Program from $200,000 to $750,000, which increased the potential match amount from $30,000 to $112,500. Reducing the minimum match rate to five percent would result in a maximum required match amount of $37,500.

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[5] Section 420.9071(19), F.S., defines "low-income person" or "low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever amount is greatest. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

[6] Section 420.9071(28), F.S., defines "Very-low-income person" or "very-low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever is greatest. With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the area's median income adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the area's median income adjusted for family size.

State Apartment Incentive Loans: The bill changes two of the three population category parameters applicable to required allocation of funds to counties with a population of 825,000 or more, and counties with populations of greater than 100,000 but less than 825,000. The bill provides that where the Corporation's lien is subordinate to another mortgagee, then the term of the loan may be made coterminous with longest term of the superior lien. The bill extends the SAIL program to projects which reserve units for extremely low income families. The bill deletes an obsolete provision relating to rent certificates or vouchers. And, the bill authorizes the Corporation to waive certain requirements for projects which reserve units for very-low-income families. The bill also reduces the interest rates of SAIL loans from three to nine percent to one to three percent.

Surplus Public Property for Affordable Housing:

County Property: The bill requires each county to prepare an inventory list of all real property held in fee simple by the county within its jurisdiction. The list is to be prepared by January 1, 2007, and each 3 years thereafter. Criteria for the list are provided. The bill requires county planning staff to review the list and to identify each property that is appropriate for use as affordable housing. A six-month period is provided for this review. Properties identified as appropriate for affordable housing shall be offered for sale with the proceeds used to purchase land for the development of affordable housing. Alternatively:

- The proceeds may be donated to the Local Government Housing Trust Fund;
- The proceeds may be donated to a nonprofit housing organization for the construction of permanent affordable housing; or
- The land may be sold with a restriction requiring development on the property to include a specified percentage of permanent affordable housing.

The bill prescribes a public hearing process and provides restrictions on the potential pool of purchasers. Further, the bill provides for certain deed restrictions to prevent the sale of the unit at a price that exceeds the affordable housing threshold for low or moderate-income persons. The bill provides for definitions consistent with those found at s. 420.0004, F.S.

Municipal Property: The bill provides similar requirements for municipalities to prepare the real property inventory; and to offer for sale properties appropriate for use as affordable housing.

State Property: The bill amends existing law related to the surplus state lands. The bill provides that a local government may request that state lands be specifically declared surplus lands for the purpose of providing affordable housing. Additionally, the bill authorizes affordable housing as a permitted use for surplus state lands; and provides that when such lands are conveyed to local governments, they shall be disposed of consistent with the provisions outlined above.

Authority to Provide Employee Housing Assistance:

Independent Special Districts: The bill provides authority for independent special districts, created for the purpose of providing urban infrastructure or services, to provide housing and housing assistance for persons eligible under the CWHIP program. The bill also provides authority for fire control special districts to provide housing or housing assistance for their employed personnel.

School Boards: The bill authorizes school boards to provide affordable housing for teachers and other instructional personnel. The bill also authorizes school boards to rent or lease existing buildings, land, or space within buildings, originally constructed for purposes other than education, for conversion to use as affordable and workforce housing for school and instructional personnel.

Small Scale Amendments to Local Comprehensive Plan: Existing law provides that certain small scale development activities requiring a comprehensive plan amendment may be approved through a summary process known as a small scale amendment. The bill revises one of the categories of activities for development of affordable housing on property of less than 10 acres by including

workforce housing that meets the definition of affordable housing under s. 420.0004(3), F.S., without requiring the development to be financed with tax exempt bonds. Many of the workforce housing initiatives could be affordable housing developments that do not utilize tax exempt bond financing and this revision would also allow affordable housing developed with nine percent housing credits to comply with this small scale comprehensive plan amendment provision.

Disabled Veterans License and Permit Fee Exemption: Section 295.16, F.S., allows veterans to be exempt from paying building license or permit fees to any county or municipality for wheelchair accessibility improvements made upon a mobile home, when certain criteria are met. The bill increases the type of residences eligible for the permit fee exemption in s. 295.16, F.S to include any dwelling they own.

The provisions of this bill will enable a larger population of eligible, disabled veterans to take advantage of the existing fee exemption, reducing the costs that they are obligated to pay in order to make their homes wheelchair accessible. This bill does not place any restrictions on the number of wheelchair accessibility improvements allowed nor does it appear to place any restrictions on the number of times improvements may be made to the dwelling.

Developments of Regional Impact:

Substantial Deviations: A development of regional impact (DRI) is defined in existing law to mean "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." As DRIs often are developed over a series of years, the law provides a certain threshold below which the project may be modified without triggering additional DRI review. Activities which exceed the threshold are considered to be a substantial deviation of the development order authorizing the development. The bill provides a bonus in the substantial deviation threshold when at least 20 percent of the increase in the number of dwelling units is dedicated to the construction of workforce housing. "Workforce housing" is defined to mean housing that is affordable to a person who earns less than 120 percent of the AMI.

Statewide Guidelines and Standards: Existing law contains a set of statewide guidelines and standards that guide the analysis of particular activities to determine whether they constitute a development of regional impact. The bill amends those guidelines and standards to provide a similar bonus for the provision of workforce housing.

C. SECTION DIRECTORY:

Section 1 – Creates s. 125.379, F.S., relating to the disposition of county property for affordable housing.

Section 2 – Amends s. 163.31771, F.S., conforming a citation.

Section 3 – Amends s. 163.3187(1) (c), F.S., removing an exception from the comprehensive plan small scale amendment provisions.

Section 4 – Creates s. 166.0451, F.S., relating to the disposition of municipal property for affordable housing.

Section 5 – Creates s. 189.4155 (6), F.S., authorizing specified independent special districts to provide housing and housing assistance.

Section 6 – Creates s. 191.006 (19), F.S., amending independent special fire control district general powers to allow provision of housing and housing assistance.

Section 7 – Creates s. 193.017 (5). F.S., relating to capitalization rates used to assess property value.

Section 8 – Creates s. 193.018, F.S., creating "The Manny Diaz Affordable Housing Property Tax Relief Initiative"; requiring the use of an actual rental income basis for the purpose of assessing certain affordable housing properties.

Section 9 – Amends s. 196.1978, F.S., providing an affordable housing property exemption for certain affordable housing nonprofit entity owners.

Section 10 – Amends ss. 201.15 (9) and 201.15 (10), F.S., removing the caps related to distribution of certain tax revenues for the State Housing Trust Fund.

Section 11 – Amends s. 212.08(5)(q), F.S., increasing the amount of available tax credits, providing separate annual limitations for sales tax credits, eliminating the reservation of available tax credits.

Section 12 – Amends ss. 220.183(1) (c) and 220.183 (2) (b), F.S., increasing the amount of available tax credits, providing separate annual limitations for corporate tax credits, and eliminating the reservation of available tax credits.

Section 13 – Amends s. 253.034 (6) (f), F.S., relating to the uses of state-owned lands as surplus lands for affordable housing.

Section 14 – Amends s. 295.16, F.S., relating to license or permit fee exemptions for disabled veterans; changing language from "mobile home" to "dwelling."

Section 15 – Amends s. 380.06 (19) (b), F.S., relating to development of regional impact substantial deviations and dwelling units used for "workforce housing."

Section 16 – Amends s. 380.0651 (3) (k), F.S., relating to development of regional impact statewide guidelines and standard, increasing the applicable guidelines for residential development, providing workforce housing.

Section 17 – Amends s. 420.0004 (8) – (14), F.S., providing a definition of "extremely low-income person" and authorizing the Florida Housing Finance Corporation to adjust low income guidelines.

Section 18 – Repeals s. 420.37, F.S., relating to additional powers of the Florida Housing Finance Corporation.

Section 19 – Amends s. 420.503 (18), F.S., amending the definition of "farmworker."

Section 20 – Amends s. 420.5061, F.S., conforming a citation.

Section 21 – Amends s. 420.507 (22) (23) (40), F.S.; relating to interest rates, eligibility and authorizing interest rates to apply to units on a pro rata basis, the availability of subordinated loans to nonprofit sponsors or the availability for financing of housing to eligible borrowers, changing language from "corporations" to "business entities"; and creates s. 420.507 (44) – (46), F.S., relating to the adoption of rules for program goals, establishment of rule requirements for the reporting of data, and administration of funds appropriated for disaster recovery and reconstruction.

Section 22 – Amends ss. 420.5087 (1) (3) (5) (6), F.S., relating to state apartment incentive loans; changing population category parameters applicable to required allocation of funds; providing that where the Corporation's lien is subordinate to another mortgagee, then the term of the loan may be made coterminous with longest term of the superior lien; and authorizing the Corporation to waive certain requirements for projects which reserve units for very low income families.

Section 23 – Amends s. 420.5088 (1) – (4), F.S., relating to Florida Homeownership Assistance Program.

Section 24 – Creates s. 420.5095, F.S., creating the Community Workforce Housing Innovation Program.

Section 25 – Amends s. 420.9072(2), F.S., correcting a cross-reference.

Section 26 – Amends ss. 420.9075 (4)(a), and (5) – (12), F.S., relating to the distribution of State Housing Initiatives Partnership funds in local housing assistance plans; creating content requirements for the local housing assistance plans.

Section 27 – Amends s. 420.9076 (6), F.S., changing the maximum amount that the Florida Housing Finance Corporation may seek annually from the Local Government Housing Trust Fund for the purpose of compliance monitoring.

Section 28 – Amends 420.9079 (2), F.S., relating to the Local Government Housing Trust Fund, revising the amount of money a corporation may request in order to implement the provisions of s. 420.9075 (8), F.S.

Section 29 – Amends s. 624.5105 (1) (c) and (2) (e), F.S., increasing availability of community contribution tax credits, providing separate annual limitations for insurance premium tax credits, and eliminating the reservation of available tax credits.

Section 30 – Amends s. 1001.42 (9) (b), F.S., authorizing school boards to provide affordable housing for teachers and other instructional personnel.

Section 31 – Amends s. 1013.01(6), F.S., the definition of "educational facilities."

Section 32 – Amends s. 1013.15, F.S., to add subsection (5) relating to school board authority to rent or lease certain land or buildings for conversion to use as affordable or workforce housing.

Section 33 – Appropriating $20 million from the State Housing Trust Fund to the Florida Housing Finance Corporation; and provides funds to teachers eligible for affordable housing, and to assist in teacher recruitment and retention.

Section 34 – Appropriating $32 million from the Local Government Housing Trust Fund to the Florida Housing Finance Corporation for the production of housing units for extremely-low-income persons.

Section 35 – Providing an effective date of July 1, 2006, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Community Contribution Tax Credits: The Revenue Estimating Conference has determined that increasing the amount of community contribution tax credits annually from $12 million to $13 million will result in a loss of $.9 million in state revenues during fiscal year 2006-2007 and fiscal year 2007-2006.

	FY 2006-07	FY 2007-2008
General Revenue		
Corporate	(.1)	(.1)
Sales	(.8)	(.8)

State Trust	(Indeterminate)	(Indeterminate)
Total State Impact	(.9)	(.9)

State Housing Trust Fund: The bill eliminates the $243 million cap on documentary stamp revenues into the housing trust funds which is set to take effect on July 1, 2007.

2. Expenditures:

Appropriations:

	FY 2006-2007
State Housing Trust Fund	($20 million)
Local Government Housing Trust Fund	($32 million)
Florida Housing Finance Corporation	$52 million

Community Contribution Tax Credits: It is anticipated that administration of the increase in tax credits by OTTED will be implemented within existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Community Contribution Tax Credits: The Revenue Estimating Conference has determined that increasing the amount of community contribution tax credits annually from $12 million to $13 million will result in a loss of $ .1 million in local revenues during fiscal year 2006-2007 and fiscal year 2007-2006.

Disabled Veterans License and Permit Fee Exemption: The fiscal impact on local government revenues is expected to be negative and insignificant. The Revenue Estimating Conference has not met on this issue.

2. Expenditures:

Indeterminate. The bill provides encouragement and opportunity for local government to support the affordable housing efforts advanced by this bill, but does not require any particular level of financial commitment.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Community Contribution Tax Credits: The bill increases the amount of tax credits available to persons for homeownership projects from $9.4 million to $10 million, and for non-housing projects from $2.6 million to $3 million. This may have a positive but indeterminate impact on the number of low-income homes that are built each year and the projects sponsored in enterprise zones and Front Porch Florida Communities as they are likely to receive more contributions.

Elderly Housing Community Loan Program: This bill may have an economic impact on a private sector apartment owner that qualifies under the EHCL Program by reducing the match amount required to qualify for a loan under the program, allowing them to take advantage of higher loan amounts.

The bill may have a beneficial impact on the private sector in the following manner:

- Provides incentives for the private sector development and provision of affordable housing.
- Provides housing opportunities for certain types of employees, thus supporting some private and public employers by authorizing means by which they may assist employees to secure affordable housing.

D. FISCAL COMMENTS:

Community Contribution Tax Credits: The table below shows the tax credits granted for housing projects and for other community development projects during the past 10 years. There were significant tax credits unused for the first two years after the cap was increased to $10 million. Subsequently, the entire allocation has been used.

COMMUNITY CONTRIBUTION TAX CREDIT PROGRAM
TAX CREDIT SUMMARY FY 1995/96 – FY 2005/06

FISCAL YEAR	APPROVED apps.	HOUSING TAX CREDITS	COMMUNITY DEVELOPMENT TAX CREDITS	TOTAL CREDITS APPROVED	CREDITS REMAINING	ANNUAL ALLOCATION
1995/96	75	$465,542	$1,472,255	$1,937,797	$62,203	$2,000,000
1996/97	69	$1,043,256	$1,018,947	$2,062,203	$-62,203	$2,000,000
1997/98	81	$1,348,500	$651,500	$2,000,000	$0	$2,000,000
1998/99	75	$2,720,441	$2,279,559	$5,000,000	$0	$5,000,000
1999/00	198	$3,764,283	$1,302,178	$5,066,461	$4,933,539	$10,000,000
2000/01	223	$5,320,890	$744,365	$6,065,255	$3,934,745	$10,000,000
2001/02	322	$9,484,489	$515,464	$9,999,953	$47	$10,000,000
2002/03	359	$8,914,456	$1,085,544	$10,000,000	$0	$10,000,000
2003/04	285	$8,622,769	$1,377,231	$10,000,000	$0	$10,000,000
2004/05	251	$8,051,618	$1,948,382	$10,000,000	$0	$10,000,000
2005/06	285	$9,558,883	$2,441,117	$12,000,000	$0	$12,000,000
10 YEAR TOTALS	**2,223**	**$59,295,127**	**$14,836,542**	**$74,131,669**	**$8,868,331**	**$83,000,000**

Source: Created from data provided by OTTED.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Community Contribution Tax Credits: This bill may reduce the authority of municipalities and counties to raise revenues: the estimated reduction in Local Option Sales tax is $.1 million in fiscal year 2006–2007 and fiscal year 2007-2008. However, this impact is considered to be insignificant, and the bill is therefore exempt from the provisions of s. 18(b) of Art. VII, State Constitution.

Disabled Veterans License and Permit Fee Exemption: The mandates provision appears to apply because this bill reduces revenue raising authority; however, an exemption applies. The number of applicable veterans likely to utilize the license and permit fee exemptions is expected to be minimal. Therefore, the fiscal impact is expected to be insignificant and the bill is exempt from the mandates provision.

Surplus Property Inventory: The mandates provision appears to apply because this bill requires counties and municipalities to conduct a surplus real property inventory and to determine what of that real property is appropriate for affordable housing purposes. Conducting such surveys and determining what real property is appropriate for affordable housing purposes will require the expenditure of funds. However, the bill may be exempt from the mandate requirements if the fiscal impact of the bill, on an aggregate basis for all cities and counties in the state, is less than $1.8 million over the long term. At this time, the fiscal impact of the bill is unknown.

If the bill is not exempt from the mandates requirements imposed by Art. VII, section 18 of the Florida Constitution, the Legislature must determine that the law fulfills an important state interest and the bill must be approved by two–thirds of the House and Senate membership.

2. Other:

Unauthorized Delegation of Legislative Authority: Section 24 of the bill creates s. 420.907(12), F.S., requiring the Corporation to develop and implement a down payment assistance program without any standards or guidance regarding that program.

The legislative power of the state is vested in the Legislature (s. 1, Art. III, State Constitution). It is fundamental that the Legislature may not, except when authorized by constitution, delegate its legislative power, that is, the power to enact laws, or to declare what the law shall be, or to exercise an unrestricted discretion in applying the law. Under the doctrine of nondelegation of legislative power, fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.[7] The authorization to develop and implement a program with no further standards or guidance may be considered by a court to be an unauthorized delegation of legislative authority.

B. RULE-MAKING AUTHORITY:

The bill contains specific rulemaking authority as follows:

- Whereby the Corporation may intervene, negotiate terms, or undertake other actions to further program goals or avoid default of a program loan [s. 420.507(44), F.S.].
- To establish requirements for periodic reporting of data [s. 420.507(45), F.S.].
- To establish a funding process and selection criteria relating to the CWHIP [s. 420.5095(2), F.S.].
- To set the terms under which the CWHIP loan accrued interest may be forgiven [s. 420.9075(10)(b), F.S.].

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Newly created s. 420.5095(4)(f), F.S., a definition of "essential services personnel" may benefit from rewording. A possible redraft might be as follows:
  "Essential services personnel" is defined as those personnel, designated as "essential services personnel" within the county or eligible municipality's local housing assistance plan established pursuant to s. 420.9075. Such personnel may include, but are not limited to, teachers and educators, police and fire personnel, skilled construction trades personnel, and health care personnel."
- The bill requires the Corporation to develop and implement a CWHIP down payment assistance program, but provides no direction or guidance to the Corporation regarding the program. Such a grant of authority may be an unauthorized delegation of legislative authority. [See: CONSTITUTIONAL ISSUES].

[7] 10A Fla. Jur. 2d Constitutional Law s. 202.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Growth Management Committee adopted a strike all amendment with two amendments. The strike all amendment substantially amended the originally filed bill to include the following:

- Authorizes the disposition of county property for affordable housing.
- Provides a density bonus in both the development of regional impact substantial deviation and statewide guidelines and standards provisions.
- Authorizes the disposition of municipal property for affordable housing.
- Authorizes independent special districts to provide housing and housing assistance for its employed personnel.
- Includes authority to provide housing and housing assistance for employed personnel to the general powers of independent special districts.
- Requires the use of a particular cap rates when a cap rate is used to assess the just valuation of affordable housing property.
- Defines classifications for the ownership of nonprofit entities.
- Creates "The Manny Diaz Affordable Housing Property Tax Relief Initiative."
- Removes the cap on the distribution of certain revenues into the State Housing Trust Fund.
- Increases the availability of community contribution tax credits; provides separate annual limitations for insurance premium tax credits, and eliminates the reservation of available tax credits.
- Authorizes the use of state-owned surplus lands for affordable housing.
- Creates a disabled veterans exemption from certain license and permits fees
- Creates an incentive to provide workforce housing within developments of regional impact.
- Increases the applicable statewide development of regional impact guidelines for residential development that include workforce housing.
- Authorizes the Florida Housing Finance Corporation to adjust low income guidelines; provides definitions.
- Repeals s. 420.37, F.S.
- Expands the definition of "farmworker" in s. 420.503 (18), F.S., to comply with an applicable Federal definition.
- Amends the powers of the Florida Housing Finance Corporation.
- Increases the applicable population criteria for funding eligibility; lowers the sponsor match related to funding for certain repairs or improvements; and allows for coterminous loan terms under certain circumstances; all related to the State Apartment Incentive Loan Program.
- Amends provisions relating to the Florida Homeownership Assistance Program.
- Creates the Community Workforce Housing Innovation Program.
- Amends provisions of the State Housing Initiatives Partnership Program including creating rulemaking authority.
- Changes the maximum amount that the Florida Housing Finance Corporation may seek annually from the Local Government Housing Trust Fund for the purpose of compliance monitoring.
- Amends provisions relating to the community contribution tax credit.
- Authorizes school boards to provide affordable housing for teachers and other instructional personnel.
- Creates and appropriation of $20 million from the State Housing Trust Fund to the Florida Housing Finance Corporation to provide funding to teachers eligible for affordable housing.
- Authorizes the Florida Housing Finance Corporation to adopt rules to implement the provisions of the bill.

The Growth Management Committee took up and acted upon the following amendments:

- Amendment 1 – Withdrawn.
- Amendment 2 – Created s. 196.1980, F.S., "The Manny Diaz Affordable Housing Property Relief Initiative."
- Amendment 3 – Created paragraph (i) of subsection (11) of s. 420.5095, F.S., the Community Workforce Housing Innovation Program.

On March 29, 2006, the Local Government Council adopted a strike all amendment to HB 1363 CS. The strike all amendment changed the bill in the following respects:

- Changes the reference to the recipient trust fund for donations resulting from county and municipal sales of surplus lands as provided for in amended ss. 125.379 and 163.3187, F.S.
- Added "extremely-low-income persons" to the allowable classes of persons to whom a unit may be rented pursuant to newly created s. 125.379(4), F.S.
- Section 193.017, F.S., is substantially rewritten.
- Changes the placement of the creation of "The Manny Diaz Affordable Housing Property Tax Relief Act" to s. 193.081, F.S. , from s. 196.1980, F.S. Changes the name of the act to "The Manny Diaz Affordable Housing Property Tax *Assessment* Initiative." Changes the language to provide for a *rental* income approach; specifies that the rental income approach shall be determined pursuant to s. 193.077(7), F.S.; and provides that such approach relates to certain *affordable housing* properties. Adds s. 193.018(4), F.S., to the newly created section to provide that specified affordable housing shall be assessed with priority consideration given to the rental income approach, and applying certain assumptions.
- Amends s. 196.1978(3), F.S., to provide that property *owned by a non-profit entity* shall comply with referenced criteria for the determination of an affordable housing property exemption status.
- Deleted the phrase "subject to a recorded land use restriction agreement" at the end of the first sentence of newly added s. 380.06(19)(b)10., F.S. Also, changes the definition of "workforce housing" as it applies to the subparagraph relating to DRI substantial deviations by increasing the percentage to 150 percent from 120 percent.
- Changed the percentage to 150 percent from 120 percent relating to the newly created workforce housing bonus in the DRI threshold of s. 380.0651(3)(k), F.S.
- Hyphenated the term "extremely-low-income" in the new definition of s. 420.0004(8), F.S.
- Added the phrase "and for participation in a housing locator system" to the end of the newly created s. 420.507(45), F.S
- Replaced the term "extremely-low-income" for "families" in s. 420.5087(5), F.S.
- Removed the deletion of and substantially rewrote s. 420.5087(6)(c)6., F.S., relating to SAIL loans; also removed renumbering of subsequent subparagraphs.
- Replaces the term "extremely-low-income persons" for "units" in the new language of s. 420.5087(6)(c)7., F.S.
- Amends s. 420.5087(6)(k), F.S., to add an additional condition to the allowance of rent controls on certain projects.
- Adds "rented" to the list of events giving rise to the balance due of any HAP loan, unless otherwise approved by the Corporation in s. 420.5088, F.S.
- Substantially rewrites the newly created s. 420.5095, F.S., relating to the newly created CWHIP, to remove redundancies and to provide clarifications.
- Creates s. 420.9075(3), F.S., providing for local housing assistance plans to include a definition of essential service personnel to identify those personnel that will be eligible for certain essential service personnel housing assistance.
- Clarifies that the reservation of funds for home ownership for very low income persons is a goal and not a requirement in s. 420.9075(4)(a), F.S.; and deletes the newly created subsection (5) relating to the recruitment and retention of essential service personnel.
- Adds the amendment of s. 1013.01(6), F.S., to expand the definition of "educational facilities" to include affordable and workforce housing for teacher and school personnel, if approved by the board.
- Removes the additional rulemaking authority which appeared to duplicate the Corporation's existing rulemaking authority.
- Creates s. 1013.15(5), F.S., authorizing school boards to rent or lease existing buildings, land, or space within buildings, originally constructed for purposes other than education, for conversion to use as affordable and workforce housing for school and instructional personnel.

CHAMBER ACTION

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 affordable housing; creating s.
7 125.379, F.S.; providing for disposition of county
8 property for affordable housing; amending s. 163.31771,
9 F.S.; conforming cross-references; amending s. 163.3187,
10 F.S.; revising a limitation relating to small scale
11 comprehensive plan amendments involving the construction
12 of affordable housing units; creating s. 166.0451, F.S.;
13 providing for disposition of municipal property for
14 affordable housing; amending s. 189.4155, F.S.;
15 authorizing independent special districts to provide for
16 employee housing and housing assistance; amending s.
17 191.006, F.S.; authorizing independent special fire
18 control districts to provide employee housing and housing
19 assistance; amending s. 193.017, F.S.; authorizing the
20 Florida Housing Finance Corporation and the Department of
21 Revenue to annually set the capitalization rate used for
22 assessing just valuation of affordable housing properties;
23 creating s. 193.018, F.S.; creating the Manny Diaz

24 Affordable Housing Property Tax Relief Initiative;
25 providing criteria for assessing just valuation of
26 affordable housing properties serving persons of low,
27 moderate, very-low, and extremely low incomes; amending s.
28 196.1978, F.S.; specifying what constitutes a nonprofit
29 entity for purposes of affordable housing property tax
30 exemption; conforming cross-references; amending s.
31 201.15, F.S.; removing a cap on certain funds distributed
32 to the State Housing Trust Fund; amending ss. 212.08,
33 220.183, and 624.5105, F.S.; increasing the amount of
34 available tax credits against the sales tax, corporate
35 income tax, and insurance premium tax, respectively, for
36 projects under the community contribution tax credit
37 program and providing separate annual limitations for
38 certain projects; revising requirements and procedures for
39 the Office of Tourism, Trade, and Economic Development in
40 granting tax credits under the program; conforming cross-
41 references; amending s. 253.034, F.S.; providing for the
42 disposition of state lands for affordable housing;
43 amending s. 295.16, F.S.; expanding the disabled veteran
44 exemption from certain license and permit fees relating to
45 dwelling improvements; amending s. 380.06, F.S.; providing
46 a greater substantial deviation threshold for the
47 provision of affordable housing in a development of
48 regional impact; conforming cross-references; amending s.
49 380.0651, F.S.; providing a statewide guidelines and
50 standards bonus for the provision of workforce housing;
51 amending s. 420.0004, F.S.; defining the term "extremely

52 low-income persons"; conforming cross-references;
53 repealing s. 420.37, F.S., relating to additional powers
54 of the Florida Housing Finance Corporation; amending s.
55 420.503, F.S.; revising the definition of the term
56 "farmworker" under the Florida Housing Finance Corporation
57 Act; providing rulemaking authority; amending s. 420.5061,
58 F.S.; conforming a cross-reference; amending s. 420.507,
59 F.S.; revising and expanding the powers of the Florida
60 Housing Finance Corporation relating to mortgage loan
61 interest rates, loans, loan relief, uses of loan funds,
62 subsidiary business entities, data reporting, and disaster
63 recovery and reconstruction; providing certain emergency
64 rulemaking authority; amending s. 420.5087, F.S.;
65 increasing the population criteria for the State Apartment
66 Incentive Loan Program; revising criteria for loans;
67 conforming cross-references; amending s. 420.5088, F.S.;
68 expanding the scope of the Florida Homeownership
69 Assistance Program; revising loan requirements; deleting a
70 provision reserving program funds for certain borrowers;
71 creating s. 420.5095, F.S.; creating the Community
72 Workforce Housing Innovation Program; providing the
73 Florida Housing Finance Corporation with certain powers
74 and responsibilities relating to the program; requiring
75 the program to target certain entities; requiring the
76 program to supplement existing affordable housing
77 programs; providing application requirements; providing
78 incentives for program applicants; amending s. 420.9071,
79 F.S.; conforming a cross-reference; amending s. 420.9072,

80 F.S.; conforming cross-references; amending s. 420.9075,
81 F.S.; requiring local housing assistance plans to define
82 essential service personnel for the county or eligible
83 municipality and to contain a strategy for the recruitment
84 and retention of such personnel; providing a goal for
85 provision of funds for homeownership for very-low-income
86 individuals; amending s. 420.9076, F.S.; revising a cross-
87 reference; amending s. 420.9079, F.S.; revising the
88 maximum appropriation the Florida Housing Finance
89 Corporation may request each state fiscal year; conforming
90 a cross-reference; amending s. 1001.42, F.S.; authorizing
91 district school boards to provide affordable housing for
92 certain teachers and other instructional personnel;
93 amending s. 1013.01, F.S.; providing that certain
94 affordable and workforce housing for teachers and other
95 school personnel may qualify as educational facilities;
96 amending s. 1013.15, F.S.; authorizing the board to rent
97 or lease certain property to school and instructional
98 personnel; providing appropriations; providing effective
99 dates.
100
101 Be It Enacted by the Legislature of the State of Florida:
102
103 Section 1. Section 125.379, Florida Statutes, is created
104 to read:
105 125.379 Disposition of county property for affordable
106 housing.--

107 (1) By January 1, 2007, and every 3 years thereafter, each
108 county shall prepare an inventory list of all real property
109 within its jurisdiction to which the county holds fee simple
110 title. The inventory list must include the address and legal
111 description of each real property and specify whether the
112 property is vacant or improved. County planning staff shall
113 review the inventory list and identify each property that is
114 appropriate for use as affordable housing. The time for
115 preparing the inventory list and its review by county planning
116 staff may not exceed 6 months. The properties identified as
117 appropriate for use as affordable housing may be offered for
118 sale and the proceeds used to purchase land for the development
119 of affordable housing or donated to the local housing trust
120 fund, sold with a restriction that requires any development on
121 the property to include a specified percentage of permanent
122 affordable housing, or donated to a nonprofit housing
123 organization for the construction of permanent affordable
124 housing.
125 (2) After completing an inventory list, the board of
126 county commissioners shall hold at least two public hearings to
127 discuss the inventory list and staff's recommendation concerning
128 which properties are appropriate for use as affordable housing.
129 The board shall comply with the provisions of s. 125.66(4)(b)1.
130 regarding the advertisement of the public hearings and shall
131 hold the first hearing no later than 30 days after completing
132 the inventory list. The board shall approve the inventory list
133 through the adoption of a resolution at the second hearing no
134 later than 6 months after completing the inventory list.

135 (3) After the inventory list has been approved by
136 resolution, the board of county commissioners shall immediately
137 make available any real property that has been identified in the
138 inventory list as appropriate for use as affordable housing. The
139 county shall make the surplus real property available to:
140 (a) A private developer if the purchase price paid by the
141 developer is not less than the appraised value of the property
142 based on its highest and best use and the real property is sold
143 with deed restrictions that require a specified percentage of
144 any project developed on the real property to provide affordable
145 housing for low-income and moderate-income persons, with a
146 minimum of 10 percent of the units in the project available for
147 low-income persons and another 10 percent of the units available
148 for moderate-income persons for a total minimum of 20 percent,
149 or, if providing rental housing or a combination of rental
150 housing and homeownership, an additional 5 percent of the units
151 available for very-low-income persons for a total minimum of 25
152 percent;
153 (b) A private developer without any requirement that a
154 percentage of the units built on the real property be affordable
155 if the purchase price paid by the developer is not less than the
156 appraised value of the property based on its highest and best
157 use, in which case the county must use the funds received from
158 the developer to acquire real property on which affordable
159 housing will be built or donate the funds to the local housing
160 trust fund for the purpose of implementing the programs
161 described in ss. 420.907-420.9079; or

162 (c) A nonprofit housing organization, such as a community
163 land trust, housing authority, or community redevelopment agency
164 to be used for the production and preservation of permanent
165 affordable housing.
166 (4) The deed restrictions required under paragraph (3)(a)
167 for an affordable housing unit must also prohibit the sale of
168 the unit at a price that exceeds the threshold for housing that
169 is affordable for low-income or moderate-income persons or to a
170 buyer who is not eligible due to his or her income under chapter
171 420. The deed restrictions may allow the affordable housing
172 units created under paragraph (3)(a) to be rented to extremely
173 low-income, very-low-income, low-income, or moderate-income
174 persons.
175 (5) For purposes of this section, the terms "affordable,"
176 "low-income persons," "moderate-income persons," "very-low-
177 income persons", and "extremely low-income persons" have the
178 same meaning as in s. 420.0004.
179 Section 2. Paragraphs (d), (e), and (f) of subsection (2)
180 of section 163.31771, Florida Statutes, are amended to read:
181 163.31771 Accessory dwelling units.--
182 (2) As used in this section, the term:
183 (d) "Low-income persons" has the same meaning as in s.
184 420.0004(10)~~(9)~~.
185 (e) "Moderate-income persons" has the same meaning as in
186 s. 420.0004(11)~~(10)~~.
187 (f) "Very-low-income persons" has the same meaning as in
188 s. 420.0004(15)~~(14)~~.

189 Section 3. Paragraph (c) of subsection (1) of section
190 163.3187, Florida Statutes, is amended to read:
191 163.3187 Amendment of adopted comprehensive plan.--
192 (1) Amendments to comprehensive plans adopted pursuant to
193 this part may be made not more than two times during any
194 calendar year, except:
195 (c) Any local government comprehensive plan amendments
196 directly related to proposed small scale development activities
197 may be approved without regard to statutory limits on the
198 frequency of consideration of amendments to the local
199 comprehensive plan. A small scale development amendment may be
200 adopted only under the following conditions:
201 1. The proposed amendment involves a use of 10 acres or
202 fewer and:
203 a. The cumulative annual effect of the acreage for all
204 small scale development amendments adopted by the local
205 government shall not exceed:
206 (I) A maximum of 120 acres in a local government that
207 contains areas specifically designated in the local
208 comprehensive plan for urban infill, urban redevelopment, or
209 downtown revitalization as defined in s. 163.3164, urban infill
210 and redevelopment areas designated under s. 163.2517,
211 transportation concurrency exception areas approved pursuant to
212 s. 163.3180(5), or regional activity centers and urban central
213 business districts approved pursuant to s. 380.06(2)(e);
214 however, amendments under this paragraph may be applied to no
215 more than 60 acres annually of property outside the designated
216 areas listed in this sub-sub-subparagraph. Amendments adopted

217 pursuant to paragraph (k) shall not be counted toward the
218 acreage limitations for small scale amendments under this
219 paragraph.
220 (II) A maximum of 80 acres in a local government that does
221 not contain any of the designated areas set forth in sub-sub-
222 subparagraph (I).
223 (III) A maximum of 120 acres in a county established
224 pursuant to s. 9, Art. VIII of the State Constitution.
225 b. The proposed amendment does not involve the same
226 property granted a change within the prior 12 months.
227 c. The proposed amendment does not involve the same
228 owner's property within 200 feet of property granted a change
229 within the prior 12 months.
230 d. The proposed amendment does not involve a text change
231 to the goals, policies, and objectives of the local government's
232 comprehensive plan, but only proposes a land use change to the
233 future land use map for a site-specific small scale development
234 activity.
235 e. The property that is the subject of the proposed
236 amendment is not located within an area of critical state
237 concern, unless the project subject to the proposed amendment
238 involves the construction of affordable housing units meeting
239 the criteria of s. 420.0004(3), and is located within an area of
240 critical state concern designated by s. 380.0552 or by the
241 Administration Commission pursuant to s. 380.05(1). Such
242 amendment is not subject to the density limitations of sub-
243 subparagraph f., and shall be reviewed by the state land
244 planning agency for consistency with the principles for guiding

245 development applicable to the area of critical state concern
246 where the amendment is located and shall not become effective
247 until a final order is issued under s. 380.05(6).
248 f. If the proposed amendment involves a residential land
249 use, the residential land use has a density of 10 units or less
250 per acre or the proposed future land use category allows a
251 maximum residential density of the same or less than the maximum
252 residential density allowable under the existing future land use
253 category, except that this limitation does not apply to small
254 scale amendments involving the construction of affordable
255 housing units meeting the criteria of s. 420.0004(3) on property
256 which will be the subject of a land use restriction agreement ~~or~~
257 ~~extended use agreement recorded in conjunction with the issuance~~
258 ~~of tax exempt bond financing or an allocation of federal tax~~
259 ~~credits issued through the Florida Housing Finance Corporation~~
260 ~~or a local housing finance authority authorized by the Division~~
261 ~~of Bond Finance of the State Board of Administration~~, or small
262 scale amendments described in sub-sub-subparagraph a.(I) that
263 are designated in the local comprehensive plan for urban infill,
264 urban redevelopment, or downtown revitalization as defined in s.
265 163.3164, urban infill and redevelopment areas designated under
266 s. 163.2517, transportation concurrency exception areas approved
267 pursuant to s. 163.3180(5), or regional activity centers and
268 urban central business districts approved pursuant to s.
269 380.06(2)(e).
270 2.a. A local government that proposes to consider a plan
271 amendment pursuant to this paragraph is not required to comply
272 with the procedures and public notice requirements of s.

273 163.3184(15)(c) for such plan amendments if the local government
274 complies with the provisions in s. 125.66(4)(a) for a county or
275 in s. 166.041(3)(c) for a municipality. If a request for a plan
276 amendment under this paragraph is initiated by other than the
277 local government, public notice is required.
278 b. The local government shall send copies of the notice
279 and amendment to the state land planning agency, the regional
280 planning council, and any other person or entity requesting a
281 copy. This information shall also include a statement
282 identifying any property subject to the amendment that is
283 located within a coastal high-hazard area as identified in the
284 local comprehensive plan.
285 3. Small scale development amendments adopted pursuant to
286 this paragraph require only one public hearing before the
287 governing board, which shall be an adoption hearing as described
288 in s. 163.3184(7), and are not subject to the requirements of s.
289 163.3184(3)-(6) unless the local government elects to have them
290 subject to those requirements.
291 4. If the small scale development amendment involves a
292 site within an area that is designated by the Governor as a
293 rural area of critical economic concern under s. 288.0656(7) for
294 the duration of such designation, the 10-acre limit listed in
295 subparagraph 1. shall be increased by 100 percent to 20 acres.
296 The local government approving the small scale plan amendment
297 shall certify to the Office of Tourism, Trade, and Economic
298 Development that the plan amendment furthers the economic
299 objectives set forth in the executive order issued under s.
300 288.0656(7), and the property subject to the plan amendment

301 shall undergo public review to ensure that all concurrency
302 requirements and federal, state, and local environmental permit
303 requirements are met.
304 Section 4. Section 166.0451, Florida Statutes, is created
305 to read:
306 166.0451 Disposition of municipal property for affordable
307 housing.--
308 (1) By January 1, 2007, and every 3 years thereafter, each
309 municipality shall prepare an inventory list of all real
310 property within its jurisdiction to which the municipality holds
311 fee simple title. The inventory list must include the address
312 and legal description of each property and specify whether the
313 property is vacant or improved. Municipal planning staff shall
314 review the inventory list and identify each real property that
315 is appropriate for use as affordable housing. The time for
316 preparing the inventory list and its review by municipal
317 planning staff may not exceed 6 months. The properties
318 identified as appropriate for use as affordable housing may be
319 offered for sale and the proceeds used to purchase land for the
320 development of affordable housing or donated to the local
321 housing trust fund, sold with a restriction that requires any
322 development on the property to include a specified percentage of
323 permanent affordable housing, or donated to a nonprofit housing
324 organization for the construction of permanent affordable
325 housing.
326 (2) Upon completing an inventory list in compliance with
327 this section, the governing body of the municipality shall hold
328 at least two public hearings to discuss the inventory list and

329 the recommendation of the staff concerning which properties are
330 appropriate for use as affordable housing. The governing body
331 shall comply with s. 166.041(3)(c)2.a. regarding the
332 advertisement of the public hearings and shall hold the first
333 hearing no later than 30 days after completing the inventory
334 list. The governing body shall approve the inventory list
335 through the adoption of a resolution at the second hearing no
336 later than 6 months after completing the inventory list.
337 (3) After the inventory list has been approved by
338 resolution, the governing body of the municipality shall
339 immediately make available any real property that has been
340 identified in the inventory list as appropriate for use as
341 affordable housing. The municipality shall make the surplus real
342 property available to:
343 (a) A private developer if the purchase price paid by the
344 developer is not less than the appraised value of the property
345 based on its highest and best use and the real property is sold
346 with deed restrictions that require a specified percentage of
347 any project developed on the real property to provide affordable
348 housing for low-income and moderate-income persons, with a
349 minimum of 10 percent of the units in the project available for
350 low-income persons and another 10 percent of the units available
351 for moderate-income persons for a total minimum of 20 percent,
352 or, if providing rental housing or a combination of rental
353 housing and homeownership, an additional 5 percent of the units
354 available for very-low-income persons for a total minimum of 25
355 percent;

356 (b) A private developer without any requirement that a
357 percentage of the units built on the real property be affordable
358 if the purchase price paid by the developer is not less than the
359 appraised value of the property based on its highest and best
360 use, in which case the municipality must use the funds received
361 from the developer to acquire real property on which affordable
362 housing will be built or donate the funds to the local housing
363 trust fund for the purpose of implementing the programs
364 described in ss. 420.907-420.9079; or
365 (c) A nonprofit housing organization, such as a community
366 land trust, housing authority, or community land trust, housing
367 authority, or community redevelopment agency to be used for the
368 production and preservation of permanently affordable housing.
369 (4) The deed restrictions required under paragraph (3)(a)
370 for an affordable housing unit must also prohibit the sale of
371 the unit at a price that exceeds the threshold for housing that
372 is affordable for low-income or moderate-income persons or to a
373 buyer who is not eligible due to his or her income under chapter
374 420. The deed restrictions may allow the affordable housing
375 units created under paragraph (3)(a) to be rented to extremely
376 low-income, very-low-income, low-income, or moderate-income
377 persons.
378 (5) For purposes of this section, the terms "affordable,"
379 "extremely low-income persons," "low-income persons," "moderate-
380 income persons," and "very-low-income persons" have the same
381 meaning as in s. 420.0004.
382 Section 5. Subsection (6) is added to section 189.4155,
383 Florida Statutes, to read:

384 189.4155 Activities of special districts; local government
385 comprehensive planning.--
386 (6) Any independent special district created pursuant to
387 special act or general law, including, but not limited to, this
388 chapter and chapters 190, 191, and 298, for the purpose of
389 providing urban infrastructure of services, is authorized to
390 provide housing and housing assistance for persons eligible
391 under s. 420.5095.
392 Section 6. Subsection (19) is added to section 191.006,
393 Florida Statutes, to read:
394 191.006 General powers.--The district shall have, and the
395 board may exercise by majority vote, the following powers:
396 (19) To provide housing and housing assistance for persons
397 eligible under s. 420.5095.
398 Section 7. Subsection (5) is added to section 193.017,
399 Florida Statutes, to read:
400 193.017 Low-income housing tax credit.--Property used for
401 affordable housing which has received a low-income housing tax
402 credit from the Florida Housing Finance Corporation, as
403 authorized by s. 420.5099, shall be assessed under s. 193.011
404 and, consistent with s. 420.5099(5) and (6), pursuant to this
405 section.
406 (5) If a capitalization rate is used to assess just
407 valuation for the affordable housing property, the appraiser
408 shall use a capitalization rate that is comparable to a rate
409 used for nonaffordable market-based properties.
410 Section 8. Section 193.018, Florida Statutes, is created
411 to read:

412 193.018 The Manny Diaz Affordable Housing Property Tax
413 Relief Initiative.--
414 (1) For the purpose of assessing just valuation of
415 affordable housing properties serving persons with income limits
416 defined as extremely low, low, moderate, and very low, as
417 specified in s. 420.0004(8), (10), (11), and (15), the actual
418 rental income from rent-restricted units in such a property
419 shall be recognized by the property appraiser for assessment
420 purposes, and a rental income approach pursuant to s. 193.011(7)
421 shall be used for assessment of the rents for the following
422 affordable housing properties:
423 (a) Property that is funded by the United States
424 Department of Housing and Urban Development under s. 8 of the
425 United States Housing Act of 1937 that is used to provide
426 affordable housing serving eligible persons as defined by s.
427 159.603(7) and elderly persons, extremely low-income persons,
428 and very-low-income persons as defined by s. 420.0004(7), (8),
429 and (15) and that has undergone financial restructuring as
430 provided in s. 501, Title V, Subtitle A of the Multifamily
431 Assisted Housing Reform and Affordability Act of 1997;
432 (b) Multifamily, farmworker, or elderly rental properties
433 that are funded by the Florida Housing Finance Corporation under
434 ss. 420.5087 and 420.5089 and the State Housing Initiatives
435 Partnership Program under ss. 420.9072 and 420.9075, s. 42 of
436 the Internal Revenue Code; the HOME Investment Partnership
437 Program under the Cranston-Gonzalez National Affordable Housing
438 Act, 42 U.S.C. s. 12741 et seq.; or the Federal Home Loan Banks'
439 Affordable Housing Program established pursuant to the Financial

440 Institutions Reform, Recovery and Enforcement Act of 1989, Pub.
441 L. No. 101-73; or
442 (c) Multifamily residential rental properties of 10 or
443 more units that are certified by the local housing agency as
444 having at least 95 percent of its units providing affordable
445 housing to extremely low-income persons, very-low-income
446 persons, low-income persons, and moderate-income persons as
447 defined by s. 420.0004(8), (15), (10), and (11).
448 (2) Properties used for affordable housing which have
449 received a low-income housing tax credit from the Florida
450 Housing Finance Corporation, as authorized by s. 420.5099, shall
451 be assessed with priority consideration given to the rental
452 income approach under s. 193.011(7) and, consistent with s.
453 420.5099(5) and (6), pursuant to this section, the following
454 assumptions shall apply:
455 (a) The tax credits granted and the financing generated by
456 the tax credits may not be considered as income to the property.
457 (b) The actual rental income from rent-restricted units in
458 such a property shall be recognized by the property appraiser as
459 the real rents for assessing just value.
460 (c) Any costs paid for by tax credits and costs paid for
461 by additional financing proceeds received under chapter 420 may
462 not be included in the valuation of the property.
463 (d) If an extended low-income housing agreement is filed
464 in the official public records of the county in which the
465 property is located, the agreement, and any recorded amendment
466 or supplement thereto, shall be considered a land-use regulation

467 and a limitation on the highest and best use of the property
468 during the term of the agreement, amendment, or supplement.
469 Section 9. Section 196.1978, Florida Statutes, is amended
470 to read:
471 196.1978 Affordable housing property exemption.--
472 (1) Property used to provide affordable housing serving
473 eligible persons as defined by s. 159.603(7) and persons meeting
474 income limits specified in s. 420.0004(10) ~~(9)~~, (11) ~~(10)~~, and
475 (15) ~~(14)~~, which property is owned entirely by a nonprofit entity
476 which is qualified as charitable under s. 501(c)(3) of the
477 Internal Revenue Code and which complies with Rev. Proc. 96-32,
478 1996-1 C.B. 717, shall be considered property owned by an exempt
479 entity and used for a charitable purpose, and those portions of
480 the affordable housing property which provide housing to
481 individuals with incomes as defined in s. 420.0004(10) ~~(9)~~ and
482 (15) ~~(14)~~ shall be exempt from ad valorem taxation to the extent
483 authorized in s. 196.196.
484 (2) For the purposes of this section, ownership entirely
485 by a nonprofit entity is classified as ownership by either:
486 (a) A corporation not for profit; or
487 (b) A Florida limited partnership the sole general partner
488 of which is either a corporation not for profit or a Florida
489 limited liability company or corporation the sole member or
490 shareholder, respectively, of which is a corporation not for
491 profit.
492 (3) All property owned by a nonprofit entity identified in
493 this section shall comply with the criteria for determination of
494 exempt status to be applied by property appraisers on an annual

495 basis as defined in s. 196.195. The Legislature intends that any
496 property owned by a limited liability company which is
497 disregarded as an entity for federal income tax purposes
498 pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) shall be
499 treated as owned by its sole member.
500 Section 10. Effective July 1, 2007, subsections (9) and
501 (10) of section 201.15, Florida Statutes, as amended by section
502 1 of chapter 2005-92, Laws of Florida, are amended to read:
503 201.15 Distribution of taxes collected.--All taxes
504 collected under this chapter shall be distributed as follows and
505 shall be subject to the service charge imposed in s. 215.20(1),
506 except that such service charge shall not be levied against any
507 portion of taxes pledged to debt service on bonds to the extent
508 that the amount of the service charge is required to pay any
509 amounts relating to the bonds:
510 (9) ~~The lesser of~~ Seven and fifty-three hundredths percent
511 of the remaining taxes collected under this chapter ~~or $107~~
512 ~~million~~ in each fiscal year shall be paid into the State
513 Treasury to the credit of the State Housing Trust Fund and shall
514 be used as follows:
515 (a) Half of that amount shall be used for the purposes for
516 which the State Housing Trust Fund was created and exists by
517 law.
518 (b) Half of that amount shall be paid into the State
519 Treasury to the credit of the Local Government Housing Trust
520 Fund and shall be used for the purposes for which the Local
521 Government Housing Trust Fund was created and exists by law.

522 (10) ~~The lesser of~~ Eight and sixty-six hundredths percent
523 of the remaining taxes collected under this chapter ~~or $136~~
524 ~~million~~ in each fiscal year shall be paid into the State
525 Treasury to the credit of the State Housing Trust Fund and shall
526 be used as follows:
527 (a) Twelve and one-half percent of that amount shall be
528 deposited into the State Housing Trust Fund and be expended by
529 the Department of Community Affairs and by the Florida Housing
530 Finance Corporation for the purposes for which the State Housing
531 Trust Fund was created and exists by law.
532 (b) Eighty-seven and one-half percent of that amount shall
533 be distributed to the Local Government Housing Trust Fund and
534 shall be used for the purposes for which the Local Government
535 Housing Trust Fund was created and exists by law. Funds from
536 this category may also be used to provide for state and local
537 services to assist the homeless.
538 Section 11. Paragraphs (o) and (q) of subsection (5) of
539 section 212.08, Florida Statutes, are amended to read:
540 212.08 Sales, rental, use, consumption, distribution, and
541 storage tax; specified exemptions.--The sale at retail, the
542 rental, the use, the consumption, the distribution, and the
543 storage to be used or consumed in this state of the following
544 are hereby specifically exempt from the tax imposed by this
545 chapter.
546 (5) EXEMPTIONS; ACCOUNT OF USE.--
547 (o) Building materials in redevelopment projects.--
548 1. As used in this paragraph, the term:

549 a. "Building materials" means tangible personal property
550 that becomes a component part of a housing project or a mixed-
551 use project.
552 b. "Housing project" means the conversion of an existing
553 manufacturing or industrial building to housing units in an
554 urban high-crime area, enterprise zone, empowerment zone, Front
555 Porch Community, designated brownfield area, or urban infill
556 area and in which the developer agrees to set aside at least 20
557 percent of the housing units in the project for low-income and
558 moderate-income persons or the construction in a designated
559 brownfield area of affordable housing for persons described in
560 s. 420.0004(8)~~(9)~~, (11)~~(10)~~, or (15)~~(14)~~, or in s. 159.603(7).
561 c. "Mixed-use project" means the conversion of an existing
562 manufacturing or industrial building to mixed-use units that
563 include artists' studios, art and entertainment services, or
564 other compatible uses. A mixed-use project must be located in an
565 urban high-crime area, enterprise zone, empowerment zone, Front
566 Porch Community, designated brownfield area, or urban infill
567 area, and the developer must agree to set aside at least 20
568 percent of the square footage of the project for low-income and
569 moderate-income housing.
570 d. "Substantially completed" has the same meaning as
571 provided in s. 192.042(1).
572 2. Building materials used in the construction of a
573 housing project or mixed-use project are exempt from the tax
574 imposed by this chapter upon an affirmative showing to the
575 satisfaction of the department that the requirements of this
576 paragraph have been met. This exemption inures to the owner

577 through a refund of previously paid taxes. To receive this
578 refund, the owner must file an application under oath with the
579 department which includes:
580 a. The name and address of the owner.
581 b. The address and assessment roll parcel number of the
582 project for which a refund is sought.
583 c. A copy of the building permit issued for the project.
584 d. A certification by the local building code inspector
585 that the project is substantially completed.
586 e. A sworn statement, under penalty of perjury, from the
587 general contractor licensed in this state with whom the owner
588 contracted to construct the project, which statement lists the
589 building materials used in the construction of the project and
590 the actual cost thereof, and the amount of sales tax paid on
591 these materials. If a general contractor was not used, the owner
592 shall provide this information in a sworn statement, under
593 penalty of perjury. Copies of invoices evidencing payment of
594 sales tax must be attached to the sworn statement.
595 3. An application for a refund under this paragraph must
596 be submitted to the department within 6 months after the date
597 the project is deemed to be substantially completed by the local
598 building code inspector. Within 30 working days after receipt of
599 the application, the department shall determine if it meets the
600 requirements of this paragraph. A refund approved pursuant to
601 this paragraph shall be made within 30 days after formal
602 approval of the application by the department. The provisions of
603 s. 212.095 do not apply to any refund application made under
604 this paragraph.

605 4. The department shall establish by rule an application
606 form and criteria for establishing eligibility for exemption
607 under this paragraph.
608 5. The exemption shall apply to purchases of materials on
609 or after July 1, 2000.
610 (q) Community contribution tax credit for donations.--
611 1. Authorization.--~~Beginning July 1, 2001,~~ Persons who are
612 registered with the department under s. 212.18 to collect or
613 remit sales or use tax and who make donations to eligible
614 sponsors are eligible for tax credits against their state sales
615 and use tax liabilities as provided in this paragraph:
616 a. The credit shall be computed as 50 percent of the
617 person's approved annual community contribution.~~;~~
618 b. The credit shall be granted as a refund against state
619 sales and use taxes reported on returns and remitted in the 12
620 months preceding the date of application to the department for
621 the credit as required in sub-subparagraph 3.c. If the annual
622 credit is not fully used through such refund because of
623 insufficient tax payments during the applicable 12-month period,
624 the unused amount may be included in an application for a refund
625 made pursuant to sub-subparagraph 3.c. in subsequent years
626 against the total tax payments made for such year. Carryover
627 credits may be applied for a 3-year period without regard to any
628 time limitation that would otherwise apply under s. 215.26.~~;~~
629 c. A person may not receive more than $200,000 in annual
630 tax credits for all approved community contributions made in any
631 one year.~~;~~

632 d. All proposals for the granting of the tax credit
633 require the prior approval of the Office of Tourism, Trade, and
634 Economic Development.~~,~~
635 e. The total amount of tax credits which may be granted
636 for all programs approved under this paragraph, s. 220.183, and
637 s. 624.5105 is $10 ~~$12~~ million annually for projects that
638 provide homeownership opportunities for low-income or very-low-
639 income persons as defined in s. 420.9071(19) and (28) and $3
640 million annually for all other projects.~~; and~~
641 f. A person who is eligible to receive the credit provided
642 for in this paragraph, s. 220.183, or s. 624.5105 may receive
643 the credit only under the one section of the person's choice.
644 2. Eligibility requirements.--
645 a. A community contribution by a person must be in the
646 following form:
647 (I) Cash or other liquid assets;
648 (II) Real property;
649 (III) Goods or inventory; or
650 (IV) Other physical resources as identified by the Office
651 of Tourism, Trade, and Economic Development.
652 b. All community contributions must be reserved
653 exclusively for use in a project. As used in this sub-
654 subparagraph, the term "project" means any activity undertaken
655 by an eligible sponsor which is designed to construct, improve,
656 or substantially rehabilitate housing that is affordable to low-
657 income or very-low-income households as defined in s.
658 420.9071(19) and (28); designed to provide commercial,
659 industrial, or public resources and facilities; or designed to

660 improve entrepreneurial and job-development opportunities for
661 low-income persons. A project may be the investment necessary to
662 increase access to high-speed broadband capability in rural
663 communities with enterprise zones, including projects that
664 result in improvements to communications assets that are owned
665 by a business. A project may include the provision of museum
666 educational programs and materials that are directly related to
667 any project approved between January 1, 1996, and December 31,
668 1999, and located in an enterprise zone designated pursuant to
669 s. 290.0065. This paragraph does not preclude projects that
670 propose to construct or rehabilitate housing for low-income or
671 very-low-income households on scattered sites. With respect to
672 housing, contributions may be used to pay the following eligible
673 low-income and very-low-income housing-related activities:
674 (I) Project development impact and management fees for
675 low-income or very-low-income housing projects;
676 (II) Down payment and closing costs for eligible persons,
677 as defined in s. 420.9071(19) and (28);
678 (III) Administrative costs, including housing counseling
679 and marketing fees, not to exceed 10 percent of the community
680 contribution, directly related to low-income or very-low-income
681 projects; and
682 (IV) Removal of liens recorded against residential
683 property by municipal, county, or special district local
684 governments when satisfaction of the lien is a necessary
685 precedent to the transfer of the property to an eligible person,
686 as defined in s. 420.9071(19) and (28), for the purpose of

687 promoting home ownership. Contributions for lien removal must be
688 received from a nonrelated third party.
689 c. The project must be undertaken by an "eligible
690 sponsor," which includes:
691 (I) A community action program;
692 (II) A nonprofit community-based development organization
693 whose mission is the provision of housing for low-income or
694 very-low-income households or increasing entrepreneurial and
695 job-development opportunities for low-income persons;
696 (III) A neighborhood housing services corporation;
697 (IV) A local housing authority created under chapter 421;
698 (V) A community redevelopment agency created under s.
699 163.356;
700 (VI) The Florida Industrial Development Corporation;
701 (VII) A historic preservation district agency or
702 organization;
703 (VIII) A regional workforce board;
704 (IX) A direct-support organization as provided in s.
705 1009.983;
706 (X) An enterprise zone development agency created under s.
707 290.0056;
708 (XI) A community-based organization incorporated under
709 chapter 617 which is recognized as educational, charitable, or
710 scientific pursuant to s. 501(c)(3) of the Internal Revenue Code
711 and whose bylaws and articles of incorporation include
712 affordable housing, economic development~~,~~ or community
713 development as the primary mission of the corporation;
714 (XII) Units of local government;

715 (XIII) Units of state government; or
716 (XIV) Any other agency that the Office of Tourism, Trade,
717 and Economic Development designates by rule.
718
719 In no event may a contributing person have a financial interest
720 in the eligible sponsor.
721 d. The project must be located in an area designated an
722 enterprise zone or a Front Porch Florida Community pursuant to
723 s. 20.18(6), unless the project increases access to high-speed
724 broadband capability for rural communities with enterprise zones
725 but is physically located outside the designated rural zone
726 boundaries. Any project designed to construct or rehabilitate
727 housing for low-income or very-low-income households as defined
728 in s. 420.0971(19) and (28) is exempt from the area requirement
729 of this sub-subparagraph.
730 e.(I) ~~For the first 6 months of the fiscal year, the~~
731 ~~Office of Tourism, Trade, and Economic Development shall reserve~~
732 ~~80 percent of the first $10 million in available annual tax~~
733 ~~credits and 70 percent of any available annual tax credits in~~
734 ~~excess of $10 million for donations made to eligible sponsors~~
735 ~~for projects that provide homeownership opportunities for low-~~
736 ~~income or very-low-income households as defined in s.~~
737 ~~420.9071(19) and (28). If any such reserved annual tax credits~~
738 ~~remain after the first 6 months of the fiscal year, the office~~
739 ~~may approve the balance of these available credits for donations~~
740 ~~made to eligible sponsors for projects other than those that~~
741 ~~provide homeownership opportunities for low-income or very-low-~~
742 ~~income households.~~

743 ~~(II) For the first 6 months of the fiscal year, the office~~
744 ~~shall reserve 20 percent of the first $10 million in available~~
745 ~~annual tax credits and 30 percent of any available annual tax~~
746 ~~credits in excess of $10 million for donations made to eligible~~
747 ~~sponsors for projects other than those that provide~~
748 ~~homeownership opportunities for low-income or very-low-income~~
749 ~~households as defined in s. 420.9071(19) and (28). If any~~
750 ~~reserved annual tax credits remain after the first 6 months of~~
751 ~~the fiscal year, the office may approve the balance of these~~
752 ~~available credits for donations made to eligible sponsors for~~
753 ~~projects that provide homeownership opportunities for low-income~~
754 ~~or very-low-income households.~~
755 ~~(III)~~ If, during the first 10 business days of the state
756 fiscal year, eligible tax credit applications for projects that
757 provide homeownership opportunities for low-income or very-low-
758 income persons as defined in s. 420.9071(19) and (28) are
759 received for less than the ~~available~~ annual tax credits
760 available for those projects ~~reserved under sub-sub-subparagraph~~
761 ~~(I)~~, the office shall grant tax credits for those applications
762 and shall grant remaining tax credits on a first-come, first-
763 served basis for any subsequent eligible applications received
764 before the end of the ~~first 6 months of the~~ state fiscal year.
765 If, during the first 10 business days of the state fiscal year,
766 eligible tax credit applications for projects that provide
767 homeownership opportunities for low-income or very-low-income
768 persons as defined in s. 420.9071(19) and (28) are received for
769 more than the ~~available~~ annual tax credits available for those
770 projects ~~reserved under sub-sub-subparagraph (I)~~, the office

771 shall grant the tax credits for those ~~the~~ applications as
772 follows:
773 (A) If tax credit applications submitted for approved
774 projects of an eligible sponsor do not exceed $200,000 in total,
775 the credits shall be granted in full if the tax credit
776 applications are approved~~, subject to sub-sub-subparagraph (I)~~.
777 (B) If tax credit applications submitted for approved
778 projects of an eligible sponsor exceed $200,000 in total, the
779 amount of tax credits granted pursuant to sub-sub-sub-
780 subparagraph (A) shall be subtracted from the amount of
781 available tax credits ~~under sub-sub-subparagraph (I)~~, and the
782 remaining credits shall be granted to each approved tax credit
783 application on a pro rata basis.
784 ~~(C) If, after the first 6 months of the fiscal year,~~
785 ~~additional credits become available under sub-sub-subparagraph~~
786 ~~(II), the office shall grant the tax credits by first granting~~
787 ~~to those who received a pro rata reduction up to the full amount~~
788 ~~of their request and, if there are remaining credits, granting~~
789 ~~credits to those who applied on or after the 11th business day~~
790 ~~of the state fiscal year on a first-come, first-served basis.~~
791 (II) ~~(IV)~~ If, during the first 10 business days of the
792 state fiscal year, eligible tax credit applications for projects
793 other than those that provide homeownership opportunities for
794 low-income or very-low-income persons as defined in s.
795 420.9071(19) and (28) are received for less than the ~~available~~
796 annual tax credits available for those projects ~~reserved under~~
797 ~~sub-sub-subparagraph (II)~~, the office shall grant tax credits
798 for those applications and shall grant remaining tax credits on

799 a first-come, first-served basis for any subsequent eligible
800 applications received before the end of ~~the first 6 months of~~
801 the state fiscal year. If, during the first 10 business days of
802 the state fiscal year, eligible tax credit applications for
803 projects other than those that provide homeownership
804 opportunities for low-income or very-low-income persons as
805 defined in s. 420.9071(19) and (28) are received for more than
806 the ~~available~~ annual tax credits available for those projects
807 ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant
808 the tax credits for those ~~the~~ applications on a pro rata basis.
809 ~~If, after the first 6 months of the fiscal year, additional~~
810 ~~credits become available under sub-sub-subparagraph (I), the~~
811 ~~office shall grant the tax credits by first granting to those~~
812 ~~who received a pro rata reduction up to the full amount of their~~
813 ~~request and, if there are remaining credits, granting credits to~~
814 ~~those who applied on or after the 11th business day of the state~~
815 ~~fiscal year on a first-come, first-served basis.~~
816 3. Application requirements.--
817 a. Any eligible sponsor seeking to participate in this
818 program must submit a proposal to the Office of Tourism, Trade,
819 and Economic Development which sets forth the name of the
820 sponsor, a description of the project, and the area in which the
821 project is located, together with such supporting information as
822 is prescribed by rule. The proposal must also contain a
823 resolution from the local governmental unit in which the project
824 is located certifying that the project is consistent with local
825 plans and regulations.

826 b. Any person seeking to participate in this program must
827 submit an application for tax credit to the office ~~of Tourism,~~
828 ~~Trade, and Economic Development~~ which sets forth the name of the
829 sponsor, a description of the project, and the type, value, and
830 purpose of the contribution. The sponsor shall verify the terms
831 of the application and indicate its receipt of the contribution,
832 which verification must be in writing and accompany the
833 application for tax credit. The person must submit a separate
834 tax credit application to the office for each individual
835 contribution that it makes to each individual project.
836 c. Any person who has received notification from the
837 office ~~of Tourism, Trade, and Economic Development~~ that a tax
838 credit has been approved must apply to the department to receive
839 the refund. Application must be made on the form prescribed for
840 claiming refunds of sales and use taxes and be accompanied by a
841 copy of the notification. A person may submit only one
842 application for refund to the department within any 12-month
843 period.
844 4. Administration.--
845 a. The Office of Tourism, Trade, and Economic Development
846 may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary
847 to administer this paragraph, including rules for the approval
848 or disapproval of proposals by a person.
849 b. The decision of the office ~~of Tourism, Trade, and~~
850 ~~Economic Development~~ must be in writing, and, if approved, the
851 notification shall state the maximum credit allowable to the
852 person. Upon approval, the office shall transmit a copy of the
853 decision to the Department of Revenue.

854 c. The office ~~of Tourism, Trade, and Economic Development~~
855 shall periodically monitor all projects in a manner consistent
856 with available resources to ensure that resources are used in
857 accordance with this paragraph; however, each project must be
858 reviewed at least once every 2 years.
859 d. The office ~~of Tourism, Trade, and Economic Development~~
860 shall, in consultation with the Department of Community Affairs~~,~~
861 ~~the Florida Housing Finance Corporation,~~ and the statewide and
862 regional housing and financial intermediaries, market the
863 availability of the community contribution tax credit program to
864 community-based organizations.
865 5. Expiration.--This paragraph expires June 30, 2015;
866 however, any accrued credit carryover that is unused on that
867 date may be used until the expiration of the 3-year carryover
868 period for such credit.
869 Section 12. Paragraph (c) of subsection (1) and paragraph
870 (b) of subsection (2) of section 220.183, Florida Statutes, are
871 amended to read:
872 220.183 Community contribution tax credit.--
873 (1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX
874 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM
875 SPENDING.--
876 (c) The total amount of tax credit which may be granted
877 for all programs approved under this section, s. 212.08(5)(q),
878 and s. 624.5105 is <u>$10</u> ~~$12~~ million annually <u>for projects that</u>
879 <u>provide homeownership opportunities for low-income or very-low-</u>
880 <u>income persons as defined in s. 420.9071(19) and (28) and $3</u>
881 <u>million annually for all other projects</u>.

882 (2) ELIGIBILITY REQUIREMENTS.--
883 (b)1. All community contributions must be reserved
884 exclusively for use in projects as defined in s. 220.03(1)(t).
885 ~~2. For the first 6 months of the fiscal year, the Office~~
886 ~~of Tourism, Trade, and Economic Development shall reserve 80~~
887 ~~percent of the first $10 million in available annual tax~~
888 ~~credits, and 70 percent of any available annual tax credits in~~
889 ~~excess of $10 million, for donations made to eligible sponsors~~
890 ~~for projects that provide homeownership opportunities for low-~~
891 ~~income or very low-income households as defined in s.~~
892 ~~420.9071(19) and (28). If any reserved annual tax credits remain~~
893 ~~after the first 6 months of the fiscal year, the office may~~
894 ~~approve the balance of these available credits for donations~~
895 ~~made to eligible sponsors for projects other than those that~~
896 ~~provide homeownership opportunities for low-income or very low-~~
897 ~~income households.~~
898 ~~3. For the first 6 months of the fiscal year, the office~~
899 ~~shall reserve 20 percent of the first $10 million in available~~
900 ~~annual tax credits, and 30 percent of any available annual tax~~
901 ~~credits in excess of $10 million, for donations made to eligible~~
902 ~~sponsors for projects other than those that provide~~
903 ~~homeownership opportunities for low-income or very low-income~~
904 ~~households as defined in s. 420.9071(19) and (28). If any~~
905 ~~reserved annual tax credits remain after the first 6 months of~~
906 ~~the fiscal year, the office may approve the balance of these~~
907 ~~available credits for donations made to eligible sponsors for~~
908 ~~projects that provide homeownership opportunities for low-income~~
909 ~~or very low-income households.~~

910 2.~~4.~~ If, during the first 10 business days of the state
911 fiscal year, eligible tax credit applications for projects that
912 provide homeownership opportunities for low-income or very-low-
913 income persons as defined in s. 420.9071(19) and (28) are
914 received for less than the ~~available~~ annual tax credits
915 available for those projects ~~reserved under subparagraph 2.~~, the
916 office shall grant tax credits for those applications and shall
917 grant remaining tax credits on a first-come, first-served basis
918 for any subsequent eligible applications received before the end
919 of the ~~first 6 months of the~~ state fiscal year. If, during the
920 first 10 business days of the state fiscal year, eligible tax
921 credit applications for projects that provide homeownership
922 opportunities for low-income or very-low-income persons as
923 defined in s. 420.9071(19) and (28) are received for more than
924 the ~~available~~ annual tax credits available for those projects
925 ~~reserved under subparagraph 2.~~, the office shall grant the tax
926 credits for those ~~such~~ applications as follows:
927 a. If tax credit applications submitted for approved
928 projects of an eligible sponsor do not exceed $200,000 in total,
929 the credit shall be granted in full if the tax credit
930 applications are approved~~, subject to the provisions of~~
931 ~~subparagraph 2~~.
932 b. If tax credit applications submitted for approved
933 projects of an eligible sponsor exceed $200,000 in total, the
934 amount of tax credits granted under sub-subparagraph a. shall be
935 subtracted from the amount of available tax credits ~~under~~
936 ~~subparagraph 2.~~, and the remaining credits shall be granted to
937 each approved tax credit application on a pro rata basis.

938 ~~c. If, after the first 6 months of the fiscal year,~~
939 ~~additional credits become available pursuant to subparagraph 3.,~~
940 ~~the office shall grant the tax credits by first granting to~~
941 ~~those who received a pro rata reduction up to the full amount of~~
942 ~~their request and, if there are remaining credits, granting~~
943 ~~credits to those who applied on or after the 11th business day~~
944 ~~of the state fiscal year on a first-come, first-served basis.~~
945 3.~~5.~~ If, during the first 10 business days of the state
946 fiscal year, eligible tax credit applications for projects other
947 than those that provide homeownership opportunities for low-
948 income or very-low-income persons as defined in s. 420.9071(19)
949 and (28) are received for less than the ~~available~~ annual tax
950 credits available for those projects ~~reserved under subparagraph~~
951 ~~3.~~, the office shall grant tax credits for those applications
952 and shall grant remaining tax credits on a first-come, first-
953 served basis for any subsequent eligible applications received
954 before the end of the ~~first 6 months of the~~ state fiscal year.
955 If, during the first 10 business days of the state fiscal year,
956 eligible tax credit applications for projects other than those
957 that provide homeownership opportunities for low-income or very-
958 low-income persons as defined in s. 420.9071(19) and (28) are
959 received for more than the ~~available~~ annual tax credits
960 available for those projects ~~reserved under subparagraph 3.~~, the
961 office shall grant the tax credits for those ~~such~~ applications
962 on a pro rata basis. ~~If, after the first 6 months of the fiscal~~
963 ~~year, additional credits become available under subparagraph 2.,~~
964 ~~the office shall grant the tax credits by first granting to~~
965 ~~those who received a pro rata reduction up to the full amount of~~

966 ~~their request and, if there are remaining credits, granting~~
967 ~~credits to those who applied on or after the 11th business day~~
968 ~~of the state fiscal year on a first-come, first-served basis.~~
969 Section 13. Paragraph (f) of subsection (6) of section
970 253.034, Florida Statutes, is amended to read:
971 253.034 State-owned lands; uses.--
972 (6) The Board of Trustees of the Internal Improvement
973 Trust Fund shall determine which lands, the title to which is
974 vested in the board, may be surplused. For conservation lands,
975 the board shall make a determination that the lands are no
976 longer needed for conservation purposes and may dispose of them
977 by an affirmative vote of at least three members. In the case of
978 a land exchange involving the disposition of conservation lands,
979 the board must determine by an affirmative vote of at least
980 three members that the exchange will result in a net positive
981 conservation benefit. For all other lands, the board shall make
982 a determination that the lands are no longer needed and may
983 dispose of them by an affirmative vote of at least three
984 members.
985 (f)1. In reviewing lands owned by the board, the council
986 shall consider whether such lands would be more appropriately
987 owned or managed by the county or other unit of local government
988 in which the land is located. <u>A local government may request</u>
989 <u>that state lands be specifically declared surplus lands for the</u>
990 <u>purpose of providing affordable housing.</u> The council shall
991 recommend to the board whether a sale, lease, or other
992 conveyance to a local government would be in the best interests
993 of the state and local government. The provisions of this

994 paragraph in no way limit the provisions of ss. 253.111 and
995 253.115. Such lands shall be offered to the state, county, or
996 local government for a period of 30 days. Permittable uses for
997 such surplus lands may include public schools; public libraries;
998 fire or law enforcement substations; ~~and~~ governmental, judicial,
999 or recreational centers; and affordable housing. County or local
1000 government requests for surplus lands shall be expedited
1001 throughout the surplusing process. Surplus lands that are
1002 conveyed to a local government for affordable housing shall be
1003 disposed of under the provisions of s. 125.379 or s. 166.0451.
1004 If the county or local government does not elect to purchase
1005 such lands in accordance with s. 253.111, then any surplusing
1006 determination involving other governmental agencies shall be
1007 made upon the board deciding the best public use of the lands.
1008 Surplus properties in which governmental agencies have expressed
1009 no interest shall then be available for sale on the private
1010 market.
1011 2. Notwithstanding subparagraph 1., any surplus lands that
1012 were acquired by the state prior to 1958 by a gift or other
1013 conveyance for no consideration from a municipality, and which
1014 the department has filed by July 1, 2006, a notice of its intent
1015 to surplus, shall be first offered for reconveyance to such
1016 municipality at no cost, but for the fair market value of any
1017 building or other improvements to the land, unless otherwise
1018 provided in a deed restriction of record. This subparagraph
1019 expires July 1, 2006.
1020 Section 14. Section 295.16, Florida Statutes, is amended
1021 to read:

1022 295.16 Disabled veterans exempt from certain license or
1023 permit fee.--No totally and permanently disabled veteran who is
1024 a resident of Florida and honorably discharged from the Armed
1025 Forces, who has been issued a valid identification card by the
1026 Department of Veterans' Affairs in accordance with s. 295.17 or
1027 has been determined by the United States Department of Veterans
1028 Affairs or its predecessor to have a service-connected 100-
1029 percent disability rating for compensation, or who has been
1030 determined to have a service-connected disability rating of 100
1031 percent and is in receipt of disability retirement pay from any
1032 branch of the uniformed armed services, shall be required to pay
1033 any license or permit fee, by whatever name known, to any county
1034 or municipality in order to make improvements upon a dwelling
1035 ~~mobile home~~ owned by the veteran which is used as the veteran's
1036 residence, provided such improvements are limited to ramps,
1037 widening of doors, and similar improvements for the purpose of
1038 making the dwelling ~~mobile home~~ habitable for veterans confined
1039 to wheelchairs.
1040 Section 15. Paragraphs (b) and (e) of subsection (19) of
1041 section 380.06, Florida Statutes, are amended to read:
1042 380.06 Developments of regional impact.--
1043 (19) SUBSTANTIAL DEVIATIONS.--
1044 (b) Any proposed change to a previously approved
1045 development of regional impact or development order condition
1046 which, either individually or cumulatively with other changes,
1047 exceeds any of the following criteria shall constitute a
1048 substantial deviation and shall cause the development to be

1049 subject to further development-of-regional-impact review without
1050 the necessity for a finding of same by the local government:
1051 1. An increase in the number of parking spaces at an
1052 attraction or recreational facility by 5 percent or 300 spaces,
1053 whichever is greater, or an increase in the number of spectators
1054 that may be accommodated at such a facility by 5 percent or
1055 1,000 spectators, whichever is greater.
1056 2. A new runway, a new terminal facility, a 25-percent
1057 lengthening of an existing runway, or a 25-percent increase in
1058 the number of gates of an existing terminal, but only if the
1059 increase adds at least three additional gates.
1060 3. An increase in the number of hospital beds by 5 percent
1061 or 60 beds, whichever is greater.
1062 4. An increase in industrial development area by 5 percent
1063 or 32 acres, whichever is greater.
1064 5. An increase in the average annual acreage mined by 5
1065 percent or 10 acres, whichever is greater, or an increase in the
1066 average daily water consumption by a mining operation by 5
1067 percent or 300,000 gallons, whichever is greater. An increase in
1068 the size of the mine by 5 percent or 750 acres, whichever is
1069 less. An increase in the size of a heavy mineral mine as defined
1070 in s. 378.403(7) will only constitute a substantial deviation if
1071 the average annual acreage mined is more than 500 acres and
1072 consumes more than 3 million gallons of water per day.
1073 6. An increase in land area for office development by 5
1074 percent or an increase of gross floor area of office development
1075 by 5 percent or 60,000 gross square feet, whichever is greater.

1076 7. An increase in the storage capacity for chemical or
1077 petroleum storage facilities by 5 percent, 20,000 barrels, or 7
1078 million pounds, whichever is greater.
1079 8. An increase of development at a waterport of wet
1080 storage for 20 watercraft, dry storage for 30 watercraft, or
1081 wet/dry storage for 60 watercraft in an area identified in the
1082 state marina siting plan as an appropriate site for additional
1083 waterport development or a 5-percent increase in watercraft
1084 storage capacity, whichever is greater.
1085 9. An increase in the number of dwelling units by 5
1086 percent or 50 dwelling units, whichever is greater.
1087 10. An increase in the number of dwelling units by 15
1088 percent or 100 units, whichever is greater, provided that 20
1089 percent of the increase in the number of dwelling units is
1090 dedicated to the construction of workforce housing. For purposes
1091 of this subparagraph, the term "workforce housing" means housing
1092 that is affordable to a person who earns less than 150 percent
1093 of the area median income.
1094 11.~~10.~~ An increase in commercial development by 50,000
1095 square feet of gross floor area or of parking spaces provided
1096 for customers for 300 cars or a 5-percent increase of either of
1097 these, whichever is greater.
1098 12.~~11.~~ An increase in hotel or motel facility units by 5
1099 percent or 75 units, whichever is greater.
1100 13.~~12.~~ An increase in a recreational vehicle park area by
1101 5 percent or 100 vehicle spaces, whichever is less.
1102 14.~~13.~~ A decrease in the area set aside for open space of
1103 5 percent or 20 acres, whichever is less.

1104 15.~~14.~~ A proposed increase to an approved multiuse
1105 development of regional impact where the sum of the increases of
1106 each land use as a percentage of the applicable substantial
1107 deviation criteria is equal to or exceeds 100 percent. The
1108 percentage of any decrease in the amount of open space shall be
1109 treated as an increase for purposes of determining when 100
1110 percent has been reached or exceeded.
1111 16.~~15.~~ A 15-percent increase in the number of external
1112 vehicle trips generated by the development above that which was
1113 projected during the original development-of-regional-impact
1114 review.
1115 17.~~16.~~ Any change which would result in development of any
1116 area which was specifically set aside in the application for
1117 development approval or in the development order for
1118 preservation or special protection of endangered or threatened
1119 plants or animals designated as endangered, threatened, or
1120 species of special concern and their habitat, primary dunes, or
1121 archaeological and historical sites designated as significant by
1122 the Division of Historical Resources of the Department of State.
1123 The further refinement of such areas by survey shall be
1124 considered under sub-subparagraph (e)5.b.
1125
1126 The substantial deviation numerical standards in subparagraphs
1127 4., 6., 10., 11., and 15. ~~14.~~, excluding residential uses, and
1128 16. ~~15.~~, are increased by 100 percent for a project certified
1129 under s. 403.973 which creates jobs and meets criteria
1130 established by the Office of Tourism, Trade, and Economic
1131 Development as to its impact on an area's economy, employment,

1132 and prevailing wage and skill levels. The substantial deviation
1133 numerical standards in subparagraphs 4., 6., 9., 10., 11., 12.,
1134 and 15. ~~14.~~ are increased by 50 percent for a project located
1135 wholly within an urban infill and redevelopment area designated
1136 on the applicable adopted local comprehensive plan future land
1137 use map and not located within the coastal high hazard area.
1138 (e)1. Except for a development order rendered pursuant to
1139 subsection (22) or subsection (25), a proposed change to a
1140 development order that individually or cumulatively with any
1141 previous change is less than any numerical criterion contained
1142 in subparagraphs (b)1.-16. ~~(b)1.-15.~~ and does not exceed any
1143 other criterion, or that involves an extension of the buildout
1144 date of a development, or any phase thereof, of less than 5
1145 years is not subject to the public hearing requirements of
1146 subparagraph (f)3., and is not subject to a determination
1147 pursuant to subparagraph (f)5. Notice of the proposed change
1148 shall be made to the regional planning council and the state
1149 land planning agency. Such notice shall include a description of
1150 previous individual changes made to the development, including
1151 changes previously approved by the local government, and shall
1152 include appropriate amendments to the development order.
1153 2. The following changes, individually or cumulatively
1154 with any previous changes, are not substantial deviations:
1155 a. Changes in the name of the project, developer, owner,
1156 or monitoring official.
1157 b. Changes to a setback that do not affect noise buffers,
1158 environmental protection or mitigation areas, or archaeological
1159 or historical resources.

1160 c. Changes to minimum lot sizes.
1161 d. Changes in the configuration of internal roads that do
1162 not affect external access points.
1163 e. Changes to the building design or orientation that stay
1164 approximately within the approved area designated for such
1165 building and parking lot, and which do not affect historical
1166 buildings designated as significant by the Division of
1167 Historical Resources of the Department of State.
1168 f. Changes to increase the acreage in the development,
1169 provided that no development is proposed on the acreage to be
1170 added.
1171 g. Changes to eliminate an approved land use, provided
1172 that there are no additional regional impacts.
1173 h. Changes required to conform to permits approved by any
1174 federal, state, or regional permitting agency, provided that
1175 these changes do not create additional regional impacts.
1176 i. Any renovation or redevelopment of development within a
1177 previously approved development of regional impact which does
1178 not change land use or increase density or intensity of use.
1179 j. Any other change which the state land planning agency
1180 agrees in writing is similar in nature, impact, or character to
1181 the changes enumerated in sub-subparagraphs a.-i. and which does
1182 not create the likelihood of any additional regional impact.
1183
1184 This subsection does not require a development order amendment
1185 for any change listed in sub-subparagraphs a.-j. unless such
1186 issue is addressed either in the existing development order or
1187 in the application for development approval, but, in the case of

1188 the application, only if, and in the manner in which, the
1189 application is incorporated in the development order.
1190 3. Except for the change authorized by sub-subparagraph
1191 2.f., any addition of land not previously reviewed or any change
1192 not specified in paragraph (b) or paragraph (c) shall be
1193 presumed to create a substantial deviation. This presumption may
1194 be rebutted by clear and convincing evidence.
1195 4. Any submittal of a proposed change to a previously
1196 approved development shall include a description of individual
1197 changes previously made to the development, including changes
1198 previously approved by the local government. The local
1199 government shall consider the previous and current proposed
1200 changes in deciding whether such changes cumulatively constitute
1201 a substantial deviation requiring further development-of-
1202 regional-impact review.
1203 5. The following changes to an approved development of
1204 regional impact shall be presumed to create a substantial
1205 deviation. Such presumption may be rebutted by clear and
1206 convincing evidence.
1207 a. A change proposed for 15 percent or more of the acreage
1208 to a land use not previously approved in the development order.
1209 Changes of less than 15 percent shall be presumed not to create
1210 a substantial deviation.
1211 b. Except for the types of uses listed in subparagraph
1212 (b)17. ~~(b)16.~~, any change which would result in the development
1213 of any area which was specifically set aside in the application
1214 for development approval or in the development order for
1215 preservation, buffers, or special protection, including habitat

1216 for plant and animal species, archaeological and historical
1217 sites, dunes, and other special areas.
1218 c. Notwithstanding any provision of paragraph (b) to the
1219 contrary, a proposed change consisting of simultaneous increases
1220 and decreases of at least two of the uses within an authorized
1221 multiuse development of regional impact which was originally
1222 approved with three or more uses specified in s. 380.0651(3)(c),
1223 (d), (f), and (g) and residential use.
1224 Section 16. Paragraph (k) of subsection (3) of section
1225 380.0651, Florida Statutes, is redesignated as paragraph (l),
1226 and a new paragraph (k) is added to that subsection to read:
1227 380.0651 Statewide guidelines and standards.--
1228 (3) The following statewide guidelines and standards shall
1229 be applied in the manner described in s. 380.06(2) to determine
1230 whether the following developments shall be required to undergo
1231 development-of-regional-impact review:
1232 (k) Workforce housing.--The applicable guidelines for
1233 residential development and the residential component for
1234 multiuse development shall be increased by 20 percent where the
1235 developer demonstrates that at least 15 percent of the
1236 residential dwelling units will be dedicated to workforce
1237 housing. For purposes of this subparagraph, the term "workforce
1238 housing" means housing that is affordable to a person who earns
1239 less than 150 percent of the area median income.
1240 Section 17. Section 420.0004, Florida Statutes, is amended
1241 to read:
1242 420.0004 Definitions.--As used in this part, unless the
1243 context otherwise indicates:

1244 (1) "Adjusted for family size" means adjusted in a manner
1245 which results in an income eligibility level which is lower for
1246 households with fewer than four people, or higher for households
1247 with more than four people, than the base income eligibility
1248 determined as provided in subsection (10) ~~(9)~~, subsection (11)
1249 ~~(10)~~, or subsection (15) ~~(14)~~, based upon a formula as
1250 established by the United States Department of Housing and Urban
1251 Development.
1252 (2) "Adjusted gross income" means all wages, assets,
1253 regular cash or noncash contributions or gifts from persons
1254 outside the household, and such other resources and benefits as
1255 may be determined to be income by the United States Department
1256 of Housing and Urban Development, adjusted for family size, less
1257 deductions allowable under s. 62 of the Internal Revenue Code.
1258 (3) "Affordable" means that monthly rents or monthly
1259 mortgage payments including taxes, insurance, and utilities do
1260 not exceed 30 percent of that amount which represents the
1261 percentage of the median adjusted gross annual income for the
1262 households as indicated in subsection (8), subsection (10) ~~(9)~~,
1263 subsection (11) ~~(10)~~, or subsection (15) ~~(14)~~.
1264 (4) "Corporation" means the Florida Housing Finance
1265 Corporation.
1266 (5) "Community-based organization" or "nonprofit
1267 organization" means a private corporation organized under
1268 chapter 617 to assist in the provision of housing and related
1269 services on a not-for-profit basis and which is acceptable to
1270 federal and state agencies and financial institutions as a
1271 sponsor of low-income housing.

1272 (6) "Department" means the Department of Community
1273 Affairs.
1274 (7) "Elderly" describes persons 62 years of age or older.
1275 (8) "Extremely low-income persons" means one or more
1276 natural persons or a family whose total annual household income
1277 does not exceed 30 percent of the median annual adjusted gross
1278 income for households within the state. The Florida Housing
1279 Finance Corporation may adjust this amount annually by rule to
1280 provide that in lower income counties extremely low income may
1281 exceed 30 percent of area median income and that in higher
1282 income counties extremely low income may be less than 30 percent
1283 of area median income.
1284 (9) ~~(8)~~ "Local public body" means any county, municipality,
1285 or other political subdivision, or any housing authority as
1286 provided by chapter 421, which is eligible to sponsor or develop
1287 housing for farmworkers and very-low-income and low-income
1288 persons within its jurisdiction.
1289 (10) ~~(9)~~ "Low-income persons" means one or more natural
1290 persons or a family, the total annual adjusted gross household
1291 income of which does not exceed 80 percent of the median annual
1292 adjusted gross income for households within the state, or 80
1293 percent of the median annual adjusted gross income for
1294 households within the metropolitan statistical area (MSA) or, if
1295 not within an MSA, within the county in which the person or
1296 family resides, whichever is greater.
1297 (11) ~~(10)~~ "Moderate-income persons" means one or more
1298 natural persons or a family, the total annual adjusted gross
1299 household income of which is less than 120 percent of the median

1300 annual adjusted gross income for households within the state, or
1301 120 percent of the median annual adjusted gross income for
1302 households within the metropolitan statistical area (MSA) or, if
1303 not within an MSA, within the county in which the person or
1304 family resides, whichever is greater.
1305 (12) ~~(11)~~ "Student" means any person not living with his or
1306 her parent or guardian who is eligible to be claimed by his or
1307 her parent or guardian as a dependent under the federal income
1308 tax code and who is enrolled on at least a half-time basis in a
1309 secondary school, career center, community college, college, or
1310 university.
1311 (13) ~~(12)~~ "Substandard" means:
1312 (a) Any unit lacking complete plumbing or sanitary
1313 facilities for the exclusive use of the occupants;
1314 (b) A unit which is in violation of one or more major
1315 sections of an applicable housing code and where such violation
1316 poses a serious threat to the health of the occupant; or
1317 (c) A unit that has been declared unfit for human
1318 habitation but that could be rehabilitated for less than 50
1319 percent of the property value.
1320 (14) ~~(13)~~ "Substantial rehabilitation" means repair or
1321 restoration of a dwelling unit where the value of such repair or
1322 restoration exceeds 40 percent of the value of the dwelling.
1323 (15) ~~(14)~~ "Very-low-income persons" means one or more
1324 natural persons or a family, not including students, the total
1325 annual adjusted gross household income of which does not exceed
1326 50 percent of the median annual adjusted gross income for
1327 households within the state, or 50 percent of the median annual

1328 adjusted gross income for households within the metropolitan
1329 statistical area (MSA) or, if not within an MSA, within the
1330 county in which the person or family resides, whichever is
1331 greater.
1332 Section 18. Section 420.37, Florida Statutes, is repealed.
1333 Section 19. Subsection (18) of section 420.503, Florida
1334 Statutes, is amended to read:
1335 420.503 Definitions.--As used in this part, the term:
1336 (18)(a) "Farmworker" means a laborer who is employed on a
1337 seasonal, temporary, or permanent basis in the planting,
1338 cultivating, harvesting, or processing of agricultural or
1339 aquacultural products and who derived at least 50 percent of her
1340 or his income in the immediately preceding 12 months from such
1341 employment.
1342 (b) "Farmworker" ~~also~~ includes a person who has retired as
1343 a laborer due to age, disability, or illness. In order to be
1344 considered retired as a farmworker due to age under this part, a
1345 person must be 50 years of age or older and must have been
1346 employed for a minimum of 5 years as a farmworker before
1347 retirement. In order to be considered retired as a farmworker
1348 due to disability or illness, a person must:
1349 1.~~(a)~~ Establish medically that she or he is unable to be
1350 employed as a farmworker due to that disability or illness.
1351 2.~~(b)~~ Establish that she or he was previously employed as
1352 a farmworker.
1353 (c) Notwithstanding paragraphs (a) and (b), when
1354 corporation-administered funds are used in conjunction with
1355 United States Department of Agriculture Rural Development funds,

1356 the term "farmworker" may mean a laborer who meets, at a
1357 minimum, the definition of "domestic farm laborer" as found in 7
1358 C.F.R. s. 3560.11, as amended. The corporation may establish
1359 additional criteria by rule.
1360 Section 20. Section 420.5061, Florida Statutes, is amended
1361 to read:
1362 420.5061 Transfer of agency assets and
1363 liabilities.--Effective January 1, 1998, all assets and
1364 liabilities and rights and obligations, including any
1365 outstanding contractual obligations, of the agency shall be
1366 transferred to the corporation as legal successor in all
1367 respects to the agency. The corporation shall thereupon become
1368 obligated to the same extent as the agency under any existing
1369 agreements and be entitled to any rights and remedies previously
1370 afforded the agency by law or contract, including specifically
1371 the rights of the agency under chapter 201 and part VI of
1372 chapter 159. The corporation is a state agency for purposes of
1373 s. 159.807(4)(a). Effective January 1, 1998, all references
1374 under Florida law to the agency are deemed to mean the
1375 corporation. The corporation shall transfer to the General
1376 Revenue Fund an amount which otherwise would have been deducted
1377 as a service charge pursuant to s. 215.20(1) if the Florida
1378 Housing Finance Corporation Fund established by s. 420.508(5),
1379 the State Apartment Incentive Loan Fund established by s.
1380 420.5087(7), the Florida Homeownership Assistance Fund
1381 established by s. 420.5088(4) ~~(5)~~, the HOME Investment
1382 Partnership Fund established by s. 420.5089(1), and the Housing
1383 Predevelopment Loan Fund established by s. 420.525(1) were each

1384 trust funds. For purposes of s. 112.313, the corporation is
1385 deemed to be a continuation of the agency, and the provisions
1386 thereof are deemed to apply as if the same entity remained in
1387 place. Any employees of the agency and agency board members
1388 covered by s. 112.313(9)(a)6. shall continue to be entitled to
1389 the exemption in that subparagraph, notwithstanding being hired
1390 by the corporation or appointed as board members of the
1391 corporation. Effective January 1, 1998, all state property in
1392 use by the agency shall be transferred to and become the
1393 property of the corporation.
1394 Section 21. Subsections (22), (23), and (40) of section
1395 420.507, Florida Statutes, are amended, and subsections (44),
1396 (45), and (46) are added to that section, to read:
1397 420.507 Powers of the corporation.--The corporation shall
1398 have all the powers necessary or convenient to carry out and
1399 effectuate the purposes and provisions of this part, including
1400 the following powers which are in addition to all other powers
1401 granted by other provisions of this part:
1402 (22) To develop and administer the State Apartment
1403 Incentive Loan Program. In developing and administering that
1404 program, the corporation may:
1405 (a) Make first, second, and other subordinated mortgage
1406 loans including variable or fixed rate loans subject to
1407 contingent interest for all State Apartment Incentive Loans
1408 provided for in this chapter based upon available cash flow of
1409 the projects. The corporation shall make loans exceeding 25
1410 percent of project cost available only to nonprofit
1411 organizations and public bodies which are able to secure grants,

1412 donations of land, or contributions from other sources and to
1413 projects meeting the criteria of subparagraph 1. Mortgage loans
1414 shall be made available at the following rates of interest:
1415 1. Zero to 3 percent interest for sponsors of projects
1416 that set aside at least ~~maintain an~~ 80 percent ~~occupancy~~ of
1417 their total units for residents qualifying as farmworkers as
1418 defined in this part ~~s. 420.503(18)~~, or commercial fishing
1419 workers as defined in this part ~~s. 420.503(5)~~, or the homeless
1420 as defined in s. 420.621(4) over the life of the loan.
1421 2. The board may set the interest rate based on the pro
1422 rata share of units set aside for homeless residents if the
1423 total of such units is less than 80 percent of the units in the
1424 borrower's project.
1425 3. One ~~Three~~ to 3 ~~9~~ percent interest for sponsors of
1426 projects targeted at populations other than farmworkers,
1427 commercial fishing workers, and the homeless.
1428 (b) Make loans exceeding 25 percent of project cost when
1429 the project serves extremely low-income persons.
1430 (c) Forgive indebtedness for a share of the loan
1431 attributable to the units in a project reserved for extremely
1432 low-income persons.
1433 (d) ~~(b)~~ Geographically and demographically target the
1434 utilization of loans.
1435 (e) ~~(c)~~ Underwrite credit, and reject projects which do not
1436 meet the established standards of the corporation.
1437 (f) ~~(d)~~ Negotiate with governing bodies within the state
1438 after a loan has been awarded to obtain local government
1439 contributions.

1440 (g) ~~(e)~~ Inspect any records of a sponsor at any time during
1441 the life of the loan or the agreed period for maintaining the
1442 provisions of s. 420.5087.
1443 (h) ~~(f)~~ Establish, by rule, the procedure for evaluating,
1444 scoring, and competitively ranking all applications based on the
1445 criteria set forth in s. 420.5087(6)(c); determining actual loan
1446 amounts; making and servicing loans; and exercising the powers
1447 authorized in this subsection.
1448 (i) ~~(g)~~ Establish a loan loss insurance reserve to be used
1449 to protect the outstanding program investment in case of a
1450 default, deed in lieu of foreclosure, or foreclosure of a
1451 program loan.
1452 (23) To develop and administer the Florida Homeownership
1453 Assistance Program. In developing and administering the program,
1454 the corporation may:
1455 (a)1. Make subordinated loans to eligible borrowers for
1456 down payments or closing costs related to the purchase of the
1457 borrower's primary residence.
1458 2. Make permanent loans to eligible borrowers related to
1459 the purchase of the borrower's primary residence.
1460 3. Make subordinated loans to nonprofit sponsors or
1461 developers of housing for purchase of property, for
1462 construction, or for financing of housing to be offered for sale
1463 to eligible borrowers as a primary residence at an affordable
1464 price.
1465 (b) Establish a loan loss insurance reserve to supplement
1466 existing sources of mortgage insurance with appropriated funds.

1467 (c) Geographically and demographically target the
1468 utilization of loans.
1469 (d) Defer repayment of loans for the term of the first
1470 mortgage.
1471 (e) Establish flexible terms for loans with an interest
1472 rate not to exceed 3 percent per annum and which are
1473 nonamortizing for the term of the first mortgage.
1474 (f) Require repayment of loans upon sale, transfer,
1475 refinancing, or rental of secured property, unless otherwise
1476 approved by the corporation.
1477 (g) Accelerate a loan for monetary default, for failure to
1478 provide the benefits of the loans to eligible borrowers, or for
1479 violation of any other restriction placed upon the loan.
1480 (h) Adopt rules for the program and exercise the powers
1481 authorized in this subsection.
1482 (40) To establish subsidiary business entities
1483 ~~corporations~~ for the purpose of taking title to and managing and
1484 disposing of property acquired by the corporation. Such
1485 subsidiary business entities ~~corporations~~ shall be public
1486 business entities ~~corporations~~ wholly owned by the corporation;
1487 shall be entitled to own, mortgage, and sell property on the
1488 same basis as the corporation; and shall be deemed business
1489 entities ~~corporations~~ primarily acting as an agent ~~agents~~ of the
1490 state, within the meaning of s. 768.28, on the same basis as the
1491 corporation. Any subsidiary business entity created by the
1492 corporation shall be subject to chapters 119, 120, and 286 to
1493 the same extent as the corporation. The subsidiary business

1494 entities shall have authority to make rules necessary to conduct
1495 business and to carry out the purposes of this subsection.
1496 (44) To adopt rules whereby the corporation may intervene,
1497 negotiate terms, or undertake other actions which the
1498 corporation deems necessary to further program goals or avoid
1499 default of a program loan. Such rules must consider fiscal
1500 program goals and the preservation or advancement of affordable
1501 housing for the state.
1502 (45) To establish by rule requirements for periodic
1503 reporting of data, including, but not limited to, financial
1504 data, housing market data, detailed economic and physical
1505 occupancy on multifamily projects, and demographic data on all
1506 housing financed through corporation programs and for
1507 participation in a housing locator system.
1508 (46) In order to administer funds appropriated for
1509 disaster recovery and reconstruction following a declaration of
1510 emergency pursuant to s. 252.36, to create programs to repair,
1511 rehabilitate, and construct multifamily and single-family
1512 dwellings. To administer this subsection, the corporation may
1513 adopt emergency rules pursuant to s. 120.54. The Legislature
1514 finds that emergency rules adopted pursuant to this subsection
1515 meet the health, safety, and welfare requirement of s.
1516 120.54(4). The Legislature finds that such emergency rulemaking
1517 power is necessary for the preservation of the rights and
1518 welfare of the people in order to provide additional funds to
1519 assist those areas of the state that sustain housing damage due
1520 to the occurrence of a disaster, as defined in s. 252.34(1).

1521 Emergency rules adopted under this subsection are exempt from s.
1522 120.54(4)(a) and (c).
1523 Section 22. Subsections (1), (3), (5), and (6) of section
1524 420.5087, Florida Statutes, are amended to read:
1525 420.5087 State Apartment Incentive Loan Program.--There is
1526 hereby created the State Apartment Incentive Loan Program for
1527 the purpose of providing first, second, or other subordinated
1528 mortgage loans or loan guarantees to sponsors, including for-
1529 profit, nonprofit, and public entities, to provide housing
1530 affordable to very-low-income persons.
1531 (1) Program funds shall be distributed over successive 3-
1532 year periods in a manner that meets the need and demand for
1533 very-low-income housing throughout the state. That need and
1534 demand must be determined by using the most recent statewide
1535 low-income rental housing market studies available at the
1536 beginning of each 3-year period. However, at least 10 percent of
1537 the program funds distributed during a 3-year period must be
1538 allocated to each of the following categories of counties, as
1539 determined by using the population statistics published in the
1540 most recent edition of the Florida Statistical Abstract:
1541 (a) Counties that have a population of 825,000 or more.
1542 ~~more than 500,000 people;~~
1543 (b) Counties that have a population of more than ~~between~~
1544 100,000 but less than 825,000. ~~and 500,000 people; and~~
1545 (c) Counties that have a population of 100,000 or less.
1546
1547 Any increase in funding required to reach the 10-percent minimum
1548 shall be taken from the county category that has the largest

1549 allocation. The corporation shall adopt rules which establish an
1550 equitable process for distributing any portion of the 10 percent
1551 of program funds allocated to the county categories specified in
1552 this subsection which remains unallocated at the end of a 3-year
1553 period. Counties that have a population of 100,000 or less shall
1554 be given preference under these rules.
1555 (3) During the first 6 months of loan or loan guarantee
1556 availability, program funds shall be reserved for use by
1557 sponsors who provide the housing set-aside required in
1558 subsection (2) for the tenant groups designated in this
1559 subsection. The reservation of funds to each of these groups
1560 shall be determined using the most recent statewide very-low-
1561 income rental housing market study available at the time of
1562 publication of each notice of fund availability required by
1563 paragraph (6)(b). The reservation of funds within each notice of
1564 fund availability to the tenant groups in paragraphs (a), (b),
1565 and (d) may not be less than 10 percent of the funds available
1566 at that time. Any increase in funding required to reach the 10-
1567 percent minimum shall be taken from the tenant group that has
1568 the largest reservation. The reservation of funds within each
1569 notice of fund availability to the tenant group in paragraph (c)
1570 may not be less than 5 percent of the funds available at that
1571 time. The tenant groups are:
1572 (a) Commercial fishing workers and farmworkers;
1573 (b) Families;
1574 (c) Persons who are homeless; and
1575 (d) Elderly persons. Ten percent of the amount reserved
1576 for the elderly shall be reserved to provide loans to sponsors

1577 of housing for the elderly for the purpose of making building
1578 preservation, health, or sanitation repairs or improvements
1579 which are required by federal, state, or local regulation or
1580 code, or lifesafety or security-related repairs or improvements
1581 to such housing. Such a loan may not exceed $750,000 per housing
1582 community for the elderly. In order to receive the loan, the
1583 sponsor of the housing community must make a commitment to match
1584 at least 5 ~~15~~ percent of the loan amount to pay the cost of such
1585 repair or improvement. The corporation shall establish the rate
1586 of interest on the loan, which may not exceed 3 percent, and the
1587 term of the loan, which may not exceed 15 years; however, if the
1588 lien of the corporation's encumbrance is subordinate to the lien
1589 of another mortgagee, then the term may be made coterminous with
1590 the longest term of the superior lien. The term of the loan
1591 shall be established on the basis of a credit analysis of the
1592 applicant. The corporation shall establish, by rule, the
1593 procedure and criteria for receiving, evaluating, and
1594 competitively ranking all applications for loans under this
1595 paragraph. A loan application must include evidence of the first
1596 mortgagee's having reviewed and approved the sponsor's intent to
1597 apply for a loan. A nonprofit organization or sponsor may not
1598 use the proceeds of the loan to pay for administrative costs,
1599 routine maintenance, or new construction.
1600 (5) The amount of the mortgage provided under this program
1601 combined with any other mortgage in a superior position shall be
1602 less than the value of the project without the housing set-aside
1603 required by subsection (2). However, the corporation may waive
1604 this requirement for projects in rural areas or urban infill

1605 areas which have market rate rents that are less than the
1606 allowable rents pursuant to applicable state and federal
1607 guidelines, and for projects which reserve units for extremely
1608 low-income persons. In no event shall the mortgage provided
1609 under this program combined with any other mortgage in a
1610 superior position exceed total project cost.
1611 (6) On all state apartment incentive loans, except loans
1612 made to housing communities for the elderly to provide for
1613 lifesafety, building preservation, health, sanitation, or
1614 security-related repairs or improvements, the following
1615 provisions shall apply:
1616 (a) The corporation shall establish two interest rates in
1617 accordance with s. 420.507(22)(a)1. and 3. ~~2.~~
1618 (b) The corporation shall publish a notice of fund
1619 availability in a publication of general circulation throughout
1620 the state. Such notice shall be published at least 60 days prior
1621 to the application deadline and shall provide notice of the
1622 temporary reservations of funds established in subsection (3).
1623 (c) The corporation shall provide by rule for the
1624 establishment of a review committee composed of the department
1625 and corporation staff and shall establish by rule a scoring
1626 system for evaluation and competitive ranking of applications
1627 submitted in this program, including, but not limited to, the
1628 following criteria:
1629 1. Tenant income and demographic targeting objectives of
1630 the corporation.

1631 2. Targeting objectives of the corporation which will
1632 ensure an equitable distribution of loans between rural and
1633 urban areas.
1634 3. Sponsor's agreement to reserve the units for persons or
1635 families who have incomes below 50 percent of the state or local
1636 median income, whichever is higher, for a time period to exceed
1637 the minimum required by federal law or the provisions of this
1638 part.
1639 4. Sponsor's agreement to reserve more than:
1640 a. Twenty percent of the units in the project for persons
1641 or families who have incomes that do not exceed 50 percent of
1642 the state or local median income, whichever is higher; or
1643 b. Forty percent of the units in the project for persons
1644 or families who have incomes that do not exceed 60 percent of
1645 the state or local median income, whichever is higher, without
1646 requiring a greater amount of the loans as provided in this
1647 section.
1648 5. Provision for tenant counseling.
1649 6. Sponsor's agreement to accept rental assistance
1650 certificates or vouchers as payment for rent; however, when
1651 certificates or vouchers are accepted as payment for rent on
1652 units set aside <u>for persons with incomes under 50 percent of the</u>
1653 <u>state or local median income, whichever is higher, these units</u>
1654 <u>shall only be considered to satisfy the sponsor's agreement to</u>
1655 <u>serve persons at or above 50 percent of state or local median</u>
1656 <u>income</u> ~~pursuant to subsection (2), the benefit must be divided~~
1657 ~~between the corporation and the sponsor, as provided by~~
1658 ~~corporation rule~~.

1659 7. Projects requiring the least amount of a state
1660 apartment incentive loan compared to overall project cost <u>except</u>
1661 <u>that the share of the loan attributable to units serving</u>
1662 <u>extremely low-income persons shall be excluded from this</u>
1663 <u>requirement</u>.
1664 8. Local government contributions and local government
1665 comprehensive planning and activities that promote affordable
1666 housing.
1667 9. Project feasibility.
1668 10. Economic viability of the project.
1669 11. Commitment of first mortgage financing.
1670 12. Sponsor's prior experience.
1671 13. Sponsor's ability to proceed with construction.
1672 14. Projects that directly implement or assist welfare-to-
1673 work transitioning.
1674 <u>15. Projects that reserve units for extremely low-income</u>
1675 <u>persons.</u>
1676 (d) The corporation may reject any and all applications.
1677 (e) The corporation may approve and reject applications
1678 for the purpose of achieving geographic targeting.
1679 (f) The review committee established by corporation rule
1680 pursuant to this subsection shall make recommendations to the
1681 board of directors of the corporation regarding program
1682 participation under the State Apartment Incentive Loan Program.
1683 The corporation board shall make the final ranking and the
1684 decisions regarding which applicants shall become program
1685 participants based on the scores received in the competitive
1686 ranking, further review of applications, and the recommendations

1687 of the review committee. The corporation board shall approve or
1688 reject applications for loans and shall determine the tentative
1689 loan amount available to each applicant selected for
1690 participation in the program. The actual loan amount shall be
1691 determined pursuant to rule adopted pursuant to s.
1692 420.507(22)(h) ~~(f)~~.
1693 (g) The loan term shall be for a period of not more than
1694 15 years; however, if both a program loan and federal low-income
1695 housing tax credits are to be used to assist a project, the
1696 corporation may set the loan term for a period commensurate with
1697 the investment requirements associated with the tax credit
1698 syndication. The term of the loan may also exceed 15 years if
1699 necessary to conform to requirements of the Federal National
1700 Mortgage Association. The corporation may renegotiate and extend
1701 the loan in order to extend the availability of housing for the
1702 targeted population. The term of a loan may not extend beyond
1703 the period for which the sponsor agrees to provide the housing
1704 set-aside required by subsection (2).
1705 (h) The loan shall be subject to sale, transfer, or
1706 refinancing. The sale, transfer, or refinancing of the loan
1707 shall be consistent with fiscal program goals and the
1708 preservation or advancement of affordable housing for the state.
1709 ~~However, all requirements and conditions of the loan shall~~
1710 ~~remain following sale, transfer, or refinancing.~~
1711 (i) The discrimination provisions of s. 420.516 shall
1712 apply to all loans.
1713 (j) The corporation may require units dedicated for the
1714 elderly.

1715 (k) Rent controls shall not be allowed on any project
1716 except as required in conjunction with the issuance of tax-
1717 exempt bonds or federal low-income housing tax credits, and
1718 except when the sponsor has committed to set aside units for
1719 extremely low-income persons, in which case rents shall be
1720 restricted at the level applicable for federal low-income tax
1721 credits.
1722 (l) The proceeds of all loans shall be used for new
1723 construction or substantial rehabilitation which creates
1724 affordable, safe, and sanitary housing units.
1725 (m) Sponsors shall annually certify the adjusted gross
1726 income of all persons or families qualified under subsection (2)
1727 at the time of initial occupancy, who are residing in a project
1728 funded by this program. All persons or families qualified under
1729 subsection (2) may continue to qualify under subsection (2) in a
1730 project funded by this program if the adjusted gross income of
1731 those persons or families at the time of annual recertification
1732 meets the requirements established in s. 142(d)(3)(B) of the
1733 Internal Revenue Code of 1986, as amended. If the annual
1734 recertification of persons or families qualifying under
1735 subsection (2) results in noncompliance with income occupancy
1736 requirements, the next available unit must be rented to a person
1737 or family qualifying under subsection (2) in order to ensure
1738 continuing compliance of the project. The corporation may waive
1739 the annual recertification if 100 percent of the units are set
1740 aside as affordable.
1741 (n) Upon submission and approval of a marketing plan which
1742 demonstrates a good faith effort of a sponsor to rent a unit or

1743 units to persons or families reserved under subsection (3) and
1744 qualified under subsection (2), the sponsor may rent such unit
1745 or units to any person or family qualified under subsection (2)
1746 notwithstanding the reservation.
1747 (o) Sponsors may participate in federal mortgage insurance
1748 programs and must abide by the requirements of those programs.
1749 If a conflict occurs between the requirements of federal
1750 mortgage insurance programs and the requirements of this
1751 section, the requirements of federal mortgage insurance programs
1752 shall take precedence.
1753 Section 23. Section 420.5088, Florida Statutes, is amended
1754 to read:
1755 420.5088 Florida Homeownership Assistance Program.--There
1756 is created the Florida Homeownership Assistance Program for the
1757 purpose of assisting low-income and moderate-income persons in
1758 purchasing a home as their primary residence by reducing the
1759 cost of the home with below-market construction financing, by
1760 reducing the amount of down payment and closing costs paid by
1761 the borrower to a maximum of 5 percent of the purchase price, or
1762 by reducing the monthly payment to an affordable amount for the
1763 purchaser. Loans shall be made available at an interest rate
1764 that does not exceed 3 percent. The balance of any loan is due
1765 at closing if the property is sold, refinanced, rented, or
1766 transferred, unless otherwise approved by the corporation.
1767 (1) For loans made available pursuant to s.
1768 420.507(23)(a)1. or 2.:
1769 (a) The corporation may underwrite and make those mortgage
1770 loans through the program to persons or families who have

1771 incomes that do not exceed 120 ~~80~~ percent of the state or local
1772 median income, whichever is greater, adjusted for family size.
1773 (b) Loans shall be made available for the term of the
1774 first mortgage.
1775 (c) Loans may not exceed ~~are limited to~~ the lesser of 35
1776 ~~25~~ percent of the purchase price of the home or the amount
1777 necessary to enable the purchaser to meet credit underwriting
1778 criteria.
1779 (2) For loans made pursuant to s. 420.507(23)(a)3.:
1780 (a) Availability is limited to nonprofit sponsors or
1781 developers who are selected for program participation pursuant
1782 to this subsection.
1783 (b) Preference must be given ~~to community development~~
1784 ~~corporations as defined in s. 290.033 and~~ to community-based
1785 organizations as defined in s. 420.503.
1786 (c) Priority must be given to projects that have received
1787 state assistance in funding project predevelopment costs.
1788 (d) The benefits of making such loans shall be
1789 contractually provided to the persons or families purchasing
1790 homes financed under this subsection.
1791 (e) At least 30 percent of the units in a project financed
1792 pursuant to this subsection must be sold to persons or families
1793 who have incomes that do not exceed 80 percent of the state or
1794 local median income, whichever amount is greater, adjusted for
1795 family size; and at least another 30 percent of the units in a
1796 project financed pursuant to this subsection must be sold to
1797 persons or families who have incomes that do not exceed 65 ~~50~~

1798 percent of the state or local median income, whichever amount is
1799 greater, adjusted for family size.
1800 (f) The maximum loan amount may not exceed 33 percent of
1801 the total project cost.
1802 (g) A person who purchases a home in a project financed
1803 under this subsection is eligible for a loan authorized by s.
1804 420.507(23)(a)1. or 2. in an aggregate amount not exceeding the
1805 construction loan made pursuant to this subsection. The home
1806 purchaser must meet all the requirements for loan recipients
1807 established pursuant to the applicable loan program.
1808 (h) The corporation shall provide, by rule, for the
1809 establishment of a review committee composed of corporation
1810 staff and shall establish, by rule, a scoring system for
1811 evaluating and ranking applications submitted for construction
1812 loans under this subsection, including, but not limited to, the
1813 following criteria:
1814 1. The affordability of the housing proposed to be built.
1815 2. The direct benefits of the assistance to the persons
1816 who will reside in the proposed housing.
1817 3. The demonstrated capacity of the applicant to carry out
1818 the proposal, including the experience of the development team.
1819 4. The economic feasibility of the proposal.
1820 5. The extent to which the applicant demonstrates
1821 potential cost savings by combining the benefits of different
1822 governmental programs and private initiatives, including the
1823 local government contributions and local government
1824 comprehensive planning and activities that promote affordable
1825 housing.

1826 6. The use of the least amount of program loan funds
1827 compared to overall project cost.
1828 7. The provision of homeownership counseling.
1829 8. The applicant's agreement to exceed the requirements of
1830 paragraph (e).
1831 9. The commitment of first mortgage financing for the
1832 balance of the construction loan and for the permanent loans to
1833 the purchasers of the housing.
1834 10. The applicant's ability to proceed with construction.
1835 11. The targeting objectives of the corporation which will
1836 ensure an equitable distribution of loans between rural and
1837 urban areas.
1838 12. The extent to which the proposal will further the
1839 purposes of this program.
1840 (i) The corporation may reject any and all applications.
1841 (j) The review committee established by corporation rule
1842 pursuant to this subsection shall make recommendations to the
1843 corporation board regarding program participation under this
1844 subsection. The corporation board shall make the final ranking
1845 for participation based on the scores received in the ranking,
1846 further review of the applications, and the recommendations of
1847 the review committee. The corporation board shall approve or
1848 reject applicants for loans and shall determine the tentative
1849 loan amount available to each program participant. The final
1850 loan amount shall be determined pursuant to rule adopted under
1851 s. 420.507(23)(h).
1852 (3) The corporation shall publish a notice of fund
1853 availability in a publication of general circulation throughout

1854 the state at least 60 days prior to the anticipated availability
1855 of funds.
1856 ~~(4) During the first 9 months of fund availability:~~
1857 ~~(a) Sixty percent of the program funds shall be reserved~~
1858 ~~for use by borrowers pursuant to s. 420.507(23)(a)1.;~~
1859 ~~(b) Twenty percent of the program funds shall be reserved~~
1860 ~~for use by borrowers pursuant to s. 420.507(23)(a)2.; and~~
1861 ~~(c) Twenty percent of the program funds shall be reserved~~
1862 ~~for use by borrowers pursuant to s. 420.507(23)(a)3.~~
1863
1864 ~~If the application of these percentages would cause the~~
1865 ~~reservation of program funds under paragraph (a) to be less than~~
1866 ~~$1 million, the reservation for paragraph (a) shall be increased~~
1867 ~~to $1 million or all available funds, whichever amount is less,~~
1868 ~~with the increase to be accomplished by reducing the reservation~~
1869 ~~for paragraph (b) and, if necessary, paragraph (c).~~
1870 (4) ~~(5)~~ There is authorized to be established by the
1871 corporation with a qualified public depository meeting the
1872 requirements of chapter 280 the Florida Homeownership Assistance
1873 Fund to be administered by the corporation according to the
1874 provisions of this program. Any amounts held in the Florida
1875 Homeownership Assistance Trust Fund for such purposes as of
1876 January 1, 1998, must be transferred to the corporation for
1877 deposit in the Florida Homeownership Assistance Fund, whereupon
1878 the Florida Homeownership Assistance Trust Fund must be closed.
1879 There shall be deposited in the fund moneys from the State
1880 Housing Trust Fund created by s. 420.0005, or moneys received
1881 from any other source, for the purpose of this program and all

1882 proceeds derived from the use of such moneys. In addition, all
1883 unencumbered funds, loan repayments, proceeds from the sale of
1884 any property, and any other proceeds that would otherwise accrue
1885 pursuant to the activities of the programs described in this
1886 section shall be transferred to this fund. In addition, all loan
1887 repayments, proceeds from the sale of any property, and any
1888 other proceeds that would otherwise accrue pursuant to the
1889 activities conducted under the provisions of the Florida
1890 Homeownership Assistance Program shall be deposited in the fund
1891 and shall not revert to the General Revenue Fund. Expenditures
1892 from the Florida Homeownership Assistance Fund shall not be
1893 required to be included in the corporation's budget request or
1894 be subject to appropriation by the Legislature.
1895 (5) ~~(6)~~ No more than one-fifth of the funds available in
1896 the Florida Homeownership Assistance Fund may be made available
1897 to provide loan loss insurance reserve funds to facilitate
1898 homeownership for eligible persons.
1899 Section 24. Section 420.5095, Florida Statutes, is created
1900 to read:
1901 420.5095 Community Workforce Housing Innovation Program.--
1902 (1) The Community Workforce Housing Innovation Program is
1903 created for the purpose of providing regulatory incentives and
1904 state and local funds to promote local public-private
1905 partnerships and leverage government and private resources to
1906 provide affordable rental and home ownership community workforce
1907 housing for essential services personnel with medium incomes in
1908 high-cost and high-growth counties in this state.

1909 (2) Subject to the availability of funds appropriated by
1910 the Legislature to fund the Community Workforce Housing
1911 Innovation Program, the Florida Housing Finance Corporation
1912 shall have the authority to provide Community Workforce Housing
1913 Innovation Program loans, which may be forgivable, to an
1914 applicant for construction or rehabilitation of rental or home
1915 ownership workforce housing in targeted high-cost and high-
1916 growth counties, areas of critical state concern, or areas that
1917 were designated as areas of critical state concern for at least
1918 20 consecutive years prior to removal of the designation. The
1919 corporation shall establish a funding process and selection
1920 criteria by rule or request for proposals to distribute annually
1921 appropriated funds under this section. Funding may be used with
1922 other corporation and private sector resources.
1923 (3) The corporation shall provide incentives for local
1924 governments in these counties to use local affordable housing
1925 funds, such as those from the State Housing Initiatives
1926 Partnership Program to assist in meeting the affordable housing
1927 needs of persons eligible under this program.
1928 (4) The Community Workforce Housing Innovation Program
1929 projects shall target:
1930 (a) "High-cost counties," defined as those counties in
1931 which the median sales price of a single-family home using the
1932 most recent county level statistics is above the state median
1933 sales price of a single-family home, areas of critical state
1934 concern designated under s. 380.05 for which the Legislature has
1935 declared its intent to provide affordable housing, and areas
1936 that were designated as areas of critical state concern for at

1937 least 20 consecutive years prior to removal of the designation.
1938 The corporation shall develop the list of high-cost counties on
1939 an annual basis.
1940 (b) "High-growth counties," defined as those counties that
1941 demonstrate significantly high rates of growth in K-12 public
1942 school students and a substantial number of open teaching
1943 positions currently and projected for the next school year. To
1944 qualify under these criteria of high growth and need to fill
1945 public school teaching positions, a county's school district
1946 must have been in the top 10 school districts in the state for
1947 the fastest student population growth as a percentage rate of
1948 increase for the previous 5 years, as defined by the Department
1949 of Education. Counties with school districts having the greatest
1950 number of teaching position vacancies shall be prioritized.
1951 (c) "Public-private partnerships," defined to include
1952 substantial involvement of at least one county, one
1953 municipality, or one public sector entity, such as a school
1954 district or other unit of local government in which the project
1955 is to be located, and at least one private not-for-profit or
1956 for-profit project partner. Partnerships are encouraged to
1957 include one or more private sector business or charitable
1958 entities.
1959 (d) "Workforce housing," defined as housing affordable to
1960 natural persons or families whose total annual household income
1961 does not exceed 150 percent of the area median income, adjusted
1962 for household size, in prioritized areas included in this
1963 subsection, or a higher area median income, adjusted for
1964 household size, in areas of critical state concern or in areas

1965 that were designated as areas of critical state concern for at
1966 least 20 consecutive years prior to removal of the designation.
1967 (e) Essential services personnel in need of affordable
1968 housing who are employed in areas in which they are considered
1969 essential services personnel, including, but not limited to,
1970 teachers and educators, police and fire personnel, skilled
1971 construction trades personnel, and health care personnel, and in
1972 other job categories in which the personnel are defined as
1973 essential services personnel, as locally defined by each county
1974 and eligible municipality within its local housing assistance
1975 plan pursuant to s. 420.9075.
1976 (f) Innovative projects that include new construction or
1977 rehabilitation of existing housing, mixed-income housing, or
1978 commercial and housing mixed-use elements.
1979
1980 The corporation shall seek to achieve a 70-percent high-cost,
1981 30-percent high-growth ratio in its annual funding of projects.
1982 (5) The Community Workforce Housing Innovation Program
1983 shall supplement and not supplant the existing affordable
1984 housing programs funded under chapter 420.
1985 (6) On an annual basis, the corporation shall review the
1986 success of the Community Workforce Housing Innovation Program to
1987 ascertain whether the program is meeting the housing needs of
1988 high-cost and high-growth counties. The corporation shall submit
1989 any recommendations for strengthening the program to the
1990 Governor, the Speaker of the House of Representatives, and the
1991 President of the Senate not later than 2 months after the end of
1992 the corporation's fiscal year.

1993 (7) The corporation shall review ways to improve public
1994 sector and private sector incentives and barriers to affordable
1995 and community workforce housing and make any recommendations
1996 necessary to improve these incentives in a report to the
1997 Governor, the Speaker of the House of Representatives, and the
1998 President of the Senate not later than 2 months after the end of
1999 the corporation's fiscal year. The corporation may request the
2000 assistance of the Department of Community Affairs or the
2001 Shimberg Center for Affordable Housing.
2002 (8)(a) Projects approved or funded by the Community
2003 Workforce Housing Innovation Program as Community Workforce
2004 Housing Innovation Program projects shall be eligible for the
2005 following workforce housing incentives to promote the financial
2006 viability, successful development, and ongoing maintenance of
2007 these housing developments:
2008 1. The processing of approvals of development orders or
2009 development permits, as defined in s. 163.3164(7) and (8), for
2010 affordable housing projects shall be expedited to a greater
2011 degree than other projects.
2012 2. Impact fees shall be reduced by 50 percent or may be
2013 waived entirely by the local government, or an applicant shall
2014 be provided with an alternative method of fee payment by the
2015 local government in which the proposed project is to be located.
2016 3. Increased density levels of up to 16 units or higher
2017 density per acre shall be allowed, except in coastal high-hazard
2018 areas, if approved by the local government, for community
2019 workforce housing.

2020 4. The infrastructure capacity in the local comprehensive
2021 plan for affordable housing shall be reserved for these
2022 communities.
2023 5. Additional affordable residential units in residential
2024 zoning districts shall be allowed.
2025 6. Open space and setback requirements for affordable
2026 housing shall be reduced by 50 percent.
2027 7. Zero-lot-line configurations shall be allowed.
2028 8. Traffic concurrency requirements shall be modified or
2029 reduced by up to 25 percent.
2030 9. Local transportation infrastructure funding shall be
2031 considered eligible for prioritization from metropolitan
2032 planning organizations.
2033 (b) The regulatory incentives for approved Community
2034 Workforce Housing Innovation Program projects shall be
2035 considered acceptable by the respective local government
2036 maintaining jurisdiction over the site of the project, if:
2037 1. The applicant receives a letter of support from the
2038 local government for the project application submitted to the
2039 corporation; or
2040 2. Within 60 days after receipt of the applicant's plan by
2041 the local government, a vote of "no objection" regarding the
2042 project is taken by that body. During the 60-day period, the
2043 local government and project applicant may agree to modify the
2044 project incentives and size of the development with approval
2045 from the corporation and still be eligible for project funding.
2046 However, if that local government entity votes not to accept the
2047 Community Workforce Housing Innovation Program project in its

2048 county, the corporation shall remove the application from the
2049 project approval list.
2050 (9) All eligible applications shall:
2051 (a) Set aside at least 80 percent of the units for
2052 workforce housing.
2053 (b) Set aside at least 50 percent of the units as
2054 prioritized for eligible persons who are employed as essential
2055 services personnel.
2056 (c) For rental projects, restrict rents for all workforce
2057 housing serving those with incomes up to 120 percent of area
2058 median income at the appropriate income level using the
2059 restricted rents for the federal low-income housing tax credit
2060 program and, for workforce housing units serving those with
2061 incomes up to 150 percent of area median income, restrict rents
2062 to those established by the corporation, not to exceed 40
2063 percent of the maximum household income adjusted to unit size.
2064 (d) For home ownership, limit the sales price of a
2065 detached unit, townhome, or condominium unit to not more than
2066 the median sales price for that type of unit in that county and
2067 require that all eligible purchasers of home ownership units
2068 occupy the homes as their primary residence.
2069 (e) Demonstrate that the program applicant consists of a
2070 public-private partnership of at least one local government or
2071 special district public entity and one private not-for-profit or
2072 for-profit partner.
2073 (f) Demonstrate how the applicant will use the regulatory
2074 incentives outlined in subsection (8) and include, if available,
2075 any letters of support for the incentives referenced in

2076 subparagraph (8)(b)1. from the local jurisdiction in which the
2077 proposed project is to be located.
2078 (g) Demonstrate that the applicant possesses title to or
2079 site control of land and evidences availability of required
2080 infrastructure.
2081 (h) Provide any research or facts available supporting the
2082 demand and need for rental or home ownership workforce housing
2083 for qualified workforce residents in the county in which the
2084 project is proposed.
2085 (i) Have grants, donations of land, or contributions from
2086 the public-private partnership or other sources collectively
2087 totaling at least 15 percent of the total development cost. Such
2088 grants, donations of land, or contributions must only be
2089 evidenced by a letter of commitment at the time of application.
2090 (j) Demonstrate accessibility to commercial businesses,
2091 services, and employment opportunities needed to serve the needs
2092 of the residents or include a viable plan to provide
2093 transportation access to those commercial businesses, services,
2094 and jobs.
2095 (k) Demonstrate a marketing and sales plan to ensure that
2096 residents fit the income requirements and workforce employment
2097 demand for essential services, as well as alternative strategies
2098 to sell or lease units to other qualified individuals if
2099 essential services personnel are not immediately available or
2100 qualified for the units.
2101 (l) Provide a development cost pro forma financial
2102 statement for the project.

2103 (m) Demonstrate the applicant's affordable housing
2104 development and management experience.
2105 (n) Demonstrate the long-term affordability of the rental
2106 or homeownership units.
2107 (10)(a) The corporation shall establish a review committee
2108 and shall establish a scoring system for evaluation and
2109 competitive ranking of applications submitted to the program.
2110 The ranking shall ensure an opportunity for a greater number of
2111 high-cost, high-growth counties to receive project funding.
2112 (b) The corporation shall award loans with interest rates
2113 set at 1 percent, which may be forgivable if the project
2114 continues to meet the rental or ownership criteria outlined in
2115 subsection (4). The corporation shall develop rules and
2116 guidelines to set the terms of forgivability.
2117 (11) The corporation may use a maximum of 2 percent of the
2118 annual appropriation per state fiscal year for administration
2119 and compliance monitoring.
2120 (12) The corporation shall develop and implement within
2121 the Community Workforce Housing Innovation Program a down-
2122 payment assistance program.
2123 (13) The corporation shall develop recommendations for
2124 increasing the development of innovative affordable home
2125 ownership projects serving very-low-income, low-income, and
2126 moderate-income residents in Florida, which may include
2127 expansion of support for nonprofit home builders, such as
2128 Habitat for Humanity and other charitable housing organizations,
2129 public housing authorities, and for-profit housing developers.
2130 Recommendations shall assess the value of public-private

2131 partnerships, increased local and state funding for nonprofit
2132 housing organizations, and the possible conversion of existing
2133 affordable multifamily rental apartments to affordable home
2134 ownership units for projects in high-cost counties and counties
2135 with areas designated as areas of critical state concern or
2136 areas that were designated as areas of critical state concern
2137 for at least 20 consecutive years prior to removal of the
2138 designation. Recommendations shall examine how to guarantee
2139 long-term affordability for home ownership. The corporation may
2140 request the assistance of the Affordable Housing Study
2141 Commission in these efforts.
2142 Section 25. Subsection (25) of section 420.9071, Florida
2143 Statutes, is amended to read:
2144 420.9071 Definitions.--As used in ss. 420.907-420.9079,
2145 the term:
2146 (25) "Recaptured funds" means funds that are recouped by a
2147 county or eligible municipality in accordance with the recapture
2148 provisions of its local housing assistance plan pursuant to s.
2149 420.9075(5)~~(4)~~(g) from eligible persons or eligible sponsors who
2150 default on the terms of a grant award or loan award.
2151 Section 26. Subsection (2) of section 420.9072, Florida
2152 Statutes, is amended to read:
2153 420.9072 State Housing Initiatives Partnership
2154 Program.--The State Housing Initiatives Partnership Program is
2155 created for the purpose of providing funds to counties and
2156 eligible municipalities as an incentive for the creation of
2157 local housing partnerships, to expand production of and preserve
2158 affordable housing, to further the housing element of the local

2159 government comprehensive plan specific to affordable housing,
2160 and to increase housing-related employment.
2161 (2)(a) To be eligible to receive funds under the program,
2162 a county or eligible municipality must:
2163 1. Submit to the corporation its local housing assistance
2164 plan describing the local housing assistance strategies
2165 established pursuant to s. 420.9075;
2166 2. Within 12 months after adopting the local housing
2167 assistance plan, amend the plan to incorporate the local housing
2168 incentive strategies defined in s. 420.9071(16) and described in
2169 s. 420.9076; and
2170 3. Within 24 months after adopting the amended local
2171 housing assistance plan to incorporate the local housing
2172 incentive strategies, amend its land development regulations or
2173 establish local policies and procedures, as necessary, to
2174 implement the local housing incentive strategies adopted by the
2175 local governing body. A county or an eligible municipality that
2176 has adopted a housing incentive strategy pursuant to s. 420.9076
2177 before the effective date of this act shall review the status of
2178 implementation of the plan according to its adopted schedule for
2179 implementation and report its findings in the annual report
2180 required by s. 420.9075(10)~~(9)~~. If as a result of the review, a
2181 county or an eligible municipality determines that the
2182 implementation is complete and in accordance with its schedule,
2183 no further action is necessary. If a county or an eligible
2184 municipality determines that implementation according to its
2185 schedule is not complete, it must amend its land development
2186 regulations or establish local policies and procedures, as

2187 necessary, to implement the housing incentive plan within 12
2188 months after the effective date of this act, or if extenuating
2189 circumstances prevent implementation within 12 months, pursuant
2190 to s. 420.9075(13) ~~(12)~~, enter into an extension agreement with
2191 the corporation.
2192 (b) A county or an eligible municipality seeking approval
2193 to receive its share of the local housing distribution must
2194 adopt an ordinance containing the following provisions:
2195 1. Creation of a local housing assistance trust fund as
2196 described in s. 420.9075(6) ~~(5)~~.
2197 2. Adoption by resolution of a local housing assistance
2198 plan as defined in s. 420.9071(14) to be implemented through a
2199 local housing partnership as defined in s. 420.9071(18).
2200 3. Designation of the responsibility for the
2201 administration of the local housing assistance plan. Such
2202 ordinance may also provide for the contracting of all or part of
2203 the administrative or other functions of the program to a third
2204 person or entity.
2205 4. Creation of the affordable housing advisory committee
2206 as provided in s. 420.9076.
2207
2208 The ordinance must not take effect until at least 30 days after
2209 the date of formal adoption. Ordinances in effect prior to the
2210 effective date of amendments to this section shall be amended as
2211 needed to conform to new provisions.
2212 Section 27. Paragraphs (a) and (c) of present subsection
2213 (4) of section 420.9075, Florida Statutes, are amended,
2214 subsections (3) through (12) are renumbered as subsections (4)

2215 through (13), respectively, and a new subsection (3) is added to
2216 that section, to read:
2217 420.9075 Local housing assistance plans; partnerships.--
2218 (3)(a) Each local housing assistance plan shall include a
2219 definition of essential service personnel for the county or
2220 eligible municipality, including, but not limited to, teachers
2221 and educators, police and fire personnel, health care personnel,
2222 skilled building trades personnel, and other job categories.
2223 (b) Each county and each eligible municipality is
2224 encouraged to develop a strategy within its local housing
2225 assistance plan that emphasizes the recruitment and retention of
2226 essential service personnel and persons skilled in the building
2227 trades. The local government is encouraged to involve public and
2228 private sector employers. Compliance with the eligibility
2229 criteria established under this strategy shall be verified by
2230 the county or eligible municipality.
2231 (5) ~~(4)~~ The following criteria apply to awards made to
2232 eligible sponsors or eligible persons for the purpose of
2233 providing eligible housing:
2234 (a) At least 65 percent of the funds made available in
2235 each county and eligible municipality from the local housing
2236 distribution must be reserved for home ownership for eligible
2237 persons, with an annual goal of at least one-third of those
2238 funds going to home ownership for very-low-income persons.
2239 (c) The sales price or value of new or existing eligible
2240 housing may not exceed 90 percent of the average area purchase
2241 price in the statistical area in which the eligible housing is
2242 located. Such average area purchase price may be that calculated

2243 for any 12-month period beginning not earlier than the fourth
2244 calendar year prior to the year in which the award occurs or as
2245 otherwise established by the United States Department of the
2246 Treasury.
2247
2248 If both an award under the local housing assistance plan and
2249 federal low-income housing tax credits are used to assist a
2250 project and there is a conflict between the criteria prescribed
2251 in this subsection and the requirements of s. 42 of the Internal
2252 Revenue Code of 1986, as amended, the county or eligible
2253 municipality may resolve the conflict by giving precedence to
2254 the requirements of s. 42 of the Internal Revenue Code of 1986,
2255 as amended, in lieu of following the criteria prescribed in this
2256 subsection with the exception of paragraphs (a) and (d) of this
2257 subsection.
2258 Section 28. Subsection (6) of section 420.9076, Florida
2259 Statutes, is amended to read:
2260 420.9076 Adoption of affordable housing incentive
2261 strategies; committees.--
2262 (6) Within 90 days after the date of receipt of the local
2263 housing incentive strategies recommendations from the advisory
2264 committee, the governing body of the appointing local government
2265 shall adopt an amendment to its local housing assistance plan to
2266 incorporate the local housing incentive strategies it will
2267 implement within its jurisdiction. The amendment must include,
2268 at a minimum, the local housing incentive strategies specified
2269 ~~as defined~~ in paragraphs (4)(a)-(j) ~~s. 420.9071(16)~~.

2270 Section 29. Subsection (2) of section 420.9079, Florida
2271 Statutes, is amended to read:
2272 420.9079 Local Government Housing Trust Fund.--
2273 (2) The corporation shall administer the fund exclusively
2274 for the purpose of implementing the programs described in ss.
2275 420.907-420.9078 and this section. With the exception of
2276 monitoring the activities of counties and eligible
2277 municipalities to determine local compliance with program
2278 requirements, the corporation shall not receive appropriations
2279 from the fund for administrative or personnel costs. For the
2280 purpose of implementing the compliance monitoring provisions of
2281 s. 420.9075(9) ~~(8)~~, the corporation may request a maximum of one-
2282 quarter of 1 percent of the annual appropriation ~~$200,000~~ per
2283 state fiscal year. When such funding is appropriated, the
2284 corporation shall deduct the amount appropriated prior to
2285 calculating the local housing distribution pursuant to ss.
2286 420.9072 and 420.9073.
2287 Section 30. Paragraph (c) of subsection (1) and paragraph
2288 (e) of subsection (2) of section 624.5105, Florida Statutes, are
2289 amended to read:
2290 624.5105 Community contribution tax credit; authorization;
2291 limitations; eligibility and application requirements;
2292 administration; definitions; expiration.--
2293 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--
2294 (c) The total amount of tax credit which may be granted
2295 for all programs approved under this section and ss.
2296 212.08(5)(q) and 220.183 is $10 ~~$12~~ million annually for
2297 projects that provide homeownership opportunities for low-income

2298 or very-low-income persons as defined in s. 420.9071(19) and
2299 (28) and $3 million annually for all other projects.
2300 (2) ELIGIBILITY REQUIREMENTS.--
2301 (e)1. ~~For the first 6 months of the fiscal year, the~~
2302 ~~Office of Tourism, Trade, and Economic Development shall reserve~~
2303 ~~80 percent of the first $10 million in available annual tax~~
2304 ~~credits, and 70 percent of any available annual tax credits in~~
2305 ~~excess of $10 million, for donations made to eligible sponsors~~
2306 ~~for projects that provide homeownership opportunities for low-~~
2307 ~~income or very-low-income households as defined in s.~~
2308 ~~420.9071(19) and (28). If any such reserved annual tax credits~~
2309 ~~remain after the first 6 months of the fiscal year, the office~~
2310 ~~may approve the balance of these available credits for donations~~
2311 ~~made to eligible sponsors for projects other than those that~~
2312 ~~provide homeownership opportunities for low-income or very-low-~~
2313 ~~income households.~~
2314 ~~2. For the first 6 months of the fiscal year, the office~~
2315 ~~shall reserve 20 percent of the first $10 million in available~~
2316 ~~annual tax credits, and 30 percent of any available annual tax~~
2317 ~~credits in excess of $10 million, for donations made to eligible~~
2318 ~~sponsors for projects other than those that provide~~
2319 ~~homeownership opportunities for low-income or very-low-income~~
2320 ~~households as defined in s. 420.9071(19) and (28). If any~~
2321 ~~reserved annual tax credits remain after the first 6 months of~~
2322 ~~the fiscal year, the office may approve the balance of these~~
2323 ~~available credits for donations made to eligible sponsors for~~
2324 ~~projects that provide homeownership opportunities for low-income~~
2325 ~~or very-low-income households.~~

2326 ~~3.~~ If, during the first 10 business days of the state
2327 fiscal year, eligible tax credit applications for projects that
2328 provide homeownership opportunities for low-income or very-low-
2329 income persons as defined in s. 420.9071(19) and (28) are
2330 received for less than the ~~available~~ annual tax credits
2331 available for those projects ~~reserved under subparagraph 1.~~, the
2332 office shall grant tax credits for those applications and shall
2333 grant remaining tax credits on a first-come, first-served basis
2334 for any subsequent eligible applications received before the end
2335 of the ~~first 6 months of the~~ state fiscal year. If, during the
2336 first 10 business days of the state fiscal year, eligible tax
2337 credit applications for projects that provide homeownership
2338 opportunities for low-income or very-low-income persons as
2339 defined in s. 420.9071(19) and (28) are received for more than
2340 the ~~available~~ annual tax credits available for those projects
2341 ~~reserved under subparagraph 1.~~, the office shall grant the tax
2342 credits for those ~~the~~ applications as follows:
2343 a. If tax credit applications submitted for approved
2344 projects of an eligible sponsor do not exceed $200,000 in total,
2345 the credits shall be granted in full if the tax credit
2346 applications are approved~~, subject to subparagraph 1~~.
2347 b. If tax credit applications submitted for approved
2348 projects of an eligible sponsor exceed $200,000 in total, the
2349 amount of tax credits granted under sub-subparagraph a. shall be
2350 subtracted from the amount of available tax credits ~~under~~
2351 ~~subparagraph 1.~~, and the remaining credits shall be granted to
2352 each approved tax credit application on a pro rata basis.

2353 ~~c. If, after the first 6 months of the fiscal year,~~
2354 ~~additional credits become available under subparagraph 2., the~~
2355 ~~office shall grant the tax credits by first granting to those~~
2356 ~~who received a pro rata reduction up to the full amount of their~~
2357 ~~request and, if there are remaining credits, granting credits to~~
2358 ~~those who applied on or after the 11th business day of the state~~
2359 ~~fiscal year on a first-come, first-served basis.~~
2360 2.~~4.~~ If, during the first 10 business days of the state
2361 fiscal year, eligible tax credit applications for projects other
2362 than those that provide homeownership opportunities for low-
2363 income or very-low-income persons as defined in s. 420.9071(19)
2364 and (28) are received for less than the ~~available~~ annual tax
2365 credits available for those projects ~~reserved under subparagraph~~
2366 ~~2.~~, the office shall grant tax credits for those applications
2367 and shall grant remaining tax credits on a first-come, first-
2368 served basis for any subsequent eligible applications received
2369 before the end of the ~~first 6 months of the~~ state fiscal year.
2370 If, during the first 10 business days of the state fiscal year,
2371 eligible tax credit applications for projects other than those
2372 that provide homeownership opportunities for low-income or very-
2373 low-income persons as defined in s. 420.9071(19) and (28) are
2374 received for more than the ~~available~~ annual tax credits
2375 available for those projects ~~reserved under subparagraph 2.~~, the
2376 office shall grant the tax credits for those ~~the~~ applications on
2377 a pro rata basis. ~~If, after the first 6 months of the fiscal~~
2378 ~~year, additional credits become available under subparagraph 1.,~~
2379 ~~the office shall grant the tax credits by first granting to~~
2380 ~~those who received a pro rata reduction up to the full amount of~~

2381 ~~their request and, if there are remaining credits, granting~~
2382 ~~credits to those who applied on or after the 11th business day~~
2383 ~~of the state fiscal year on a first-come, first-served basis.~~
2384 Section 31. Paragraph (b) of subsection (9) of section
2385 1001.42, Florida Statutes, is amended to read:
2386 1001.42 Powers and duties of district school board.--The
2387 district school board, acting as a board, shall exercise all
2388 powers and perform all duties listed below:
2389 (9) SCHOOL PLANT.--Approve plans for locating, planning,
2390 constructing, sanitating, insuring, maintaining, protecting, and
2391 condemning school property as prescribed in chapter 1013 and as
2392 follows:
2393 (b) Sites, buildings, and equipment.--
2394 1. Select and purchase school sites, playgrounds, and
2395 recreational areas located at centers at which schools are to be
2396 constructed, of adequate size to meet the needs of projected
2397 students to be accommodated.
2398 2. Approve the proposed purchase of any site, playground,
2399 or recreational area for which district funds are to be used.
2400 3. Expand existing sites.
2401 4. Rent buildings when necessary.
2402 5. Enter into leases or lease-purchase arrangements, in
2403 accordance with the requirements and conditions provided in s.
2404 1013.15(2), with private individuals or corporations for the
2405 rental of necessary grounds and educational facilities for
2406 school purposes or of educational facilities to be erected for
2407 school purposes. Current or other funds authorized by law may be
2408 used to make payments under a lease-purchase agreement.

2409 Notwithstanding any other statutes, if the rental is to be paid
2410 from funds received from ad valorem taxation and the agreement
2411 is for a period greater than 12 months, an approving referendum
2412 must be held. The provisions of such contracts, including
2413 building plans, shall be subject to approval by the Department
2414 of Education, and no such contract shall be entered into without
2415 such approval. As used in this section, "educational facilities"
2416 means the buildings and equipment that are built, installed, or
2417 established to serve educational purposes and that may lawfully
2418 be used. The State Board of Education may adopt such rules as
2419 are necessary to implement these provisions.
2420 6. Provide for the proper supervision of construction.
2421 7. Make or contract for additions, alterations, and
2422 repairs on buildings and other school properties.
2423 8. Ensure that all plans and specifications for buildings
2424 provide adequately for the safety and well-being of students, as
2425 well as for economy of construction.
2426 9. Provide affordable housing for teachers and other
2427 instructional personnel independently or in conjunction with
2428 other agencies as described in s. 1001.43(5).
2429 Section 32. Subsection (6) of section 1013.01, Florida
2430 Statutes, is amended to read:
2431 1013.01 Definitions.--The following terms shall be defined
2432 as follows for the purpose of this chapter:
2433 (6) "Educational facilities" means the buildings and
2434 equipment, structures, and special educational use areas that
2435 are built, installed, or established to serve primarily the
2436 educational purposes and secondarily the social and recreational

2437 purposes of the community and which may lawfully be used as
2438 authorized by the Florida Statutes and approved by boards.
2439 Affordable housing and workforce housing for teachers and school
2440 personnel also qualify as educational facilities if approved by
2441 the board.
2442 Section 33. Subsection (5) is added to section 1013.15,
2443 Florida Statutes, to read:
2444 1013.15 Lease, rental, and lease-purchase of educational
2445 facilities and sites.--
2446 (5) A board may rent or lease existing buildings, land, or
2447 space within existing buildings, originally constructed or used
2448 for purposes other than education, for conversion to use as
2449 affordable and workforce housing, as defined in ss. 420.0004 and
2450 420.5095, for school and instructional personnel.
2451 Section 34. The sum of $20 million is appropriated from
2452 the State Housing Trust Fund to the Florida Housing Finance
2453 Corporation for the 2006-2007 fiscal year to provide funds to
2454 teachers eligible for affordable housing pursuant to s. 420.5088
2455 or s. 420.5089, Florida Statutes, and to assist in teacher
2456 retention and recruitment as a response to the state's teacher
2457 shortage.
2458 Section 35. The sum of $32 million is appropriated from
2459 the Local Government Housing Trust Fund to the Florida Housing
2460 Finance Corporation for the 2006-2007 fiscal year to assist in
2461 the production of housing units for extremely low-income
2462 persons.
2463 Section 36. Except as otherwise expressly provided in this
2464 act, this act shall take effect July 1, 2006.

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

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; 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 <u>including the ability to adopt construction standards that</u>
811 <u>exceed the National Electrical Safety Code for purposes of</u>
812 <u>ensuring the reliable provision of service,</u> and service rules
813 and regulations to be observed by each public utility; to
814 require repairs, improvements, additions, <u>replacements,</u> 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. <u>When possible, any hearing on a federally</u>
1680 <u>approved or delegated program permit such as new source review,</u>
1681 <u>prevention of significant deterioration permit, or NPDES permit</u>
1682 <u>shall be conducted in conjunction with the certification hearing</u>
1683 <u>held under this act.</u> ~~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) ~~(c)~~ 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 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

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1 The Elder & Long-Term Care Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to youth and young adults with
7 disabilities; creating the Interagency Services Committee
8 for Youth and Young Adults with Disabilities within the
9 Agency for Persons with Disabilities; providing
10 legislative intent; providing for membership, duties, and
11 responsibilities; requiring specified member agencies to
12 provide staff support for the committee; providing for
13 reimbursement of certain expenses; providing that the
14 committee is subject to open records and open meetings
15 requirements; requiring the committee to submit a report
16 to the Governor and Legislature; providing for termination
17 of the committee; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Interagency Services Committee for Youth and
22 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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

PCB #: HB 7121 CS PCB DS 06-02 Disaster Preparedness, Response, and Recovery
SPONSOR(S): Domestic Security Committee
TIED PCBS: **IDEN./SIM. PCBS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	9 Y, 0 N	Wiggins	Newton
1) Agriculture Committee	10 Y, 0 N	Kaiser	Reese
2) Finance & Tax Committee	6 Y, 0 N, w/CS	Noriega	Diez-Arguelles
3) Fiscal Council		Darity	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Disaster Supplier Program Council (council). The council consists of seven members, comprised of one county emergency management director from each of the seven Division of Emergency operational regions as designated by the Florida Emergency Preparedness Association. The council is tasked with developing specific criteria for the voluntary Florida Disaster Supplier Program by February 1, 2007. The purpose of this program is to facilitate access to supplies during an emergency and to inform state residents of the availability of crucial supplies before, during, and after a disaster.

The bill creates the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs. The program allows motor fuel retail outlets doing business in the state to participate in a network of emergency responders to provide fuel supplies and services to government agencies, medical institutions and facilities, critical infrastructure and other responders, as well as the general public before, during, and after a disaster.

The bill requires all multi-family dwellings that are at least 75 feet high and contain a public elevator, to have at least one public elevator that is capable of operating on an alternate power source available to residents for a number of hours each day over a 5-day period following a disaster.

The bill specifies that the statewide public disaster awareness campaign must include information on personal responsibility for individual citizens for up to 72 hours following a disaster. The campaign must also promote statewide disaster plans, evacuation routes, fuel suppliers, and shelter information. In addition, the materials must be available in alternative formats and mediums to ensure they are available to persons with disabilities.

The bill provides that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space.

The bill appropriates $20 million from nonrecurring General Revenue and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to provide for the construction or structural renovation of county emergency operations centers. The bill also appropriates $826,150 from recurring General Revenue to the Department of Community Affairs, which includes $76,150 to fund the Florida Disaster Supplier Program Council and $750,000 to fund the Division of Emergency Management's public awareness campaign.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill provides for the creation of a program that will empower businesses to operate during a disaster. The program will provide options to individuals when obtaining supplies and fuel to maintain normalcy before, during, and after a disaster.

Promote Personal Responsibility: The bill clarifies that one of the goals of the public educational campaign on emergency preparedness issues is to promote the self-sufficiency of citizens for up to 72 hours following a disaster. The bill encourages the public to make arrangements for the care of individuals with special needs or in need of assistance, to be familiar with evacuation routes, disaster plans, shelter information, and fuel and consumer suppliers.

Empower Families: The bill decreases the burdens of government on families by providing options to obtain needed supplies for their families during a disaster. The bill provides families choices when making crucial decisions that will affect their safety and well-being during a disaster. The bill decreases the dependence of families on government support and/or assistance by educating the public regarding disaster preparedness. The public awareness program will specifically encourage families to prepare for disasters and review evacuation plans, thus increasing family stability.

Maintains Public Security: The bill increases the physical security of citizens and their property by providing citizens with options during disasters. These options will help families secure their homes and businesses. The Florida Disaster Motor Fuel Supplier Program assists health care facilities by enabling them to remain operational during a disaster and by assisting critical care workers to obtain fuel so they may return to work. If health care centers are able to remain operational, law enforcement may devote its time and energy to public security and disaster needs, such as recovery and rescue.

B. EFFECT OF PROPOSED CHANGES:

Background

The 2004 and 2005 hurricane seasons, specifically the devastation left from Hurricanes Wilma and Katrina, raised a number of issues across Florida on disaster preparedness, response and recovery. In an effort to better understand the issues specific to Florida's ability to deal with and recover from disasters, the Domestic Security Committee and the Health Care General Committee held two joint committee meetings to hear testimony and take comments on disaster-related issues. In conjunction with the Health Care General Committee's bill on special needs sheltering, the Domestic Security Committee has addressed areas of concern related to emergency supplies, availability of motor fuels, and disaster preparedness.

Effect of the Bill

Florida Disaster Supplier Program and the Florida Disaster Supplier Program Council
At present, supplies to communities are provided through government agencies and private assistance following a disaster. Businesses that are able to maintain power during a disaster or have an alternate power source may sell their goods and services. There are no identified State Emergency Response Team (SERT) businesses that provide needed supplies and fuel to the public and SERT members following a disaster. There are no provisions that allow SERT members and critical care health providers to acquire fuel during a disaster.

The Florida Disaster Supplier Program Council (council) is established within the Department of Community Affairs to make recommendations to the Governor and Legislature on the creation of a voluntary Florida Disaster Supplier Program. The council consists of seven members, one from each of the operational regions of the Division of Emergency Management (division). The bill sets forth criteria for the council relating to:

- Election of a chair and vice chair;
- When the council shall meet;
- Duration of service;
- Vacancies on the council;
- Compensation for service; and
- Termination of the council as of July 1, 2008.

The duties and responsibilities of the council include recommending to the division:

- State disaster preparedness criteria necessary for implementation of this program;
- The most effective means of providing access to businesses partnering in this program to facilitate the operation, supply, and staffing of such businesses, as feasible, under emergency situations;
- A statewide system of certification during a disaster for suppliers of pharmaceuticals, food and water, building supplies, ice, and other categories deemed necessary by the council;
- If deemed necessary by the council, the assessment of an annual program membership fee for businesses voluntarily seeking to obtain certification as a state disaster supplier; and
- A State Emergency Response Team (SERT) logo bearing the name of the state of Florida and the type of supplies being provided by the supplier for display by businesses participating in this program.

The intended purposes of this program are:

- To provide statewide oversight of the availability and provision of necessary supplies prior to, during, and following a state of emergency or natural or manmade disaster or catastrophe;
- To assist in the rapid recovery of an area affected by a natural or manmade disaster or catastrophe and to immediately stimulate the post-disaster recovery of local economies; and
- To provide the public with alternative access to certain commodities as recommended by the council.

The bill provides that participation in this program is optional. Counties choosing to participate must be responsible for administering this program within that county. The council will recommend guidelines and standards for participation. This program must allow businesses to participate even though the county in which the business is located may choose not to participate. This program is not intended to interfere with normal and ongoing commerce occurring at the local government level.

Businesses participating in this program must be certified through the county emergency management agencies, using certification standards developed by the council. If an annual program membership fee is assessed, the method of collection of said fee must be determined by the council. Program membership fees must be used, by the participating counties and state agencies, to recover administrative costs of the program or as recommended by the council.

The council must submit a report on the development and implementation of this program to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The bill provides criteria to be included in the report by February 1, 2007.

Motor Fuel Dispensing Facilities

Motor fuel terminal facilities supplying motor fuel to retail outlets around the state are currently not required to have an auxiliary source of electrical power. A lack of emergency electrical power in retail outlets creates a serious deficiency in the available mobile fuel supplies prior, during, and after a disaster has occurred. Fuel remaining in the storage tanks of retail outlets is inaccessible until primary

electrical power is restored. The lack of available mobile fuel directly affects the evacuation, response, and recovery efforts in a disaster area.

The bill creates s. 526.143, F.S., requiring each motor fuel terminal dispensing facility to operate its distribution loading racks using an alternate power source for a minimum of 72 hours following a disaster. The emergency auxiliary equipment must be operational 36 hours after the disaster. All newly constructed or substantially renovated[1] motor fuel retail outlets, with a certificate of occupancy on or after July 1, 2006, must also have an appropriate transfer switch capable of operating all fuel pumps using an alternate power source. The bill requires local and state inspections of auxiliary equipment and proof of those inspections to be available before a facility may be deemed to be in compliance and able to participate in the fuel supplier program.

By December 31, 2006, all motor fuel retail outlets that are within one-half mile of an interstate highway or a state or federally designated evacuation route must be pre-wired with an appropriate transfer switch capable of operating all required equipment using an alternate power source within the following specifications based on population:

- 16 or more fueling positions located in counties with a population of 300,000 or more;
- 12 or more fueling positions located in counties with a population of 100,000 to 299,999 ; or
- 8 or more fueling positions located in counties with a population of 99,999 or fewer residents.

The bill requires installation and wiring to be completed by a certified electrical contractor, with owners of motor fuel retail outlets keeping documentation of such installation on site or at its corporate headquarters. Additionally, each retail outlet must maintain written records confirming periodic testing and ensured operational capacity of the equipment. These records must be made available, upon request, to the Division of Emergency Management and the county emergency management agency.

The requirement for motor fuel retail outlets to be pre-wired does not apply to:

- Automobile dealers;
- Persons who operate a fleet of motor vehicles; or
- Persons who sell motor fuel exclusively to a fleet of motor vehicles.

The bill provides a severability clause stating that if any provision of s. 526.143, F.S., or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of s. 526.143, F.S.

Florida Disaster Motor Fuel Supplier Program

This bill creates the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs to allow motor fuel retail outlets, doing business in the state, to participate in a network of emergency responders authorized to provide fuel supplies and services before, during, and after a declared disaster. The program is optional and counties choosing to participate, the local county emergency management agency will be primarily responsible for administering the program within that county. In counties choosing not to participate, the Division of Emergency Management (division) must have the authority to certify businesses as members of the State Emergency Response Team (SERT). The division must recommend guidelines and standards for participation.

Participation in the program requires certification, which will be established by the division or the county emergency management director no later than July 1, 2007. Businesses that are certified will be issued a SERT logo for public display to alert responders and the public that the business is capable of assisting in an emergency. Businesses certified as a SERT member must be able to provide fuel dispensing services to other SERT members within 36 hours after a disaster has occurred, or demonstrate the ability to have such service available, and agree to make such service available as needed. The bill provides for SERT members to sell motor fuel through a pre-existing contract with

[1] Substantially renovated is defined as "...a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet."

local, state, and federal response agencies or to provide point-of-sale service to such agencies. Additionally, SERT members may sell motor fuel to the general public, or may be directed to do so by the county or state emergency management officials. The bill provides for law enforcement security to be provided, if requested, to maintain civil order during operating hours.

SERT members must be given priority when purchasing fuel. Businesses who are SERT members may be directed to remain open for specified periods during a declared curfew to provide service for emergency management personnel. Under such direction, neither the SERT member nor the emergency management personnel will be in violation of such curfew. SERT members traveling during periods of declared curfews will be required to produce valid documentation of SERT membership.

Retail motor fuel outlets, designated as SERT members, may request priority consideration relating to re-supply of motor fuel to continue to provide fuel and necessary services to emergency responders. Emergency management agencies must take such requests into account when determining appropriate disaster response protocol.

The bill also preempts regulation of and requirements for the siting and placement of an alternate power source at motor fuel terminal facilities, wholesalers, and retail sales outlets to the state.

The Department of Environmental Protections' Energy Office must review and provide a report to the Legislature, including the status of the motor fuel supply program and a list of participating retail fuel outlets by March 1, 2007.

Access to Residential Multi-Family Dwellings for Emergency Purposes

According to the 2001 and 2004 Florida Building Code,[2] multi-family residential high-rise buildings[3] must have an emergency system that provides for emergency elevator operation and lighting. The 2004 building code intends for the emergency use of the elevator to be for evacuation, medical, and rescue assistance only. Certified inspectors that conduct annual elevator inspections must confirm that all installed generators are in working order and that a generator key is present in the lockbox at or near the installed generator. If the building does not have an installed generator, the inspector must confirm that the appropriate pre-wiring and switching capabilities are operational and a contract exists for an alternate power source.

This bill requires all multifamily dwellings, as defined in the 2004 Florida Building Code, as well as all newly constructed multifamily dwellings that are at least 75 feet high and contain a public elevator, to have at least one public elevator that is capable of operating on an alternate power source, and for a specified number of hours each day over a 5-day period following a disaster that disrupts the normal supply of electricity. The alternate power source, which controls elevator operation, must also be capable of powering any connected fire alarm system in the building, as well as all required emergency lighting to portions of the building used by the public.

Each multi-family dwelling must have an available generator and fuel source on the property or have proof of a current guaranteed service contract for such equipment and fuel source for elevator operation on an on-call basis within 24 hours after a request. Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management director by December 31, 2007. In regards to newly constructed multifamily dwellings, installation and operational capability requirements must be verified by local building inspectors and reported to the emergency management agency prior to occupancy.

The bill requires each person, firm, or corporation required to maintain an alternate power source under s. 553.509(4), F.S., to also maintain a written emergency operations plan detailing the sequence of

[2] ss. 1016.2 and 1006.2, F.S., respectively.

[3] Defined as buildings having occupied floors located more than 75 feet above the lowest level of fire department vehicle access.

operations before, during, and after a disaster or emergency situation. The bill provides criteria to be included in the operations plan, such as:

- A life safety plan for evacuation;
- Maintenance of the electrical and lighting supply; and
- Provisions for the health, safety, and welfare of the residents.

Additionally, the owners or operators of the multifamily dwelling must keep, on file, written records of inspections of all equipment, confirming that the equipment is properly maintained and in good working order, as well as any contracts for alternate power generation equipment. The written operations plan and inspection records are to be provided to local and state government agencies, when requested, for review. The bill requires the owner or operator of a multifamily dwelling to keep a generator key in a lockbox posted at or near any installed generator unit.

The bill also requires owners of multistory affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development, to make every effort to obtain grant funding at the federal or state level to comply with the requirements of s. 553.509(4), F.S. If this is not possible, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a disaster or an emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

The bill revises the requirements for annual elevator inspections to confirm that:

- Installed generators are in working order;
- Inspection records are current;
- The lockbox with key are in the appropriate location;
- If the building does not have an installed generator, the appropriate pre-wiring and switching capabilities are operational; and
- A valid contract for alternate power is in effect.

Public Awareness Campaign

Florida law creates the Division of Emergency Management (division) within the Department of Community Affairs. One of the duties of the division is to institute a statewide public awareness campaign on emergency preparedness issues.[4]

The bill expands the information in the campaign to include:

- The personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster; and
- Relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters.

The bill provides for all educational materials to be available in alternative formats and mediums to ensure they are available to persons with disabilities.

The bill requires the division and the Department of Education to coordinate with the Agency for Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria.

Minimum Criteria for County Emergency Operations Centers

The bill provides that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space, as determined by assessments performed

[4] s. 252.35(2)(i), F.S.

by the Department of Community Affairs based on guidance from the Federal Emergency Management Agency (FEMA). Criteria for an appropriation for a county emergency operations center include, but are not limited to, county population, hurricane evacuation clearance time for the vulnerable population of the county, structural survivability of the existing emergency operations center, and FEMA guidance for workspace requirements for the emergency operations center. First priority for funding shall be given to county emergency operations centers where no survivable facility exists and where workspace deficits exist. Funding provided for these purposes may not be used for land acquisition or recurring expenditures. Funding is also limited to the construction or structural renovation of a county emergency operations center in order to meet national workspace recommendations and may not be used to purchase equipment, furnishings, communications, or operational systems.

C. SECTION DIRECTORY:

Section 1. Creates s. 252.63, F.S., establishes the Florida Disaster Supplier Program Council and the Florida Disaster Supplier Program, provides for the council's composition, governance, and duties.

Section 2. Creates s. 526.143, F.S., establishes criteria for alternate generated power capacity for motor fuel dispensing facilities.

Section 3. Creates s. 526.144, F.S., establishes the Florida Disaster Motor Fuel Supplier Program.

Section 4. Amends s. 553.509(4), F.S., establishes criteria for alternate generated power source for residential multifamily dwellings providing emergency vertical accessibility.

Section 5. Amends s. 252.35, F.S. provides additional information to be included in the Division of Emergency Management's public awareness programs.

Section 6. Provides that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space.

Section 7. Provides an appropriation to the Department of Community Affairs to fund the construction or structural renovation of county emergency operations centers.

Section 8. Provides an appropriation to the Department of Community Affairs to fund the Florida Disaster Supplier Program Council and the Division of Emergency Management's public awareness campaign.

Section 9. 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:

The bill appropriates $20 million from nonrecurring General Revenue and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to provide for the construction or structural renovation of county emergency operations centers.

The bill also appropriates $826,150 from recurring General Revenue to the Department of Community Affairs, which includes $76,150 to fund the Florida Disaster Supplier Program Council and $750,000 to fund the Division of Emergency Management's public awareness campaign.

The Department of Agriculture and Consumer Services states that inspections required by this bill can be handled within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill may have an indeterminate positive fiscal impact on local government revenues from the collection of annual membership fees from local businesses that voluntarily seek to obtain certification as a state disaster supplier.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector will include the purchase and installation of a transfer switch for each building unit or the purchase and installation of a generator. The transfer switch must be able to accept an alternate power source. The cost of the transfer switch is approximately $6,000 to $10,000 depending on the specifications of the building. The purchase of a generator costs approximately $300 to $500 per kilowatt.[5] Cost estimates will vary depending on the size and needs of each building. Businesses can choose to contract with a service provider if they do not want to incur the cost of purchasing a generator. The service contract costs will vary depending on the need, size, and specification of the building.

The Florida Disaster Supplier Program Council (council) will be surveying local districts and local stakeholders to estimate the anticipated expenditures and costs of the Florida Disaster Supplier Program on the local level. Those costs will be included in the council's report, due February 1, 2007, to the Governor, the Speaker of the Florida House of Representatives, and the President of the Florida Senate.

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 municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

[5] www.northerntool.com

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 Finance and Tax Committee adopted two amendments to the bill. One amendment added a section to the bill that provided minimum operating criteria for county emergency operations centers. Also, the amendment specified that funding under this section is limited to the construction or structural renovation of county emergency operations centers. In addition, the amendment appropriated $20 million from nonrecurring General Revenue and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to provide for the construction or structural renovation of county emergency operations centers.

The amendment also appropriated $826,150 from recurring General Revenue to the Department of Community Affairs, which included $76,150 to fund the Florida Disaster Supplier Program Council and $750,000 to fund the Division of Emergency Management's public awareness campaign.

The other amendment removed the motor fuel tax credit for retail motor fuel outlets that install generators or other equipment for an alternative power source.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendments adopted by the Finance and Tax Committee.

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5
6 A bill to be entitled
7 An act relating to disaster preparedness response and
8 recovery; creating s. 252.63, F.S.; creating the Florida
9 Disaster Supplier Program Council under the Department of
10 Community Affairs; requiring the council to make
11 recommendations for a voluntary local program to be
12 established as the Florida Disaster Supplier Program;
13 providing membership and organization of the council;
14 providing duties and responsibilities of the council;
15 authorizing the council to recommend the assessment of an
16 annual program membership fee; providing for certification
17 of program participants; providing requirements with
18 respect to collection and use of program membership fees;
19 requiring the council to submit a report; providing for
20 termination of the council; providing intended purposes of
21 the program; providing that participation in the program
22 shall be at the option of each county; providing for
23 administration of the program by participating counties;

24 creating s. 526.143, F.S.; providing that each motor fuel
25 terminal facility and wholesaler that sells motor fuel in
26 the state must be capable of operating its distribution
27 loading racks using an alternate power source for a
28 specified period by a certain date; providing requirements
29 with respect to the operation of such equipment following
30 a major disaster; providing requirements with respect to
31 inspection of such equipment; requiring newly constructed
32 or substantially renovated motor fuel retail outlets to be
33 capable of operation using an alternate power source;
34 defining "substantially renovated"; providing inspection
35 requirements; requiring certain motor fuel retail outlets
36 located within a specified distance from an interstate
37 highway or state or federally designated evacuation route
38 to be capable of operation using an alternate power source
39 by a specified date; providing inspection and
40 recordkeeping requirements; providing applicability;
41 providing severability; creating s. 526.144, F.S.;
42 creating the Florida Disaster Motor Fuel Supplier Program
43 within the Department of Community Affairs; providing
44 purpose of the program; providing requirements for
45 participation in the program; providing that participation
46 in the program shall be at the option of each county;
47 providing for administration of the program; providing
48 requirements of businesses certified as State Emergency
49 Response Team members; providing for preemption to the
50 state of the regulation of and requirements for siting and
51 placement of an alternate power source and any related

52 equipment at motor fuel terminal facilities, wholesalers,
53 and retail sales outlets; providing for review of the
54 program; providing a report; amending s. 553.509, F.S.,
55 relating to requirements with respect to vertical
56 accessibility under pt. II of ch. 553, F.S., the "Florida
57 Americans With Disabilities Accessibility Implementation
58 Act"; requiring specified existing and newly constructed
59 residential multifamily dwellings to have at least one
60 public elevator that is capable of operating on an
61 alternate power source for emergency purposes; providing
62 requirements with respect to the alternate power source;
63 providing for verification of compliance by specified
64 dates; providing requirements with respect to emergency
65 operations plans and inspection records; requiring any
66 person, firm, or corporation that owns or operates
67 specified multistory affordable residential dwellings to
68 attempt to obtain grant funding to comply with the act;
69 requiring an owner or operator of such a dwelling to
70 develop an evacuation plan in the absence of compliance
71 with the act; providing additional inspection requirements
72 under ch. 399, F.S., the "Elevator Safety Act"; amending
73 s. 252.35, F.S.; expanding the duty of the Division of
74 Emergency Management to conduct a public educational
75 campaign on emergency preparedness issues; providing an
76 additional duty of the division with respect to
77 educational outreach concerning disaster preparedness;
78 providing legislative findings; providing criteria for

79 construction of emergency operations centers; providing
80 appropriations; providing an effective date.
81
82 Be It Enacted by the Legislature of the State of Florida:
83
84 Section 1. Section 252.63, Florida Statutes, is created to
85 read:
86 252.63 Florida Disaster Supplier Program Council; Florida
87 Disaster Supplier Program.--
88 (1) FLORIDA DISASTER SUPPLIER PROGRAM COUNCIL.--
89 (a) The Florida Disaster Supplier Program Council is
90 created under the Department of Community Affairs. The council
91 shall make recommendations for a voluntary local program to be
92 established as the Florida Disaster Supplier Program. The
93 council shall make recommendations for the effective and
94 efficient administration of the Florida Disaster Supplier
95 Program.
96 (b)1. The council shall consist of seven members,
97 comprised of the county emergency management directors from each
98 of the seven emergency response regions of the Division of
99 Emergency Management as designated by the Florida Emergency
100 Preparedness Association.
101 2. The members of the council shall elect a chair and a
102 vice chair from among their membership. The chair shall preside
103 at all meetings of the council.
104 3. The council shall meet at the call of the chair or at
105 the request of a majority of its membership.

106 4. Members shall serve for the duration of the existence
107 of the council. A vacancy on the council shall be filled by the
108 chair according to the original membership stipulations until
109 the council is terminated.
110 5. Members of the council shall serve without
111 compensation, but shall be entitled to per diem and travel
112 expenses as provided in s. 112.061 while engaged in the
113 performance of their official duties.
114 (c) Duties and responsibilities of the council shall
115 include, but not be limited to, recommending to the division:
116 1. State disaster preparedness criteria necessary for
117 implementation of the Florida Disaster Supplier Program.
118 2. The most effective means of providing access to
119 businesses participating in the program in order to facilitate
120 the operation, supply, and staffing of such businesses, as
121 feasible, under emergency conditions.
122 3. A statewide system of certification for disaster
123 suppliers in the following categories:
124 a. Pharmaceutical.
125 b. Food and water.
126 c. Building supplies.
127 d. Ice.
128 e. Other categories as deemed necessary by the council.
129 4. If deemed necessary by the council, the assessment of
130 an annual program membership fee for businesses voluntarily
131 seeking to obtain certification as a state disaster supplier
132 under the established program guidelines. The determination of
133 the necessity of assessing an annual program membership fee

134 shall include county surveys and input from business, industry,
135 and state agencies. Any recommendation with respect to the
136 assessment of program fees shall be contained in the report
137 required under subsection (5).
138 5. A State Emergency Response Team logo that bears the
139 name of the State of Florida and the type of supplies being
140 provided by the supplier for display by businesses participating
141 in the program.
142 (2) FLORIDA DISASTER SUPPLIER PROGRAM.--
143 (a) The Florida Disaster Supplier Program Council shall
144 make recommendations for a voluntary local program to be
145 established as the Florida Disaster Supplier Program. The
146 intended purposes of the program are:
147 1. To provide statewide oversight of the availability and
148 provision of necessary supplies prior to, during, and following
149 a state of emergency or natural or manmade disaster or
150 catastrophe.
151 2. To assist in the rapid recovery of an area affected by
152 a natural or manmade disaster or catastrophe and to immediately
153 stimulate the postdisaster recovery of local economies.
154 3. To provide the public with alternative access to
155 certain commodities as recommended by the Florida Disaster
156 Supplier Program Council.
157 (b) Participation in the Florida Disaster Supplier Program
158 shall be at the option of each county governing body. Each
159 county choosing to participate in the program shall be
160 responsible for administering the program within that county.
161 Guidelines and administration standards for participating

162 counties shall be recommended by the Florida Disaster Supplier
163 Program Council.
164 (c) The Florida Disaster Supplier Program shall allow
165 businesses in counties that choose not to participate in the
166 program to voluntarily participate in the program and provide
167 for the sale of emergency-use supplies and services before,
168 during, and following an emergency or natural or manmade
169 disaster or catastrophe under the conditions set forth in this
170 section.
171 (d) The Florida Disaster Supplier Program shall be
172 designed to in no way interfere with normal and ongoing commerce
173 occurring in any political subdivision of the state.
174 (3) PROGRAM CERTIFICATION.--Upon the recommendation of the
175 council, certification of a business requesting to participate
176 in the program shall be conducted through county emergency
177 management agencies or designees as prescribed by the county's
178 elected governing body. Participating counties shall use
179 certification standards developed by the council.
180 (4) COLLECTION AND USE OF PROGRAM MEMBERSHIP FEES.--If an
181 annual program membership fee is assessed as provided in
182 subparagraph (1)(c)4., the methods for collecting such fee shall
183 be determined by the council. Program membership fees collected
184 shall be used in whole or in part to recover the administrative
185 costs of the program and as may be recommended by the council.
186 Program membership fees shall be used by the participating
187 counties and state agencies as may be determined by the
188 recommendations of the council and as provided by law.

189 (5) REPORT.--The council shall submit a report on the
190 development and implementation of the Florida Disaster Supplier
191 Program to the Governor, the Speaker of the House of
192 Representatives, and the President of the Senate no later than
193 February 1, 2007. The report shall include recommendations for
194 any needed legislation and program fees and an analysis of the
195 program's effect on the provision of supplies within the state
196 during a state of emergency or natural or manmade disaster or
197 catastrophe.
198 (6) TERMINATION.--The council shall terminate on July 1,
199 2008.
200 Section 2. Section 526.143, Florida Statutes, is created
201 to read:
202 526.143 Alternate means of power generation for motor fuel
203 dispensing facilities.--
204 (1) No later than December 31, 2006, each motor fuel
205 terminal facility, as defined in s. 526.303(16), and wholesaler,
206 as defined in s. 526.303(17), that sells motor fuel in this
207 state must be capable of operating its distribution loading
208 racks using an alternate power source for a minimum of 72 hours.
209 Pending a postdisaster examination of the equipment by the
210 operator to determine any extenuating damage that would render
211 it inoperable or unsafe to use, the facility must have such
212 alternate power source available for operation no later than 36
213 hours after a major disaster, as defined in s. 252.34. Initial
214 inspection for proper installation and operation shall be
215 completed by a local building inspector, and verification of the
216 inspection must be submitted to the local county emergency

217 management agency. Inspectors from the Department of Agriculture
218 and Consumer Services shall perform a periodic visual inspection
219 of the alternate power source to ensure that the emergency
220 auxiliary electrical equipment is installed. Each facility shall
221 perform annual inspections to ensure that the emergency
222 auxiliary electrical generators are in good working order and
223 show proof of those inspections in order to be deemed in
224 compliance with and to participate in the fuel supplier program.
225 (2) Each newly constructed or substantially renovated
226 motor fuel retail outlet, as defined in s. 526.303(14), for
227 which a certificate of occupancy is issued on or after July 1,
228 2006, must be prewired with an appropriate transfer switch and
229 be capable of operating all fuel pumps, dispensing equipment,
230 life-safety systems, and payment acceptance equipment using an
231 alternate power source. As used in this subsection, the term
232 "substantially renovated" means a renovation that results in an
233 increase of greater than 50 percent in the assessed value of the
234 motor fuel retail outlet. Local building inspectors shall
235 include an equipment and operations check for compliance with
236 this subsection in the normal inspection process before issuing
237 a certificate of occupancy. A copy of the certificate of
238 occupancy shall be provided to the county emergency management
239 agency upon issuance of such certificate. Each facility shall
240 perform periodic inspections to ensure that the installed
241 transfer switch and emergency auxiliary electrical generators
242 are in good working order and provide proof of those inspections
243 to the county emergency management agency in order to be in

244 compliance with and to participate in the Florida Disaster Motor
245 Fuel Supplier Program under s. 526.144.
246 (3)(a) No later than December 31, 2006, each motor fuel
247 retail outlet described in subparagraph 1., subparagraph 2., or
248 subparagraph 3. that is located within 1/2 mile of an interstate
249 highway or state or federally designated evacuation route must
250 be prewired with an appropriate transfer switch and be capable
251 of operating all fuel pumps, dispensing equipment, life-safety
252 systems, and payment-acceptance equipment using an alternate
253 power source:
254 1. A motor fuel retail outlet located in a county having a
255 population of 300,000 or more which has 16 or more fueling
256 positions.
257 2. A motor fuel retail outlet located in a county having a
258 population of 100,000 or more, but fewer than 300,000, which has
259 12 or more fueling positions.
260 3. A motor fuel retail outlet located in a county having a
261 population of fewer than 100,000 which has eight or more fueling
262 positions.
263 (b) Installation of the wiring and transfer switch shall
264 be performed by a certified electrical contractor. Each retail
265 outlet subject to this subsection must keep a copy of the
266 documentation of such installation on site or at its corporate
267 headquarters. In addition, each retail outlet must keep a
268 written record that confirms the periodic testing and ensured
269 operational capacity of the equipment. The required documents
270 must be made available upon request to the Division of Emergency
271 Management and the county emergency management agency.

272 (4)(a) Subsections (2) and (3) apply to any self-service,
273 full-service, or combination self-service and full-service motor
274 fuel outlet regardless of whether the business is located on the
275 grounds of, or is owned by, another retail business
276 establishment that does not engage in the business of selling
277 motor fuel.
278 (b) Subsections (2) and (3) do not apply to:
279 1. An automobile dealer;
280 2. A person who operates a fleet of motor vehicles; or
281 3. A person who sells motor fuel exclusively to a fleet of
282 motor vehicles.
283 (5) If any provision of this section or its application to
284 any person or circumstance is held invalid, the invalidity does
285 not affect other provisions or applications of the section which
286 can be given effect without the invalid provision or
287 application, and to this end the provisions of this section are
288 declared severable.
289 Section 3. Section 526.144, Florida Statutes, is created
290 to read:
291 526.144 Florida Disaster Motor Fuel Supplier Program.--
292 (1)(a) There is created the Florida Disaster Motor Fuel
293 Supplier Program within the Department of Community Affairs. The
294 Florida Disaster Motor Fuel Supplier Program shall allow any
295 retail motor fuel outlet doing business in the state to
296 participate in a network of emergency responders to provide fuel
297 supplies and services to government agencies, medical
298 institutions and facilities, critical infrastructure, and other

299 responders, as well as the general public, before, during, and
300 after a declared disaster as described in s. 252.36(2).
301 (b) Participation in the Florida Disaster Motor Fuel
302 Supplier Program shall be at the option of each county governing
303 body. In counties choosing to participate in the program, the
304 local county emergency management agency shall be primarily
305 responsible for administering the program within that county. In
306 counties that do not choose to participate in the program, the
307 Division of Emergency Management shall have the authority to
308 certify businesses as members of the State Emergency Response
309 Team and issue appropriate signage. Guidelines and
310 administration standards for participating counties shall be
311 recommended by the Division of Emergency Management and the
312 county emergency management agency.
313 (c) Participation in the program shall require
314 certification by the Division of Emergency Management or the
315 county emergency management agency of a retail motor fuel
316 outlet's preparedness to provide emergency services.
317 Requirements for certification shall be established by the
318 Division of Emergency Management or the county emergency
319 management agency no later than July 1, 2007. Businesses that
320 are certified shall be issued a State Emergency Response Team
321 logo for public display to alert emergency responders and the
322 public that the business is capable of assisting in an
323 emergency.
324 (2) At a minimum, businesses that are certified as State
325 Emergency Response Team members must have the onsite capability
326 to provide fuel dispensing services to other State Emergency

327 Response Team members within 36 hours after a major disaster has
328 occurred, or demonstrate the ability to have such service
329 available, and agree to make such service available as needed.
330 Businesses may choose to sell motor fuel through a preexisting
331 contract with local, state, and federal response agencies or may
332 provide point-of-sale service to such agencies. In addition,
333 businesses may choose to sell motor fuel to the general public
334 or may be directed by county or state emergency management
335 officials to provide such service pursuant to ss. 252.35 and
336 252.38. If requested, appropriate law enforcement security may
337 be provided to the participating business for the purpose of
338 maintaining civil order during operating hours.
339 (3) Persons who are designated as State Emergency Response
340 Team members and who can produce appropriate identification, as
341 determined by state or county emergency management officials,
342 shall be given priority for the purchase of motor fuel at
343 businesses designated as State Emergency Response Team members.
344 Businesses may be directed by county or state emergency
345 management officials to remain open for specified periods during
346 a declared curfew to provide service for emergency management
347 personnel. Under such direction, a business shall not be in
348 violation of the curfew and shall not be penalized for such
349 operation, nor shall emergency management personnel be in
350 violation of such curfew. Persons traveling during periods of a
351 declared curfew shall be required to produce valid official
352 documentation of their position as a State Emergency Response
353 Team member or local emergency response agency staff member or
354 official. Such documentation may include, but is not limited to,

355 a current State Emergency Response Team identification badge,
356 current law enforcement agency identification or shield or the
357 identification or shield of another emergency response agency,
358 current health care employee identification card, or current
359 government services identification card indicating a critical
360 services position, as applicable.
361 (4) A retail motor fuel outlet that is designated as State
362 Emergency Response Team member may request priority
363 consideration with respect to the resupply of motor fuel in
364 order to continue to provide fuel and necessary services to
365 emergency responders. Such request is not binding but shall be
366 considered by emergency management agencies in determining
367 appropriate disaster response protocol.
368 (5) Notwithstanding any other law or local ordinance, to
369 ensure an appropriate emergency management response to major
370 disasters in the state, the regulation of and requirements for
371 the siting and placement of an alternate power source and any
372 related equipment at motor fuel terminal facilities,
373 wholesalers, and retail sales outlets shall be exclusively
374 controlled by the state.
375 (6) The Florida Energy Office of the Department of
376 Environmental Protection shall review progress in postdisaster
377 motor fuel supply distribution and provide a report to the
378 Speaker of the House of Representatives and the President of the
379 Senate by March 1, 2007. The report shall include information on
380 statewide compliance with s. 526.143 and identification of all
381 retail motor fuel outlets that are participating in the Florida
382 Disaster Motor Fuel Supplier Program.

383 Section 4. Section 553.509, Florida Statutes, is amended
384 to read:
385 553.509 Vertical accessibility.--Nothing in sections
386 553.501-553.513 or the guidelines shall be construed to relieve
387 the owner of any building, structure, or facility governed by
388 those sections from the duty to provide vertical accessibility
389 to all levels above and below the occupiable grade level,
390 regardless of whether the guidelines require an elevator to be
391 installed in such building, structure, or facility, except for
392 the areas, rooms, and spaces described in subsections (1), (2),
393 and (3):
394 (1) Elevator pits, elevator penthouses, mechanical rooms,
395 piping or equipment catwalks, and automobile lubrication and
396 maintenance pits and platforms.~~;~~
397 (2) Unoccupiable spaces, such as rooms, enclosed spaces,
398 and storage spaces that are not designed for human occupancy,
399 for public accommodations, or for work areas.~~; and~~
400 (3) Occupiable spaces and rooms that are not open to the
401 public and that house no more than five persons, including, but
402 not limited to, equipment control rooms and projection booths.
403 (4)(a) Any person, firm, or corporation that owns or
404 operates a residential multifamily dwelling, including a
405 condominium, that is at least 75 feet high and contains a public
406 elevator, as described in s. 399.035(2) and (3) and rules
407 adopted by the Florida Building Commission, shall have at least
408 one public elevator that is capable of operating on an alternate
409 power source for emergency purposes. Alternate power shall be
410 available for the purpose of allowing all residents access for a

411 specified number of hours each day over a 5-day period following
412 a natural disaster, manmade disaster, emergency, or other civil
413 disturbance that disrupts the normal supply of electricity. The
414 alternate power source that controls elevator operations must
415 also be capable of powering any connected fire alarm system in
416 the building.
417 (b) At a minimum, the elevator must be appropriately
418 prewired and prepared to accept an alternate power source and
419 must have a connection on the line side of the main disconnect,
420 pursuant to National Electric Code Handbook, Article 700. In
421 addition to the required power source for the elevator and
422 connected fire alarm system in the building, the alternate power
423 supply must be sufficient to provide emergency lighting to the
424 lobbies, hallways, and other portions of the building used by
425 the public. Residential multifamily dwellings must have an
426 available generator and fuel source on the property or have
427 proof of a current guaranteed service contract for such
428 equipment and fuel source to operate the elevator on an on-call
429 basis within 24 hours after a request. By December 31, 2006,
430 local building inspectors must provide to the county emergency
431 management agency verification of engineering plans for
432 residential multifamily dwellings that provide for the
433 capability to generate power by alternate means. Compliance with
434 installation requirements and operational capability
435 requirements must be verified by local building inspectors and
436 reported to the county emergency management agency by December
437 31, 2007.

438 (c) Each newly constructed residential multifamily
439 dwelling, including a condominium, that is at least 75 feet high
440 and contains a public elevator, as described in s. 399.035(2)
441 and (3) and rules adopted by the Florida Building Commission,
442 must have at least one public elevator that is capable of
443 operating on an alternate power source for the purpose of
444 allowing all residents access for a specified number of hours
445 each day over a 5-day period following a natural disaster,
446 manmade disaster, emergency, or other civil disturbance that
447 disrupts the normal supply of electricity. The alternate power
448 source that controls elevator operations must be capable of
449 powering any connected fire alarm system in the building. In
450 addition to the required power source for the elevator and
451 connected fire alarm system, the alternate power supply must be
452 sufficient to provide emergency lighting to the lobbies,
453 hallways, and other portions of the building used by the public.
454 Engineering plans and verification of operational capability
455 must be provided by the local building inspector to the county
456 emergency management agency before occupancy of the newly
457 constructed building.
458 (d) Each person, firm, or corporation that is required to
459 maintain an alternate power source under this subsection shall
460 maintain a written emergency operations plan that details the
461 sequence of operations before, during, and after a natural or
462 manmade disaster or other emergency situation. The plan must
463 include, at a minimum, a life safety plan for evacuation,
464 maintenance of the electrical and lighting supply, and
465 provisions for the health, safety, and welfare of the residents.

466 In addition, the owner or operator of the residential
467 multifamily dwelling must keep written records of quarterly
468 inspections of life safety equipment and alternate power
469 generation equipment, which confirm that such equipment is
470 properly maintained and in good working condition, and any
471 contracts for alternate power generation equipment. The written
472 emergency operations plan and inspection records shall be open
473 for periodic inspection by local and state government agencies
474 as deemed necessary. The owner or operator must keep a generator
475 key in a lockbox posted at or near any installed generator unit.
476 (e) Multistory affordable residential dwellings for
477 persons age 62 and older that are financed or insured by the
478 United States Department of Housing and Urban Development must
479 make every effort to obtain grant funding from the Federal
480 Government or the Florida Housing Finance Corporation to comply
481 with this subsection. If an owner of such a residential dwelling
482 cannot comply with the requirements of this subsection, the
483 owner must develop a plan with the local emergency management
484 agency to ensure that residents are evacuated to a place of
485 safety in the event of a power outage resulting from a natural
486 or manmade disaster or other emergency situation that disrupts
487 the normal supply of electricity for an extended period of time.
488 A place of safety may include, but is not limited to, relocation
489 to an alternative site within the building or evacuation to a
490 local shelter.
491 (f) As a part of the annual elevator inspection required
492 under s. 399.061, certified inspectors shall confirm that all
493 installed generators required by this chapter are in working

494 order, that the inspection records are current, and that the
495 required generator key is present in the lockbox posted at or
496 near the installed generator. If a building does not have an
497 installed generator, the inspector shall confirm that the
498 appropriate prewiring and switching capabilities are operational
499 and that a contract for contingent services for alternate power
500 is current for the operating period.
501
502 However, buildings, structures, and facilities must, as a
503 minimum, comply with the requirements in the Americans with
504 Disabilities Act Accessibility Guidelines.
505 Section 5. Paragraph (i) of subsection (2) of section
506 252.35, Florida Statutes, is amended, paragraphs (j) through (v)
507 are renumbered as paragraphs (k) through (w), respectively, and
508 a new paragraph (j) is added to that subsection, to read:
509 252.35 Emergency management powers; Division of Emergency
510 Management.--
511 (2) The division is responsible for carrying out the
512 provisions of ss. 252.31-252.90. In performing its duties under
513 ss. 252.31-252.90, the division shall:
514 (i) Institute statewide public awareness programs. This
515 shall include an intensive public educational campaign on
516 emergency preparedness issues, including, but not limited to,
517 the personal responsibility of individual citizens to be self-
518 sufficient for up to 72 hours following a natural or manmade
519 disaster. The public educational campaign shall include relevant
520 information on statewide disaster plans, evacuation routes, fuel
521 suppliers, and shelters. All educational materials must be

522 available in alternative formats and mediums to ensure that they
523 are available to persons with disabilities.
524 (j) The Division of Emergency Management and the
525 Department of Education shall coordinate with the Agency For
526 Persons with Disabilities to provide an educational outreach
527 program on disaster preparedness and readiness to individuals
528 who have limited English skills and identify persons who are in
529 need of assistance but are not defined under special-needs
530 criteria.
531 Section 6. The Legislature finds that county emergency
532 operations centers should meet the minimum criteria for
533 structural survivability and sufficiency of operational space as
534 determined by assessments performed by the Department of
535 Community Affairs based on guidance from the Federal Emergency
536 Management Agency. Criteria for an appropriation for a county
537 emergency operations center include, but are not limited to,
538 county population, hurricane evacuation clearance time for the
539 vulnerable population of the county, structural survivability of
540 the existing emergency operations center, and Federal Emergency
541 Management Agency guidance for workspace requirements for the
542 emergency operations center. First priority for funding shall be
543 given to county emergency operations centers where no survivable
544 facility exists and where workspace deficits exist. Funding
545 provided under this section may not be used for land acquisition
546 or recurring expenditures. Funding is limited to the
547 construction or structural renovation of a county emergency
548 operations center in order to meet national workspace

549 recommendations and may not be used to purchase equipment,
550 furnishings, communications, or operational systems.
551 Section 7. There is hereby appropriated $20 million from
552 nonrecurring general revenue and $8.6 million from the U. S.
553 Contributions Trust Fund to the Department of Community Affairs
554 in fixed capital outlay to provide for the construction or
555 structural renovation of county emergency operations centers.
556 Section 8. There is hereby appropriated $826,150 from
557 recurring general revenue to the Department of Community
558 Affairs, which includes $76,150 for the Florida Disaster
559 Supplier Program Council and $750,000 for the Division of
560 Emergency Management's public awareness campaign.
561 Section 9. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7225 PCB IN 06-01 Property and Casualty Insurance
SPONSOR(S): Insurance Committee
TIED BILLS: HB 7227 **IDEN./SIM. BILLS:** SB 1980/SB 2166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	10 Y, 6 N	Callaway	Cooper
1) Fiscal Council		Belcher	Kelly
2)			
3)			
4)			
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SUMMARY ANALYSIS

The bill makes the following major changes to property insurance affecting homeowners in Florida:
Florida Hurricane Catastrophe Fund (FHCF): Includes a rapid cash buildup of 25% for the FHCF. Extends the date medical malpractice insurance is excluded from the FHCF assessment base.

Hurricane Mitigation: Establishes a hurricane mitigation endowment fund to allow homeowners to obtain no-interest loans to implement hurricane mitigation measures for their homes. Establishes a grant program so homeowners can obtain a hurricane inspection describing what mitigation measures will help their home to withstand hurricane damage.

Office of Insurance Regulation/Rate Review: Allows property insurers to vary their approved insurance rate up or down 5% statewide or 10% per rating territory without obtaining regulatory approval of the change. Restricts the Office of Insurance Regulation (OIR) and the Insurance Consumer Advocate from questioning insurers about certain aspects of the hurricane models insurers use to justify a rate filing. Restricts the OIR from using the public hurricane model in rate filings until it is found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology. Requires the OIR to adopt standard emergency rules to be used after a natural disaster and gives the Insurance Commissioner power to adopt emergency rules.

Citizens Property Insurance Corporation (Citizens): Requires Citizens to treat homestead and nonhomestead property differently regarding rate setting and deficit assessment. Establishes rates based upon a 100 year possible maximum loss (PML) for homestead and 250 year PML for nonhomestead. Allows authorized insurers to establish rates for nonhomestead without being subject to review for excessiveness. Reallocates Citizens' deficit assessments and requires Citizens' homestead policyholders to pay a surcharge to cover their portion of a deficit assessment. Prohibits Citizens from insuring homes insured for $1 million or more or condominium unit owner's contents and dwelling policies insured for $1 million or more. Allows authorized insurers to write policies excluded from Citizens under the $1 million exclusion without rate regulation for excessiveness. Limits Citizens' coverage on mobile homes built before 1994 to actual cash value. Requires Citizens to purchase reinsurance for the nonhomestead account. Allows Citizens to include a residual market risk load in its rates. Restricts payment of take-out bonuses by Citizens to $100 per policy. Extends the reduction of Citizens' wind-only zones. Strengthens ethics and fraud reporting requirements for Citizens' managers and employees.

Other Major Changes: Requires replacement costs to be paid in advance on dwellings only. Authorizes the Florida Insurance Guaranty Association to issue revenue bonds for hurricane recovery. Creates a Task Force to study issues relating to hurricane insurance and mitigation for mobile homes. Requires reports from OIR on the insurability of attached and free-standing structures and on the feasibility of allowing policyholders to reduce their hurricane deductibles for mitigation steps taken.

The bill appropriates $105,500,000 from the General Revenue Fund for the endowment and inspection programs. The bill does not provide $675,000 to the OIR to fund costs associated with the bill. The bill impacts the private sector in many ways. See Fiscal Section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: Establishing a no-interest loan program and providing for wind certification and hurricane mitigation inspections provides an opportunity for homeowners to take responsibility for protecting their homes.

Placing the hurricane deductible at 5% for all nonhomestead properties in Citizens valued at $250,000 or more may require homeowners of such properties to pay more in out-of-pocket costs for deductibles.

Excluding homes insured for $1 million or more from Citizens will require those homeowners to find insurance coverage from surplus lines insurers or authorized insurers writing on an individual rate basis.

Citizens' nonhomestead policyholders must satisfy any deficit among themselves rather than relying on all Florida homeowners to contribute to the deficit reduction.

Providing insurance agents and their employees with immunity relating to coverage differences and insolvencies of insurers participating in Citizens' depopulation will protect these individuals from suit.

Limited Government: Allowing insurers to flex rate residential property will allow rate variations without approval by the OIR.

Providing automatic approval of rate changes for private insurers' filed rate for the wind portion of a policy eligible for the Citizens' High Risk Account if the rate change is less than the Citizens' approved rate for a similar policy will allow rate variations without approval by the OIR.

Requiring the OIR to enact emergency rules covering insurer's actions after a natural disaster will prevent the OIR from having to issue such rules after each natural disaster.

Excluding homes valued at $1 million or more from Citizens will decrease the number of policies in this quasi-public insurer.

Requiring nonhomestead policyholder to get a declination from surplus lines insurers and authorized insurers before being eligible for Citizens should decrease the number of policies in this quasi-public insurer.

The bill creates an endowment and grant program within the Department of Community Affairs (DCA) and authorizes new rule-making.

Ensure Lower Taxes: Requiring Citizens' homestead property owners to be included in the deficit calculation and division will spread the deficit assessment over more policyholders, thus reducing the amount of any assessment.

Empower Families: The bill's provisions relating to no-interest loans for hurricane mitigation measures and grants for hurricane inspections will help harden homes to prevent or reduce hurricane damage.

B. EFFECT OF PROPOSED CHANGES:

The 2004 and 2005 Hurricane Seasons

The 2004 hurricane season was particularly destructive for Florida, with four hurricanes causing extensive damage throughout the state. All four hurricanes occurred within a 45-day period beginning August 13. 2004, when Hurricane Charley made landfall as a category 4 hurricane with wind speeds of 145 miles per hour; followed on September 4 by Hurricane Frances, a Category 2 hurricane with wind speeds of 105 miles per hour. Next, Hurricane Ivan struck on September 16 followed by Hurricane Jeanne on September 26, which were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The paths of the hurricanes indicated virtually no part of Florida is immune from hurricane risk. Allegedly, the 2004 hurricanes caused damage to an estimated one in every five homes in Florida. Every county in Florida but Liberty County reported losses as a result of the 2004 hurricane season.[1]

The four hurricanes in 2004 are responsible for 1.66 million insurance claims and $20.9 billion dollars of insured losses in the Florida market.[2] The primary insurers incurred $11.3 billion in losses (of this amount, Citizens incurred $1.8 billion), the reinsurers incurred $5.75 billion, and the Florida Hurricane Catastrophe Fund (FHCF) incurred $3.85 billion.[3]

For the most part, the insurance and reinsurance industry recapitalized after the 2004 hurricane season. That is, the capital lost by primary insurers and reinsurers was replenished. Additionally, the FHCF was able to pay its share of the losses out of cash reserves and maintain a cash balance to use to pay claims to start the 2005 hurricane season.

However, as the state was still recovering, recapitalizing, and rebuilding from the 2004 hurricanes, the 2005 season began. The 2005 hurricane season was also destructive for Florida, with four hurricanes hitting Florida for the second year in a row.

Hurricane Dennis hit Florida in the early part of hurricane season, making landfall on July 10, 2005, on Santa Rosa Island with maximum sustained winds of 121 miles per hour, making it a category three hurricane. Its center moved across the western Florida panhandle into southwest Alabama.[4]

The estimated gross property loss in Florida caused by Hurricane Dennis is close to $1.4 billion. Over 57,000 insurance claims resulted from this hurricane.[5]

Hurricane Katrina hit Florida on August 25, 2005, and moved west across the southern portion of the state and into the Gulf of Mexico. At landfall, Hurricane Katrina was a category 1 storm with maximum sustained winds of 81 miles per hour.[6] Although Florida did not sustain as severe damage as New Orleans, Louisiana; Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused an estimated gross property loss in Florida of approximately $1.8 billion due to almost 162,000 insurance claims.[7]

The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005. Like Hurricane Katrina, Hurricane Rita moved west across the southern part of the state with maximum sustained winds of 105 miles per hour, making it a category 2 hurricane.[8] It is estimated that Hurricane Rita caused an estimated gross property loss in Florida of $157 million due to an estimated 4,000 insurance claims.[9]

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[1] The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 5.
[2] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 11. (citing the OIR's disaster reporting data system)
[3] Id.
[4] http://www.nhc.noaa.gov/pdf/TCR-AL042005_Dennis.pdf (last viewed February 6, 2006).
[5] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
[6] http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf (last viewed March 9, 2006).
[7] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
[8] http://www.nhc.noaa.gov/archive/2005/pub/al182005.public_a.013.shtml? (last viewed March 12, 2006).
[9] Id.

Hurricane Wilma moved across the southern portion of Florida taking the opposite path of Hurricanes Katrina and Rita. It moved eastward across Florida from the Gulf of Mexico to the Atlantic Ocean. It made landfall on October 24, 2005, near Cape Romano, Florida with wind speeds of 121 miles per hour, a category 3 hurricane.[10] Insured losses from Hurricane Wilma are estimated at $10.8 billion, making it the costliest hurricane for Florida in 2005.[11] As of March 30, 2005, over 950,000 insurance claims have been filed for Hurricane Wilma and insurers have paid claims totaling over $8 million.[12]

Claim and loss statistics and the loss distribution among primary insurers, reinsurance, and the FHCF are still in development and being reported, but the four 2005 storms are estimated to have generated a combined 1 million claims and an estimated $14 billion in insured losses in Florida.[13] As of February 28, 2006, insurers have already paid over $4 billion in insurance proceeds for claims from the 2005 hurricane season.[14]

Insurers' losses from the 2004 and 2005 hurricanes as well as meteorological expectations that the increase in hurricane activity will continue for the foreseeable future have caused both insurers and reinsurers to reevaluate their tolerance for risk as well as the related amount of additional capital they are willing to commit to Florida. Some insurers have added new underwriting restrictions to reflect changes in their exposure tolerance. Others have nonrenewed or cancelled policies. Still others have raised rates. In fact, since 2004 the top five insurers by market share have raised rates by an average of 28.6% with an average per year increase of 11.8%.[15]

Since the 2005 hurricanes, the reinsurance market has partly recapitalized, but not yet fully replenished their investment capital.[16] According to reports from the insurance industry, the reinsurance market is showing some signs that reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities. Reinsurance rates for wind reinsurance along the Gulf states are increasing for reinsurance purchased in 2006. In addition, reinsurers are increasing the retention levels for reinsurance.

Florida Hurricane Catastrophe Fund (FHCF or fund)

Background

The Florida Hurricane Catastrophe Fund (FHCF or "fund") is a tax-exempt trust fund created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.[17] All insurers who write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention/deductible.

Because the FHCF provides insurers an additional source of reinsurance to what is available in the private market, insurers are generally able to write more residential property insurance in the state than could otherwise be written. Because reinsurance purchased through the FHCF is significantly less expensive than private reinsurance, the FHCF also acts to lower residential property insurance premiums for consumers.

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[10] http://www.nhc.noaa.gov/pdf/TCR-AL242005_Wilma.pdf (last viewed March 9, 2006).
[11] Hurricane Season 2005 Hurricane Wilma Reporting Summaries as of March 30, 2005, prepared by the OIR.
[12] Id.
[13] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006.
[14] Information received from the OIR on March 10, 2006, based on data collected as of February 28, 2006.
[15] Personal communication from a representative of the Office of Insurance Regulation on file with the Insurance Committee.
[16] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 12. (citing the Reinsurance Association of America).
[17] s. 215.555, F.S. (2005).

The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. Each insurer's "reimbursement premium" is different, based on the insured value of the residential property it insures, their location, construction type, deductible amounts, and other factors.

Under current law, the maximum amount the FHCF must pay in any 1 year is $15 billion, adjusted annually based on the percentage growth in fund exposure, but not to exceed the dollar growth in the cash balance of the fund.[18] The total industry retention is $4.5 billion per hurricane, also adjusted annually based on the FHCF's exposure (regardless of any change in the FHCF's cash balance).[19]

The FHCF generally operates on a "contract year." The contract year runs from June 1st to May 31st of the next calendar year. The start of hurricane season coincides with the start of the fund's contract year.

For the current 2005-06 contract year (June 1, 2005 – May 31, 2006), the insurance industry as a whole has an aggregate retention of $4.5 billion, meaning the total of all individual insurer retentions/deductibles will hypothetically total to $4.5 billion per event, assuming all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $4.5 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention prior to losses being reimbursed. The industry aggregate retention is expected to grow to $5.4 billion for the 2006-2007 contract year.

Each insurer must meet a retention/deductible before FHCF monies are available to pay claims. The retention level for each insurer is different because the retention level is based on the amount of premium the insurer pays to the FHCF. Insurers with a high FHCF premium will absorb more as a retention/deductible than an insurer with a low FHCF premium. The insurer must meet its retention level for each storm in a hurricane season before the FHCF will step in to pay its claims. For insurers who experience losses due to multiple storms in a year, the insurer's full retention is applied to the two storms causing its two largest losses and its retention for the other storms causing loss is one-third of the full retention.[20]

As with the FHCF retention/deductible levels, every insurer participating in the FHCF has coverage based on its FHCF reimbursement premium. Each insurer has a maximum amount of coverage the FHCF will pay for claims each year. The maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more coverage than those that pay lower premiums. For the current contract year (2005-2006), the insurance industry as a whole is covered for up to $15 billion, meaning $15 billion is the most the FHCF will pay to the insurance industry on claims for a hurricane season. The coverage limit for the fund for the 2006-2007 contract year will remain at $15 billion because the fund's capacity does not grow in years the fund's cash balance declines. This will happen in 2005 due to payouts on 2005 hurricane losses.

Additionally, insurers also choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.[21] Most insurers choose the 90 percent reimbursement percentage.[22] This means once an insurer triggers FHCF coverage, 90 percent of its losses will be covered by the FHCF, up to the insurer's limit of coverage. Insurers may purchase additional reinsurance in the private market to cover their hurricane losses for amounts below the retention,

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[18] s. 215.555((4)(c)1., F.S. (2005).
[19] s. 215.555(1)(e)1., F.S. (2005).
[20] s. 215.555(1)(e)4., F.S. (2005).
[21] s. 215.555(1)(e)2., F.S. (2005).
[22] Florida Hurricane Catastrophe Fund, Fiscal Year 2003-2004 Annual Report 23.

amounts above their reimbursement limit, or for the coinsurance amount (e.g., 10%) that is the insurer's responsibility for the layer of coverage provided by the FHCF.

If the cash balance of the fund is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders.[23] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation and, until June 1, 2007, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations.[24] Annual assessments (which have never been levied) are capped at 6% of premium with respect to losses from any 1 year and a maximum of 10% of premium to fund hurricane losses from multiple years.[25]

The FHCF is expected to pay out $3.8 billion to insurers as a result of the 2004 hurricanes; to date, the fund has already paid $3.5 billion to insurers. Because the amount paid in 2004 was less than the FHCF's cash balance, bonding was not necessary. However, the loss estimates for the FHCF are estimates and as losses develop, the actual payments may exceed the current estimates.

For the current 2005-2006 contract year, the fund's $15 billion capacity consists of $3 billion in cash (before losses) and $12 billion in bonding capacity. The FHCF was initially expected to pay out at least $3.3 billion to insurers as a result of the 2005 hurricane season, of which about $2.2 billion had actually been paid by the fund to insurers. The remainder is paid out as insurers request reimbursement and provide proof of losses. However, the loss estimates for 2005 have recently been significantly increased based on the latest loss reports, which will require bonding and assessments. The fund had previously estimated a cash shortfall of $264 million based solely on insurer loss reports. However, on April 5, 2006, representatives of the fund stated the latest loss estimates will result in a deficit of $1.55 billion.[26] This is based on both reported losses and an estimate of incurred but not reported losses. But, the $1.55 billion deficit will be reduced to $1.35 billion, due to an estimated $200 million in revenue from the 25 percent "rapid cash build up" factor the SBA approved for the 2006 premium formula.

It is anticipated the fund will have to bond in order to defray its deficit. Bonding will result in assessments against all property and casualty insurance policyholders except workers' compensation and medical malpractice. Given the broad assessment base, it is unlikely the assessments will exceed 1% of premium, but is dependent on the term of the debt and the unknown, potential losses for the 2006-2007 contract year and subsequent years.

Because the FHCF is not likely to have cash to carry over to fund claims resulting from the 2006 hurricane season, it will have to rely solely on premiums collected in 2006 to reimburse insurers for losses. This makes bonding more likely if the fund has to pay claims as a result of 2006 hurricanes. The fund's anticipated premium revenue for 2006 equals $750 million. However, premiums to the FHCF are paid by insurers in three installments. Thus, $750 million is not likely to be available to pay claims at the start of the 2006-2007 contract year (June 1, 2006). Rather, the fund anticipates a cash inflow of $250 million by August 1, 2006, another $250 million by October 1, 2006, and a final $250 million by December 1, 2006. Thus, should an early season hurricane occur, it may be necessary for the FHCF to borrow money to cover losses. For low amounts of losses, this could be done with a simple bridge loan. For large amounts of loss, revenue bonds would need to be issued.

In summary, from the inception of the fund in 1993 until the 2004 hurricane season, the fund paid insurers for claims for only two hurricanes, Hurricanes Erin and Opal in 1995. Until 2004, the amount the FHCF paid to insurers totaled approximately $13 million. Thus, going into the 2004 hurricane season the FHCF had accumulated over $6 billion in cash. As a result of the 2004 hurricanes, the fund

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[23] s. 215.555(6)(a)1., F.S. (2005); s. 215.555(6)(b)1., F.S. (2005).
[24] s. 215.555(6)(b)1., F.S. (2005); s. 215.555(6)(b)(10), F.S. (2005).
[25] s. 215.555(6)(b)2., F.S. (2005).
[26] Testimony of a representative of the Florida Hurricane Catastrophe Fund at the Senate Banking and Insurance Meeting.

has spent or expects to spend almost $3.8 billion of its cash reimbursing insurers for hurricane losses. Going into the 2005 hurricane season, the fund's cash had decreased to $3 billion. With reimbursement to insurers for 2005 hurricane losses expected to be $3.3 billion, the fund anticipates it will start the 2006 hurricane season with no cash. Thus, it is important to note that the $6 billion it took the FHCF to accumulate over ten years was depleted in just two years.

The bill requires the fund to include and use a rapid cash buildup factor of 25% in its reimbursement premium formula used to calculate each insurer's premium to the fund. Current law allows its use but it has never been required.

Requiring a rapid cash buildup of 25% will allow the fund to collect $200 million more in premium for the 2006 contract year. This amount is in addition to the estimated $750 million the fund will collect due to normal premiums. Including a rapid cash buildup in the fund will not increase the amount of fund coverage insurers have; insurers will simply pay more in premiums due to the rapid cash buildup for the same amount of coverage.

Monies collected via a rapid cash buildup implemented in 2006 could be used to pay 2005 claims against the FHCF filed by insurers if the fund amends its administrative rule covering bonding to allow this use. According to the fund, it is currently pursuing such a rule change. The extra premium generated from a rapid cash buildup would put the fund in a better financial position in case their estimates of the claims from insurers from the 2005 hurricane season are too low. In such a case bonding may be prevented or reduced if the rapid cash buildup monies can be used to pay the 2005 claims.

According to the Task Force on Long-Term Solutions to Florida's Hurricane Insurance Market's report adopted March 6, 2006, including a 25% rapid cash buildup in the fund premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The bill also deletes language that appears to be obsolete requiring a preference in reimbursement to limited apportionment companies when the cash balance is below $2 billion. This language was in the law when the fund was designed to make payments at year end, due to each insurer's maximum share not being known until that time. Changes in 1995 established recovery limits for each insurer, which has enabled the fund to reimburse insurers almost immediately (2 to 7 days). The current language could bring into question whether the fund should reserve cash for limited apportionment companies, even if other insurers have claims owing, which could result in delaying payment or earlier or unnecessary bonding.

The bill also extends the date that medical malpractice insurers are exempt from the assessment base for FHCF emergency assessments from June 1, 2007, to June 1, 2010. The provision exempting medical malpractice insurers from the emergency assessment base was added to the law in 2004. As of 2004, medical malpractice insurers wrote approximately $860 million in premiums, translating to 3% of the FHCF assessment base.[27] Extending the exemption for these insurers means if the fund has to assess insurers to pay for revenue bonds, it will be unable to levy assessments against medical malpractice insurers. It is important to note that workers' compensation insurers are also exempt from the fund's emergency assessment base.

The bill makes a clarifying change to the definition of "losses" for fund purposes. The change clarifies the fund does not reimburse insurers for claims paid for loss of rent or loss of rental income. To date, the fund has not reimbursed those types of "losses."

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[27] Florida Office of Insurance Regulation 2005 Annual Report on Medical Malpractice Financial Information Closed Claim Database and Rate Filings dated October 1, 2005, page 14.

The bill also makes a clarifying change regarding how the FHCF capacity is adjusted. Current law allows the fund's $15 billion capacity to grow with exposure; however, the growth cannot increase more than the growth of the fund's cash balance. Under a literal interpretation of this language, the fund's cash balance could grow in a year due to bonding of the fund and thus the fund's capacity would grow too. However, under this circumstance the fund's financial picture would be troublesome as it would have to resort to bonding to obtain sufficient cash to pay claims. Thus, under that financial picture, the fund's capacity should not grow because any growth exposes insurers to more bonding potential. Due to this unintended consequence, the bill amends current law to allow the fund's capacity growth to be limited by the balance of the fund on December 31st. The balance of the fund on December 31st is required to be defined by rule and the fund currently has a rule defining how to calculate the balance of the fund on December 31st.

Hurricane Mitigation

The nature of Florida's population, housing growth, and coastal development means a substantial portion of Florida's housing stock could dramatically benefit from mitigation techniques. Any meaningful, long-term solution to the Florida hurricane insurance market should recognize the critical link between structures' wind-resistance and survivability.

The average single family home in Florida is 26 years old; however, the average age of single family homes in Broward, Miami-Dade, and Palm Beach counties is over 30 years old.[28] According to the report issued in 2005 by the Multihazard Mitigation Council of the National Institute of Building Sciences, *"Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities"*, each dollar spent on mitigation, saves society an average of four dollars.

Increasing wind-resistance of buildings on the front end (at the time of construction) or retroactively through retrofitting will deliver a return on investment by reducing damage and therefore insurance losses. Hurricane mitigation techniques may include reinforcing roof-to-wall connections, reinforcing roof systems, use of superior roof material attachment methods, placement of secondary water barrier on roof decking and protection of all openings (window, doors, garage doors and gable vents, etc.) by either installing shutter systems or using wind and impact-resistant window and/or door systems.

Mitigation is important for single family residential homes, multi-family residential homes, and mobile or manufactured homes (mobile homes). Florida has the largest number of mobile homes of any state in the nation and the highest number of mobile homes owned by the elderly, although information varies on the number and age of mobile homes in Florida.[29] The Shimberg Center estimates mobile homes represent 12% of the housing stock and house 10% of the state population.[30] The 2000 Census report estimates there are over 600,000 mobile homes in Florida, 85% of which were built before 1995.[31] According to another source, the 2000 Census counted almost 850,000 mobile homes in Florida, most of which were built before 1995.[32]

Mobile homes built before 1994 are not built in accordance with the wind standards implemented by the U.S. Housing and Urban Development agency (HUD). These wind standards were implemented due to the severe damage to mobile homes by Hurricane Andrew. HUD designates wind zones in Florida by county and requires mobile homes to be placed in a wind zone to be manufactured to standards designed for the wind zone. For example, a mobile home located in a Type III Wind Zone must be built to withstand winds of 110 miles per hour. Type III wind zones are located primarily in coastal counties along Florida's southwest and southeast coasts, south of Lake Okeechobee. HUD has designated all counties in Florida as either a Type II or Type III Wind Zone. Type II Wind Zones must contain mobile

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[28] The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 17.
[29] Id. at page 14.
[30] Id.
[31] Id. at page 18.
[32] *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at page 10.

homes able to withstand winds of up to 100 miles per hour. Prior to the implementation of wind zones by HUD in 1994, mobile homes were built to withstand winds of 70 miles per hour.[33]

Hurricane Mitigation Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques had been installed which reduce the amount of loss in a windstorm. These construction techniques include roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength, etc. Individual credits generally range from 3% to 25% and a fully mitigated home can qualify for total credits ranging from 20% to 42% off its wind insurance premium. Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify, often requiring some sort of certification or inspection. Insurers may allow homeowners to self-certify some features such as roof shape or number of stories, but require an engineer, building inspector, architect, or licensed building contractor to certify the more technical features such as roof deck attachment. Section 627.711, F.S., requires insurers to notify their policyholders or potential policyholders at policy issuance and renewal about the availability and range of credits or discounts for making wind mitigation improvements to their homes.

Hurricane Loss Mitigation Funding In Current Law

Section 215.559, F.S., directs the Legislature to annually appropriate at least $10 million from the FHCF, but no more than 35% of the investment income from the prior fiscal year for hurricane loss mitigation programs.[34] Actual annual legislative appropriations have ranged from the minimum $10 million to $30 million. The Hurricane Loss Mitigation Program (Mitigation Program) within the Department of Community Affairs (DCA) was created in 1999, with an annual appropriation of $10 million from the FHCF, to fund programs for improving the wind resistance of residences and mobile homes to prevent or reduce losses or reduce the costs of rebuilding after a disaster.[35] Three ($3) million from the Mitigation Program is statutorily directed to retrofitting public facilities to be used as hurricane shelters while the remaining $7 million, is appropriated for the Residential Construction Mitigation Program (RCMP) administered by DCA and statutorily allocated as follows:

- 40% ($2.8 million) is used to inspect and improve tie-downs for mobile homes.
- 10% ($700,000) is directed to the Type I Center of the State University System dedicated to hurricane research, e.g., Florida International University.
- The remainder (50% or $3.5 million) is generally directed to programs developed by the DCA with advice from an Advisory Council to help prevent or reduce losses to residences and mobile homes or to reduce the cost of rebuilding after a disaster.

One of the programs funded by the $3.5 million allocation directs grants targeting homes in the Governor's designated Front Porch communities to provide hazard mitigation upgrades to low-to-moderate income homes. Chapter 2005-264, L.O.F. passed by the Legislature last year, required DCA by the 2006-2007 fiscal year to establish a low-interest loan program for homeowners and mobile homeowners to use to retrofit their homes with hurricane mitigation measures. Prior to the enactment of this law, DCA did not have any low-interest loan programs.

Governor's Fiscal Year 2006-2007 Budget

The Governor's Fiscal Year 2006-2007 recommended budget for Florida contains various funding proposals for hurricane mitigation. These proposals are in addition to the $10 million required to be spent on mitigation pursuant to s. 215.559, F.S. The recommended budget includes $50 million to retrofit older homes to help them better withstand hurricanes. Many of the other hurricane mitigation

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[33] *See Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at pages 10-13; Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 1.

[34] s. 215.555(7), F.S. (2005).

[35] s. 215.559, F.S. (2005).

funding proposals cover funding for hurricane shelters, evacuation, county emergency operations centers, rebuilding for homes damaged by the 2004 and 2005 hurricanes, and affordable housing.

Mitigation Endowment Proposed By the Bill
The bill creates the Florida Hurricane Damage Prevention Endowment funded by a $100 million appropriation from the General Revenue Fund. The endowment provides no-interest loans for the purpose of hurricane damage mitigation and prevention. It distributes the loans on the following priorities:

1) single-family owner-occupied dwellings located in the areas designated as high-risk areas for purposes of Citizens Property Insurance Corporation coverage;
2) single-family owner-occupied dwellings covered by Citizens Property Insurance Corporation, wherever located;
3) single-family owner-occupied dwellings that are more than 40 years old;
4) all other single-family owner-occupied dwellings; and
5) all other residential properties.

Homeowners participating in the loan program must obtain a hurricane mitigation inspection as a condition of participating in the program. The cost of the inspection can be included in the loan amount. The no-interest loans provided under the program are only available to mitigate homestead property with an insured value of $500,000 or less.

The loan program is to be administered through lending institutions with the Department of Community Affairs (DCA) issuing requests for proposals for lending institutions that want to participate in it. The state will pay the participating financial institutions enough money to cover the interest on the loans the institutions give to homeowners participating in the program.

The endowment amount ($100 million) will be invested by the State Board of Administration (SBA) in investments that ensure the $100 million is preserved and will not decrease. Accordingly, the monies used to pay the interest on the loans will be generated through investment income of the $100 million (expected to be $5 million). It is anticipated financial institutions will be able to loan approximately $55 million under the program.

Eighty percent of the interest earned on the $100 million investment ($4 million) must be used to pay interest on the no-interest loans to homeowners. The remaining 20% ($1 million) is used for matching fund grants to local governments and nonprofits for hurricane mitigation projects.

An advisory council is created to advise the DCA regarding the endowment program.

Grants for Inspection
The bill also establishes a grant program for hurricane mitigation inspections for homeowners. Entities providing hurricane mitigation inspections and wind certification reports must submit bids to the DCA to participate in the program. The inspection provided under the program must include a summary of results, identification and cost estimate of hurricane mitigation measures that could be taken, hurricane insurance premium discounts associated with the measures, an evaluation of the homes' hurricane resistance and specification of the home's hurricane resistance rating if the recommended mitigation measures are made. Inspectors must be experienced, drug tested, background checked, and certified.

The bill appropriates $5.5 million from the General Revenue Fund to the DCA for the program in nonrecurring funds.

Citizens Property Insurance Corporation

Background

In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which combined the then existing Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens is the state's "insurer of last resort" and a property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer.

Citizens operates under the direction of an 8-member Board of Governors, appointed by the Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives for 3-year terms. The Chief Financial Officer also appoints a technical advisory board to provide information and advice to the Board of Governors.

Citizens offers three types of property and casualty insurance in three separate accounts:

1) Personal Lines Account (PLA) which covers homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2) Commercial Lines Account (CLA) covering condominium associations, apartment buildings and homeowners associations; and
3) High-Risk Account (HRA) which covers personal lines windstorm-only policies, commercial residential wind-only polices and commercial non-residential wind-only policies.

As of February 2006, Citizens provided coverage to 815,482 policyholders, making Citizens the second largest insurer in Florida.[36] The numbers of policyholders in the three accounts are: PLA – 445,513; CLA -- 3,167, and HRA – 366,802.[37] Currently, Citizens is averaging 30,000 – 40,000 new applications for coverage per month. At this rate, it is soon likely to become the largest insurer in Florida.

The High-Risk Account provides windstorm only coverage. Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind only" zones, private insurers may offer other peril insurance, but are not required to provide windstorm coverage. For the HRA policies in effect on January 31, 2006, Citizens reports approximately $756 million generated in premiums, representing an exposure of approximately $134 billion.[38] The premiums generated by the HRA policies account for approximately 55% of all premiums generated and represents 64% of Citizens' total exposure.

In 2004 and 2005, Citizens policyholders were impacted by all eight hurricanes hitting Florida. Citizens reports 124,674 claims have been filed for the four 2004 hurricanes and 168,377 claims for the 2005 hurricanes.[39] As of the end of February, 2006, Citizens has paid over $2.9 billion in claims for the 2004 hurricane season and an additional $2.6 billion in claims for the 2005 hurricane season.[40] Hurricane Wilma was especially devastating for Citizens. This hurricane accounted for over 145,000 claims. As of February 28, 2006, Citizens has paid over $1 billion in losses for Hurricane Wilma and estimates its total losses will be over $2 billion.[41]

The bill increases Citizens accounts offering property and casualty insurance from three to four. It also limits the three existing accounts (PLA, CLA, and HRA) to offering insurance only to homestead property. Homestead property includes property which currently has a homestead exemption, which qualifies for a homestead exemption but does not have one (if the policy holder obtains the exemption in a year), commercial residential property, property covered by tenant's insurance, and property covered by insurance for owner-occupied mobile homes. Commercial nonresidential property on which Citizens writes wind only and property on which no homestead exemption is claimed must get insurance coverage in Citizens' nonhomestead account. Policyholders in the nonhomestead account must certify, by affidavit at the time the policy is issued and at renewal, the property insured has been

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[36] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.
[37] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006
[38] Id.
[39] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.
[40] Presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.
[41] Personal communication from a representative at Citizens on file with the Insurance Committee.

rejected for coverage by at best three authorized and three surplus lines carrier. Authorized insurers are allowed to write insurance on Citizens' nonhomestead property on an individual rate basis. In most cases, this will allow the insurer and the homeowner to negotiate a rate for homeowner's insurance. The OIR, however, is still able to review the rate to determine if it is inadequate or unfairly discriminatory.

The bill also requires Citizens to purchase reinsurance on the nonhomestead account to cover a 250-year probable maximum loss event. Under current law, Citizens must use its "best efforts" to purchase reinsurance for a 100-year probable maximum loss. Citizens purchased reinsurance for the 2005 hurricane season for its' HRA and PLA accounts. For the HRA, for $20 million, it purchased $282 million in season-long coverage after $775 million in losses; for the PLA, for almost $29 million it purchased $175 million in season-long coverage after $225 million in losses.[42] Citizens' expects to collect recoveries from private reinsurance on the HRA ($35 million recovery) and PLA ($41 million recovery). These recoveries will be offset against the amount of 2005 deficits in each account.

The bill requires properties in the nonhomestead account insured at $250,000 or more to have at least 5% hurricane deductible.

Under current law, private market insurers can only adjust Citizens' wind-only policies on a voluntary basis if the insurer writes the other perils policy for the Citizens policyholder. The bill requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy.

Depopulation and Take-Out Bonuses

Since 1995, Florida law has expressed the Legislature's intent to provide a variety of financial incentives to encourage the replacement of the highest possible number of policies written in the state's residual market with policies written by admitted insurers at approved rates.[43] There is specific authority for Citizens, as there was for the RPCJUA, to pay a "take-out bonus" to insurers of up to $100 for each policy removed from Citizens, under certain conditions. However, Citizens, like the RPCJUA before it, has implemented greater bonuses under conditions approved by its board and the OIR, based on a broader grant of authority to adopt programs and incentives for the reduction of both new and renewal writings found in s. 627.351(6)(g)3., F.S.

Citizens adopted a new depopulation program in December 2005. This program has non-bonus and bonus components in it. Only policies taken out with wind coverage are eligible for a bonus. Take-out companies must assume a minimum number of policies or a minimum total insured value of the take-out policies under either the bonus or non-bonus component. Policies must be taken out for three or five years in order to be eligible for a bonus. Base bonus amounts range from 5% to 12.5% for dwelling policies; however, some policies are not eligible for bonuses. Base bonuses for condo unit/tenant contents and mobile home policies have different ranges. Take-out companies can receive an additional bonus amount for assuming a greater number of policies or for taking a policy out for 5 years. The additional bonus amounts range from 0% to 10%, depending on the number of bonus eligible policies or the total insured value of policies taken out.

Citizens reports that in 2004, four insurance companies removed more than 158,416 policies from Citizens, including 145,959 in the PLA and 12,457 in the High Risk Account. In 2005, 293,684 policies were removed from Citizens (75,556 from the HRA and 218,128 from the PLA).[44] According to Citizens, take-out companies predict 150,000 – 300,000 policies will be taken out of Citizens in 2006.[45]

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[42] Citizens Property Insurance Corporation Board of Governor's Report to the Florida Legislature dated February 1, 2006, page 12.
[43] *See* s. 627.3511(1), F.S. (2005); s. 10, ch. 95-276, L.O.F.
[44] Personal communication with a representative of Citizens on file with the Insurance Committee.
[45] Id. at page 3.

Additionally, Citizens believes the take-out program has had substantial impact in keeping PLA policies from growing more than they have and in stabilizing the number of HRA policies.[46]

It has been questioned whether the take-out bonuses provide a cost-effective method for reducing Citizens' potential liability. On the one hand, payment of cash bonuses to insurers reduces Citizens' surplus to pay claims and may be a windfall to an insurer willing to take out a policy at its approved rate without the bonus. On the other hand, a take-out bonus may be viewed as a form of "reinsurance" that transfers 100% of liability for a policy for the 3-year period that a take-out insurer must continue to renew the policy, and reduces potential assessments on the entire market.

In its operational audit of Citizens, the Auditor General found the bonus amount paid or escrowed for each policy taken out of Citizens averaged $148, although Citizens had several takeout programs paying take-out bonuses of $300 per policy. The Auditor General also recommended Citizens seek legislative clarification of its authority to pay bonuses in excess of $100 per policy as provided in s. 627.3511(2), F.S., In response to the Auditor General's recommendation, the Board of Citizens requested the Legislature to clarify their authority to develop takeout bonus programs providing more than $100 per policy.[47]

The bill provides legislative clarification regarding the amount per policy Citizens can pay as a takeout bonus. The bill limits the bonus amount to $100 per policy in accordance with s. 627.3511(2), F.S., The bill also provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of private insurers participating in Citizens' depopulation.

Rates

In order to assure that Citizens rates are not competitive with the voluntary market, the current law requires that Citizens rates for its PLA be actuarially sound and that its average rates for each county must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers (5 insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business.[48]

For its HRA (wind-only policies in coastal areas), the law more generally requires that Citizens rates be actuarially sound and not be competitive with approved rates charged by authorized insurers. However, the law further requires Citizens and the OIR to jointly develop a wind-only ratemaking methodology to meet this purpose, for rates effective on or after July 1, 2004.[49] A wind-only rate methodology was developed that uses a variation of the "Top 20" approach mandated for personal residential multi-peril policies.

In 2005, Citizens made two rate filings, each seeking an increase in rates. One filing was based on the Top 20 approach; the other filing was based on actuarially soundness. Neither filing has been approved by the OIR yet. The Citizens' Top 20 rate filing (filed with OIR on November 29, 2005) results in a statewide average premium rate increase of 16% for Citizens' HRA policyholders and a 15% increase for its PLA policyholders.[50]

The Citizens' actuarial rate analysis filing results in a statewide average premium rate increase of 17% for the PLA and 45% for the HRA. The combination of the Top 20 rate filing and the actuarial rate filing results in a statewide average premium increase of 35.5% for PLA policyholders and 68.4% for HRA policyholders.[51]

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[46] Minutes from the Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market meeting December 14, 2005; The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, pages 41-42.
[47] Id. at page 13.
[48] s. 627.351(6)(d)2., F.S. (2005).
[49] s. 627.351(6)(d)3., F.S. (2005).
[50] Meeting minutes from Citizens' Board of Governors meeting on December 15, 2005.
[51] Id.

The bill requires Citizens to charge a rate in its three homestead accounts to cover a 100-year probable maximum loss event using premiums, FHCF reinsurance, and investment income only. Citizens is prohibited from using income from assessments, bonding, state revenues, or long-term debt in its rate calculation.

For the nonhomestead account, Citizens must charge a rate to cover a 250-year probable maximum loss event using only the same assets described above. In addition, authorized insurers willing to provide insurance to property in the nonhomestead account can do so on a consent to rate basis without the policies insured counting against their maximum percentage of consent to rate policies.

The bill also requires Citizens to include a residual market risk load in their rates. This factor will allow Citizens to develop a capital base similar to that required of insurers in the voluntary market and should, over time, reduce the need for and frequency of assessments. The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market adopted this recommendation in its report of March 6, 2006.

The bill provides for automatic approval of an insurer's rate request for the wind portion of a policy in Citizen's HRA if the rate requested is lower than Citizens' approved rate for a similar risk. However the OIR retains the authority to disapprove such a rate request if it finds the request is inadequate or unfairly discriminatory.

Deficits

Generally, if Citizens does not have adequate funds to pay claims in any of its three accounts (i.e. a deficit), it may levy regular assessments for each such account against property insurers, including surplus lines insurers, up to 10% of each insurer's net written premium from the prior year for subject lines of business.[52] The entire regular assessment is levied against property insurers, who may recoup such amounts from their policyholders in subsequent rate filings. Currently, Citizens' assessment base has about $8.3 billion in premium, so a one-time regular assessment would generate about $830 million.[53]

An insurer must pay the company's regular assessment within 30 days of receipt of notification from Citizens. If the regular assessment is not sufficient to cover the deficit, Citizens may issue revenue bonds funded by multi-year emergency assessments collected by insurers as premium surcharges on all property insurance policyholders in the state, generally limited to 10% of premium, or 10% of the deficit, whichever is greater.

However, "limited apportionment companies" (and their policyholders) are exempt from a substantial portion of a regular assessment. These are insurers with a surplus of $25 million or less, and writing 25 percent or more of their total countrywide property insurance premiums in Florida. These insurers are exempt from regular assessments for any amount of the deficit in excess of $50 million. However, if a deficit is great enough to require multi-year emergency assessments in order to fund bonds, the policyholders of limited apportionment companies are subject to emergency assessments at the same amount as other property insurance policyholders.

After imposing a regular assessment on insurers, Citizens is required to impose a "market equalization surcharge" on its own policyholders equal to the same percentage or premium assessment that is imposed on property insurers. This is intended to keep the Citizens' rates from being non-competitive, but also acts to increase revenue to Citizens above the amount of the deficit, which is fully funded by the regular assessment (if the deficit is equal to or less than 10% of premium). In other words, Citizens

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[52] Subject lines of business that are subject to Citizens' deficit assessment include insurance for: fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and includes liability coverage on all such insurance except for inland marine and certain vehicle insurance other than the insurance on mobile homes used as permanent dwellings.

[53] Personal communication with representatives from Citizens on November 29, 2005.

collects money from Florida homeowners in an amount sufficient to cover its deficit and then collects an additional amount from its policyholders.

Prior to the 2004 hurricane season, Citizens had a surplus of about $1.1 billion for its High Risk Account and $700 million for the PLA/CLA combined. Citizens' claims losses related to the 2004 hurricane season amounted to more than $2.4 billion, depleting its entire surplus in the High Risk Account. Thus, Citizens incurred a $516 million deficit in the HRA. The other two accounts (PLA and CLA) did not incur deficits.

The $516 million deficit translates into statewide average 6.8% assessment on all non-Citizens insured homeowners in Florida. However, Citizens policyholders will also pay a 6.8% assessment, a "market equalization surcharge," upon renewal of their policy.

Historically, joint underwriting authorities have used an assessment mechanism to fund deficits.[54] Florida's assessment mechanism for the property and casualty joint underwriting authority has been in place since the mid 1970s. The following chart outlines the assessments made by the property and casualty joint underwriting authority since 1970:

Year	Account	Principal Storm(s)	Assessment Amount
1975	HRA	Hurricane Eloise	$ 5.0 million
1985	HRA	Hurricane Elena	$ 3.2 million
1992	HRA	Hurricane Andrew	$ 16.2 million
1993	HRA	Winter Storm	$ 3.2 million
1994	PLA	Non-hurricane	$ 17.7 million
1995	HRA	Hurricane Opal	$ 84 million
1995	PLA	Hurricane Opal	$ 22.8 million
1998	HRA	Hurricane George and Tropical Storm Mitch	$100 million

Source: Citizens Property Insurance Corporation (August 25, 2005)

Although all of the assessments outlined above were levied before the creation of Citizens, they were levied by the predecessor "insurer of last resort" for property and casualty insurance (i.e. the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) or the Florida Windstorm Underwriting Association (FWUA)).

Due to the 2004 losses and deficit, Citizens started the 2005 hurricane season with no surplus in the HRA. Because this account sustained losses again in 2005 as a result of the 2005 hurricanes, as well as worsening loss development for the 2004 hurricanes (which are booked to the 2005 financial statements) Citizens incurred a deficit for the second year in a row. Although Citizens does not yet have its formal, certified amount of its 2005 deficit, it estimates the deficit in the High Risk Account will be $1.7 billion.[55] This amount includes $590 million in worsening loss development for claims from 2004. Citizens started the 2005 hurricane season with an estimated $162 million surplus in the PLA and $25.7 million surplus in the CLA.[56] For 2005, Citizens estimates a deficit of $82 million in the PLA and a deficit of $4 million in the CLA.[57] These deficits are expected to result in a regular assessment of about 11 percent of premium (the full 10 percent for the HRA and about 1 percent for the PLA/CLA), plus an 8 percent emergency assessment.[58] The 11 percent regular assessment would be billed at one time and, presumably, passed on to policyholders in rate filings by insurers. The 8 percent emergency

[54] *See* s. 617.3512, F.S. (2005); s. 627.311(5)(d), F.S. (2005) (relating to the Florida Workers' Compensation Joint Underwriting Association); s. 627.351(4)(e), F.S. (2005) (relating to the Medical Malpractice Joint Underwriting Association)
[55] Personal communication from a representative of Citizens on file with the Insurance Committee.
[56] Personal communication from a representative of Citizens on file with the Insurance Committee.
[57] Personal communication from a representative of Citizens on file with the Insurance Committee.

[58] Personal communication from a representative of Citizens on file with the Insurance Committee; presentation by a representative of Citizens at the Senate Banking and Insurance meeting on April 7, 2006.

assessment could be spread out over a period of years, depending on the terms of the financing approved by the board.

The bill requires Citizens to collect deficits in the three homestead accounts and the one nonhomestead account differently. The bill requires Citizens to divide any deficit among all property insurers, including their policyholders in the three homestead accounts. This will ensure Citizens does not collect more for their deficit than the deficit amount (i.e. cannot collect monies through deficit assessments to reserve as surplus). In order to charge Citizens' homestead policyholders their share of the deficit, Citizens will levy a surcharge (a "Citizens policyholder surcharge") in the same amount of the assessment passed on by the insurers to their homeowners.

If there is a deficit in the nonhomestead account, its policyholders must be assessed an amount sufficient to defray the deficit. The deficit cannot be paid by policyholders in the three Citizens homestead accounts or property insurers in the private market. In other words, a Citizens' deficit created by losses to nonhomestead property will not be passed on to Florida homeowners or Citizens' homestead property owners. Furthermore, any Citizens' policyholders in the nonhomestead account that does not pay its assessment cannot obtain insurance from surplus lines or authorized insurers.

Changes to Coverage Limits of Citizens

$1 Million Coverage Prohibition

Although not specified by statute, Citizens currently has a maximum policy limit of $1 million for homeowner policies issued in its PLA. This prohibition has been in effect for at least ten years. This account also limits coverage to $100,000 for mobile homes, $200,000 for condominium units, and $100,00 for tenants policies. However, there is no corresponding upper limit for residential (wind-only) policies issued the HRA. In February, Citizens reported that it had 6,431 residential policies in force that were insured for values greater than $1 million, with a total insured value of $16.7 billion with a total premium of $64.3 million. Additionally, a representative of Citizens reported that as of December 12, 2005, it had 5,280 HRA residential policies with dwelling coverage in excess of $1 million and that the total inforce premium was $64,238,090, resulting in an average premium of $12,166.

The bill prohibits homes with insured values of $1 million or more and condominium unit owner policies with combined dwelling and contents coverage of $1 million or more from obtaining coverage in Citizens. Citizens estimates restricting eligibility for coverage to homes with insured values of $1 million or more will reduce their probable maximum loss (PML) in the HRA by $809 million which equates to 12.5%. Additionally, this restriction will reduce Citizens' residential exposure by $16.7 billion or 14%.[59] The largest single residential insured property Citizens covers in the HRA has a total insured value of $25.5 million.

Citizens had also reported in February of this year that the 100-year PML for the HRA was $7.8 billion as of December 31, 2005. However, Citizens reported new PML estimates in March that shows the 100-year PML of the HRA is now $10.3 billion.

One property insurance option for homeowners with properties insured for $1 million or more is to obtain property coverage from the surplus lines insurers. The percentage of homeowners' insurance written by surplus lines insurers from 2002 – 2004 was 4% for each year. In other words, the admitted insurers wrote 96% of the homeowners' insurance written in Florida for those years. In 2004, 179,180 homeowners' policies were written in the surplus lines market.[60] Of these, 153,117 or 85% provided wind coverage and 26,068 excluded wind coverage. These included 5,690 policies with coverage limits in excess of $1 million, of which 3,980 provided wind coverage and 1,710 excluded wind coverage. Prior to the 2005 hurricane season, the Florida Surplus Lines Service Office reported that there is capacity and interest in the surplus lines market in writing high-value dwellings; however, the surplus

[59] Personal communication received from Citizens on February 13, 2006, on file with the Insurance Committee.

[60] Final Report and Recommendations of the Joint Select Committee on Hurricane Insurance, February 25, 2005, page 14.

lines market conditions can change rapidly. In addition, windstorm deductibles for surplus lines' policies are typically 5% or 10% and sinkhole coverage is typically excluded.

As of December 14, 2005, the surplus lines insurers issued 134,000 homeowners' policies in Florida in 2005, down from 179,180 policies in 2004.

In conjunction with the prohibition against Citizens' covering properties insured at $1 million or more, the bill allows authorized insurers in the private voluntary market to insure these properties on an individual rate basis; however, the OIR can still review such rate to determine if the rate is inadequate or unfairly discriminatory. This is another property insurance option for homeowners with properties insured for $1 million or more. Having property insured in the admitted market, rather than the surplus lines market, offers policyholders the protection of the guaranty association to pay any claims (up to the association's limit) in the event the insurer becomes insolvent. This protection is not afforded to policyholders obtaining insurance in the surplus lines market.

Insurance agents are given access to claims and underwriting information kept by Citizens for policies ineligible for Citizens due to the $1 million restriction, in order to try to find coverage for the properties in the private market. The bill provides a procedure for agents to obtain such information and a procedure for policyholders to request that Citizens keep their information confidential.

Mobile Homes

Mobile home insurance does not seem to be returning to the private markets. Citizens' mobile home policies in force in the PLA account increased from 12,028 to 62,029 over a two-year period (October 2003 – 2005) and the policies in the HRA increased from 12,552 to 14,056 during the same period.[61] Citizens currently insures over 110,000 mobile homes. Currently, the only restriction for mobile homes covered by Citizens is the $100,000 coverage limit for mobile homes in the PLA.

Citizens' mobile home policies are rapidly increasing as more private insurers restrict their mobile home exposure, particularly for those built prior to1994. Mobile homes manufactured before 1994 were built before implementation of differing wind standards for mobile homes promulgated by the U.S. Department of Housing and Urban Development (HUD), thus are more likely to sustain damage in a hurricane. HUD sets wind standards for Florida and by law a mobile home must be built for the wind standard where it is located. Mobile homes manufactured after 1994 located in many coastal counties in Florida are designed to handle the fastest wind speed load, 110 miles per hour.

In a study, Federal Emergency Management Agency (FEMA) estimated Florida has a maximum number of 829,553 pre-1994 mobile homes.[62] Additionally, FEMA estimates 847,000 mobile homes in Florida have lower anchoring standards as Florida did not implement its updated mobile home tie down standards until 1999.[63]

A study done by the International Hurricane Research Center at Florida International University found 85.5% of mobile homes in Florida were built before 1994. In addition, it found 338,000 mobile homes in Florida were built prior to 1976 and 643,000 were built between 1976 and 1994.[64]

The bill requires mobile homes insured by Citizens that were manufactured before 1994 to be insured on an actual cash value basis, rather than on a replacement cost basis. Thus, any losses sustained by these homes will be paid for with depreciation accounted for, rather than the cost for replacing the property loss without accounting for depreciation. Citizens insures approximately 94,000 mobile homes built before 1995.

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[61] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 28.

[62] *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005, at page 10.

[63] Id.

[64] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 27. (citing *Final Report on Hurricane Loss Reduction for Housing in Florida* dated July 30, 2003).

Issuance of Restrictive Coverage Policies
Section 627.351(6)(c)1., F.S., requires Citizens to adopt five different policy forms – standard personal lines policies with comprehensive multi-peril coverage, basic personal lines policies meeting the requirements of the secondary mortgage market, commercial lines policies with full coverage, personal and commercial residential wind-only policies, and commercial nonresidential wind-only policies.

The bill allows Citizens to adopt variations of the five policy forms that offer more restrictive coverages than the five policy forms listed above.

Ethical Considerations
Part III of ch. 112, establishes the code of ethics for public officers and employees, which mandates that employees comply with financial disclosure and reporting requirements. Each year, public officers and specified employees are required to submit a financial disclosure to the Commission on Ethics. Noncompliance with these provisions may result in civil penalties and forfeiture of public retirement benefits. [s. 112.317, F.S.]

Chapter 2005-111, L.O.F., directed the Auditor General to conduct an audit of Citizens. On December 7, 2005, the Auditor General released an operational audit (report number 2006-096) of Citizens, which included findings in the areas of administration, policy eligibility determination and depopulation, customer service, claims handling, actuarial soundness of rates, and financing options. The report included the following recommendations related to the administration of Citizens:

- No documentation was available to show that Citizens had conducted an enterprise-wide evaluation of the effectiveness of operational and financial controls.
- The statutes governing Citizens do not require the OIR to conduct background investigations of Citizens' management and officers, which are required for voluntary insurers.
- Additional steps should be taken to strengthen the standards of conduct.
- Citizens had not implemented a comprehensive written procurement of policies and procedures.

Citizens operates subject to the supervision and oversight of the Board of Governors and pursuant to a plan of operation approved by order of the OIR. Because Citizens is not considered a state agency, state law governing ethics for state employees is not applicable to Citizens' employees or board of directors.

On October 20, 2005, the Citizens' Board of Directors adopted proposed amendments to the Citizens' plan of operation relating to ethical standards and disclosure requirements for officers and board members of Citizens. Upon adoption by the board, the proposed amendments were sent to the OIR for approval and inclusion in the Citizens' plan of operation. The OIR approved the amendments on November 30, 2005. The standards and requirements adopted are similar to those governing state employees. The standards and requirements:

- Prohibit the Executive Director, Senior Managers of Citizens or any Board member from personally representing another person or entity before the Board or Corporation for a period of two years following their departure;
- Subject the Executive Director and Senior Managers of Citizens to the background investigation provisions prescribed by the Office of Insurance Regulation for officers of insurers;
- Require the Executive Director and Senior Managers of Citizens to file financial disclosure information in a format substantially similar to that required of state employees under Section 112.3144, F.S.;
- Require vendors to disclose any relationship, financial or otherwise, with employees or Board members; and
- Require the Executive Director to immediately report to the Chairman of the Board any breach of ethics policy regarding an employee or Board member and to report any such breach which may constitute criminal activity to the Division of Insurance Fraud within 48 hours of discovery.

The bill requires all members of the Citizens' Board and any employee with managerial, policy making, or professional duties to comply with the Code of Ethics applicable to state government employees.

Wind-Only Coverage Zones
Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind-only" zones, private insurers may offer other peril coverage, but are not required to provide windstorm coverage.

Beginning February 1, 2007, if Citizens' 100 year probable maximum loss (PML) in its wind-only zones is not reduced by 25% from what it was in February 2001, the wind-only zones must reduce by an amount that allows Citizens to reduce its PML by 25%.[65] It does not appear Citizens will be able to reduce its 100 year PML by 25% by February 1, 2007, in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons.

The bill extends the time period for Citizens to reduce its 100 year PML in the wind-only zones from February 1, 2007, to February 1, 2013. Therefore, insurers writing the other peril/non-wind coverage will not face the choice of either dropping that coverage or writing the windstorm coverage for policies.

A similar provision relating to Citizens' reduction of its 100 year PML by February 1, 2012, by 50% or risk having the area eligible in the HRA to reduce to a smaller area is affected by the bill. This provision is extended to February 1, 2018.

The bill creates the High Risk Eligibility Panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. It requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones.

Hurricane Loss Models

In 1995, the Legislature established the Florida Commission (Commission) on Hurricane Loss Projection Methodology to serve as an independent body within the State Board of Administration.[66] The Commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. The membership of the Commission is designed to equip it with expertise in fulfilling its mission. The members include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System, appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management of DCA. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards. The Commission uses a staff of five experts made up of a meteorologist, an engineer, an actuary, a statistician, and a computer scientist known as the "Professional Team" to conduct on-site reviews of proprietary models and to report back to the Commission as to their conclusions.

There are currently four private hurricane loss models that have been determined by the Commission to meet its standards and found acceptable. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review.

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[65] s. 627.351(6)(o), F.S. (2005).
[66] s. 627.0628, F.S.

The bill limits the OIR and the Insurance Consumer Advocate from questioning specified aspects about the hurricane models an insurer uses to justify its rate filing if the Commission has reviewed the hurricane model used and found it to be accurate or reliable. It also allows the insurer to use a hurricane model to justify its rate filing only if the OIR and Insurance Consumer Advocate are given a reasonable opportunity to review all the basic assumptions and factors used in developing the model results. Under current law, the OIR and Insurance Consumer Advocate must have access to, rather than a reasonable opportunity to review, the assumptions and factors.

Public Hurricane Loss Model

In 2000, the state authorized and initially funded the development of a public hurricane loss projection model.[67] The model is required to be designed in accordance with the standards set by the Florida Commission on Hurricane Loss Projection Methodology (Commission). The Department of Insurance (the predecessor to the DFS) contracted with the International Hurricane Research Center at Florida International University for the development of the public hurricane model. The model has been developed, has been tested, and has been released for use. It has not, however, been reviewed by the Commission. Thus, it has not been found by the Commission to be accurate and reliable.

The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review. However, legislative changes in 2005 provided that the findings are admissible and relevant only if OIR and the consumer advocate appointed by the Department of Financial Services have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. A separate public records bill was also enacted to provide a public records exemption for a trade secret, as defined in s. 812.081, F.S., that is used in designing and constructing a hurricane loss model, that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (Commission), OIR, or the consumer advocate.

The bill restricts OIR from using the public hurricane model in rate filings until the model is found by the Commission to be accurate or reliable. Current law (s. 627.0628(3)(c), F.S.) restricts an insurer from using a private hurricane loss model in its rate filing unless the Commission finds the model accurate and reliable.

Rate Modernization

Background

Florida is considered by some as having a restrictive system of rate regulation for property and casualty insurance (including homeowners' insurance, liability insurance, and motor vehicle insurance). In general, with respect to file-and-use submissions, insurers are not able to implement rate changes until their rate filing is approved by the regulator (formerly the Department of Insurance, currently the OIR of the Financial Services Commission).

While the option known as "use and file," under which an insurer may implement a rate change and then file it with the regulator, is available under relevant statutes, the option does not reduce the insurer's regulatory burden. Under use and file, the insurer is required to refund to policyholders any portion of a rate increase that is subsequently disapproved by the regulator. Under Florida law, the insurance company has the burden of proving that its proposed rate is not excessive, inadequate, or unfairly discriminatory.

More specifically, Florida's insurance laws require insurers (including homeowners' insurance, liability insurance, and motor vehicle insurance) to file property and casualty insurance rates for approval with the OIR either 90 days before the proposed effective date, or 30 days after the rate filing is

[67] Chapter 2000-166, L.O.F., 2000-01 General Appropriations Act, Specific Appropriation 2226, page 331.

implemented. Under the latter option, known as "use and file," the OIR may order the insurer to refund that portion of the rate determined to be excessive.

If the OIR disapproves a rate filing, in most cases, a property and casualty insurer may either request an administrative hearing under the Administrative Procedures Act (APA) (Chapter 120, F.S.), or seek binding arbitration.

Rating Territories
Property and casualty insurers establish rating territories for which a territorial rating factor will apply to increase, decrease, or leave unchanged, the base rate charged by the insurer. The insurer must demonstrate to the OIR that the application of the territorial rating factors will not result in a rate that is unfairly discriminatory, so that the factor bears a reasonable relationship to the expected loss and expense experience amount that is associated with various risks within that territory. Each insurer is permitted to establish its own territories, based on these standards. Generally, OIR does not require an insurer to justify its territorial rating factors in each rate filing, but will periodically require an insurer to do so.

Flex Rating
Flex rating allows an insurer to vary their rates up or down from a rate approved by the regulator without obtaining approval by the regulator for the rate change; however, the rate variance must be within a specified range from the approved rate. Flex rating has been implemented in a number of states.

South Carolina implemented flex rating in 1999 for auto insurance due to a significant decline in the number of insurers writing motor vehicle insurance in the voluntary market causing an increase in auto owners insured in the residual market. Under South Carolina's flex rating, annual increases or decreases of 7% or less are deemed approved unless the regulator issues an order with findings specifying in detail why the rate filing violates statutory standards.[68] After South Carolina implemented flex rating for auto, insurers returned to the market and rates decreased.[69] South Carolina included fire, allied lines, and homeowners insurance in its 7% flex rating law on July 29, 2004.[70]

Louisiana allows flex rating for all lines of insurance where the rate variation is a 10% increase or decrease from the insurer's rate in effect. Pennsylvania allows flex rating for all lines except motor vehicle involving rate decreases of 10% or more and small commercial risks with rate variations of 10% or less. Texas allows flex rating for private passenger automobile insurance. New York allows it for designated commercial lines.[71] In 2004, Rhode Island implemented a 5% flex rating for personal lines insurance.[72]

The National Conference of Insurance Legislator's (NCOIL) adopted a model law regarding flex rating in 2004. The model law establishes a 12% flex band on overall statewide rate increases or decreases within which an insurer can file rate changes on an expedited basis during any 12-motnh period. The flex rating under the model law applies to personal lines insurance. The model law allows a Commissioner of Insurance to disprove a flex rating if the Commissioner finds the rating is inadequate or unfairly discriminatory.[73]

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[68] *Rates and Regulation*, March 2006, available at http://www.iii.org/media/hottopics/insurance/ratereg/, (last viewed March 12, 2006).
[69] NCOILetter, February 2004.
[70] See Bulletin No. 2004-09 Issued by the South Carolina Department of Insurance on August 18, 2004, available at https://www.doi.sc.gov/Eng/Public/bulletins/Bulletin2004-09.pdf (last viewed March 7, 2006).
[71] *Rates and Regulation*, March 2006, available at http://www.iii.org/media/hottopics/insurance/ratereg/, viewed March 12, 2006.
[72] Newsbriefs, Insurance Journal, July 19, 2004, available at http://www.insurancejournal.com/magazines/east/2004/07/19/newsbriefs, viewed March 12, 2006.
[73] *Property/Casualty Flex-Rating Regulatory Improvement Model Act*, National Conference of Insurance Legislators, Adopted February 27, 2004.

The bill implements flex rating as of January 1, 2007, for use in residential property insurance. Insurers will be allowed to implement rate changes of a 5% increase or decrease average statewide or 10% increase or decrease per rating territory without obtaining the OIR's approval that the rate is excessive or unfairly discriminatory. Insurers can only increase or decrease rates by these amounts once per year. The OIR maintains authority to disapprove a rate change as inadequate or for use of unfairly discriminatory rating factors. In order for the OIR to operate under this authority, the bill requires insurers changing their rates in accordance with the flex rating allowance to submit the proposed rate change to the OIR at least 30 days prior to the effective date of the rate change. The OIR then has 30 days to determine whether to disapprove the rate change based on inadequate or use of unfairly discriminatory grounds. The rate change is automatically approved if the OIR does not make a finding on these grounds within the 30-day window.

In order to provide safeguards for rate decreases allowed by flex rating, during the OIR's 30-day review period, the bill requires the OIR to suspend a rate decrease if it finds the decrease will result in inadequate premiums or solvency problems.

The bill requires the OIR to furnish the Legislature with an annual report regarding the impact of flexible rate regulation on competition in the insurance market.

Surplus Lines Insurers

Surplus lines insurance refers to a high risk category for which there is no market available through standard insurance carriers. Typical categories of this nature are homeowners' insurance in hurricane-prone regions, commercial aircraft, and some sea vessels. Additionally, there are some types of specialized risks that general lines policies cannot cover. For example, special events, such as concerts or major sports exhibitions, may not be eligible for coverage by licensed general lines insurers.

Under current law, surplus lines insurance is governed by ss. 626.913 through 626.938, F.S. When insurance coverage is not available among licensed general lines insurers, the insurers may seek coverage in the surplus lines market. The law requires the general lines agent to make a diligent effort to procure the desired coverage from authorized agents. A diligent effort is defined by law to mean seeking and being denied coverage from at least three authorized agents. Surplus lines insurers also are regulated by the state, but to a lesser degree than general lines insurers.

The Florida Surplus Lines Service Office (the office) is created by s. 626.921, F.S., as a nonprofit association overseen by a Board of Governors comprised of nine members. Seven of the nine board members must be affiliated with the surplus lines industry. The office is directed to oversee the surplus lines industry in Florida and to provide protection of the general public with respect to the placement of surplus lines policies. The office is authorized by law to collect fees from licensed surplus lines agents, based upon the premiums collected, in order to pay the administrative and other costs associated with the office.

Under current law, in general surplus lines agents may not place any coverage with any unauthorized insurer which is not an eligible surplus lines insurer.[74] An unauthorized insurer cannot become a surplus lines insurer unless the statutory conditions specified in s. 626.918(2), F.S., are met. One of the conditions is the insurer must have and maintain surplus of at least $15 million.[75] Another condition is the insurer must have and maintain a trust fund in the U.S. of at least $5.4 million. The purpose of the trust fund is to provide additional protection to the insurer's U.S. policyholders. The statute further provides what type of funds can be used to satisfy the surplus and trust fund requirements.

In addition to the types of funds which can be used by alien surplus lines insurers to satisfy the surplus and trust fund requirements, the bill adds the use irrevocable, unconditional, and evergreen letters of

[74] s. 626.918 (1), F.S. (2005).
[75] s. 626.918(2)(d)1., F.S. (2005).

credit issued by a qualified U.S. financial institution to be used to fund the $5.4 million trust fund which serves to protect all policyholders. The bill also defines the term "qualified U.S. financial institution" to mean U.S. banks that are members of the Federal Reserve system.

Law and Ordinance Coverage

Under current law, insurers must offer coverage in homeowners policies for the additional costs necessary to meet applicable building codes (often referred to as "law and ordinance" coverage) that provides 25% and 50% of the dwelling limits. Pursuant to s. 627.7011(2), F.S., a homeowners' insurance policy automatically includes law and ordinance coverage unless the insurer obtains the policyholder's written refusal of such. However, because both 25% and 50% law and ordinance is required to be offered to the policyholder, it is unclear which percentage of coverage is automatically included in a homeowners' policy if the policyholder does not refuse law and ordinance coverage in writing.

To clarify any uncertainty regarding which percentage of coverage is automatically included in such circumstances, the bill specifies that 25% law and ordinance coverage (rather than 50%) is the automatically included amount if the policyholder does not refuse law and ordinance coverage in writing. This clarification was recommended in the OIR's Law and Ordinance Coverage Report submitted to the Legislature in January 2006.

Replacement Costs Coverage

Currently, polices that provide replacement cost coverage provide payment of the replacement costs, without depreciating the payment for the depreciated value of the property, regardless of whether the policyholder replaces the property or submits receipts for the repair or replacement of property. This provision applies to the insured dwelling and personal property covered by the insurance policy.

By removing the allowance for payment of replacement costs for personal property, the bill allows only losses sustained to insured dwellings to be paid at replacement costs (without taking into account depreciation). Thus, losses to personal property that is insured under a homeowners' policy will be paid for after depreciation of the personal property is taken into account and the property is replaced.

The bill clarifies an insurer retains the ability to determine whether damage can be repaired or replaced.

Electronic Payment of Claims

Pursuant to s. 627.4035(3)(b), F.S., insurers are allowed to pay claims by electronic means (e.g. debit card) if authorized in writing by the recipient/policyholder or the recipient's representative and if any fees or costs associated with the electronic payment and charged against the recipient are disclosed in writing at the time the recipient gives written authorization for the insurer to pay the claim by electronic means. This provision is especially helpful and useful in ensuring policyholders receive prompt payment of insurance proceeds after a disaster when they are displaced from their homes and may not have access to a financial institution to cash or deposit a check. After disasters, often times, mail delivery is interrupted and payment by electronic means is the most efficient way to make certain the policyholder receives the insurance proceeds.

The bill adds language to the existing law regarding payment of claims by electronic means to allow insurers to waive the requirement that written authorization from the policyholder is required in order for the insured to pay insurance claims electronically as long as there is no fee for the electronic payment and the insurer verifies the identity of the recipient of the insurance proceeds (the policyholder). Furthermore, the new language requires the insurer to be liable for payment of the proceeds if the payment is misdirected.

In at least one emergency order issued by OIR to insurers as a result of hurricanes hitting Florida, OIR has authorized insurers to pay claims electronically with the safeguards outlined in the bill.[76] However, OIR has only authorized such payment for additional living expenses and personal property contents claims. The bill does not limit electronic payment to only these claims; rather, it allows electronic payment for all types of insurance claims.

OIR Rulemaking in Natural Disaster Situations

In response to each hurricane during the 2004 and 2005 hurricane season, the Commissioner of the OIR issued emergency orders. The orders covered such topics as:

- Requiring state health insurance companies and HMOs to temporarily suspend their regulations regarding prescription refills to allow prescriptions to be refilled early.
- Restricting cancellation or non-renewals of homeowners' insurance policies in specified areas for a specified time or for the whole state for a specified time with certain exceptions.
- Restricting cancellation of all insurance policies for the whole state for a specified time with certain exceptions.
- Requiring all property and casualty insurers to do reporting to the OIR.
- Requiring all property and casualty insurers to file copies of contracts between public adjusters and the policyholder with the OIR and of current fee schedules with independent adjusting firms.
- Requiring the reporting to the OIR of violations of the OIR's rules or the insurance statute and unlicensed activity.
- Prohibiting insurers from instituting rate hikes without approval from the OIR.
- Requiring insurers to follow property mediation rules adopted by emergency rule by DFS.
- Requiring insurers to toll premiums due on insurance policies for a specified time.
- Establishing timelines for initial damage assessments, processing and settlement of personal lines residential property claims, and reporting of compliance or non-compliance with the timeline.
- Requiring insurers to extend personal and commercial residential insurance coverage for a specified time after the damaged dwelling is repaired and is insurable.

The OIR issued at least five emergency orders due to the 2004 hurricanes and at least six emergency orders due to the 2005 hurricanes. Many of the orders contained similar, if not exact, provisions.

When the emergency orders were issued, any party adversely affected by the order was given notice of his or her right to seek review of it at the Division of Administrative Hearings pursuant to s. 120.68, F.S., (under the Florida Administrative Procedures Act) and at the District Court of Appeal pursuant to Rule 9.110 of the Florida Rules of Appellate Procedure.

The bill requires the Financial Services Commission (the Governor and Cabinet) to adopt standard rules for insurers to abide by following a hurricane or other natural disaster. The standard rules are limited to the following areas: claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellation and non-renewals of insurance policies.

The bill requires the OIR to issue an order within 72 hours after a hurricane or natural disaster to specify what line of insurance the standard rules apply to, the geographic areas of the state the standard rules apply to, and the time period the standard rules are in place. The bill prohibits the Financial Services Commission or the OIR from adopting emergency rules that conflict with the standard rules.

The bill also provides the Commissioner of the Office of Insurance Regulation with power to enact emergency rules during a state of emergency.

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[76] *See* Case No. 83836-05-EO relating to Hurricane Wilma.

Insurer Solvency

Background on Insurer Solvency Issues

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the OIR. The state's Chief Financial Officer (CFO) heads the DFS while the head of the OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, the OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of the DFS. Staff of the DFS also provides consumer information and assistance through the Division of Consumer Services. When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation (the Division) of the DFS intervenes to protect the affected insurer's policyholders.

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of the Department of Financial Services.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surplus. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division files all delinquency proceedings in the Circuit Court in Leon County.

Only one insurer became insolvent as a result of the 2004 and 2005 hurricane season.

Insurance Guaranty Funds: General Information

In addition to the consumer protections afforded by the Division, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

Florida's guaranty associations are comprised of insurer representatives. Insurers are required by law to participate in guaranty associations as a condition for transacting business in the state. Monies available through a guaranty association for claims settlement and premium refunds are paid by insurers as a percentage of their total collected premiums. The percentage of premiums payable to a guaranty association is determined by law, although nationally it typically ranges from 1-3 percent. In many cases, a guaranty association also is authorized by law to assess an additional amount if an emergency arises and the association lacks sufficient funds to pay outstanding claims and to refund unearned premiums. This means, in essence, that insurers licensed to transact insurance in a state assess or tax their respective premium income streams to pay the outstanding claims and unearned premiums of an insolvent insurer.

Most states, including Florida, have more than one insurance guaranty association. Each association is assigned by law to pay outstanding claims and unearned premium, up to limits specified by law, for specific lines of insurance. In Florida, there are four guaranty associations created in chapter 631, F.S. The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent

Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of workers' compensation insurance. The fourth guaranty association is the Florida Insurance Guaranty Association (FIGA); it is responsible for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

The Florida Insurance Guaranty Association (FIGA)
Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The board of directors for FIGA is directed by law to be comprised of at least five, and no more than nine members; members serve on the FIGA board for a 4-year term.

The law directs FIGA to pay any eligible claim of more than $100 and less than $300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.). Funds available to FIGA are the result of an annual assessment of up to 2% of each specified insurer's net direct written premiums for the previous year. There have been no assessment to FIGA members since 2002. Other monies that accrue to FIGA include receivership payments from the DFS and from the agencies that liquidate the estates of insolvent insurers in other states.

The law creates three accounts under FIGA:
- auto liability account;
- auto physical damage account; and
- an account for all other included insurance lines (the all-other account).

The last FIGA assessments occurred in 2002. According to documents provided by FIGA, in December 2002, member insurers writing policies covered by the auto liability account were assessed 1.125% of their net direct premiums collected in 2001. Similarly, FIGA made an assessment for the auto physical damage account in 2002, as well, although that assessment was for .75%. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2% only once in the past 11 years. The maximum assessment was levied in 1993, only for the all-other account, after more than six insurers were declared insolvent in the first several months following Hurricane Andrew. The law, at s. 631.56(2)(d), F.S., prohibits the use of any state funds by FIGA to settle claims and return unearned premiums.

The law authorizes insurers to include the cost of their annual FIGA assessment in their rate schedule. This means an insurer may recoup its assessment through increasing its policy rates, subject to OIR approval. Generally, however, a guaranty association assessment is one of many factors an insurer considers in setting its rates.

Local Government Revenue Bonds
Article VII of the Florida Constitution governs finance and taxation by the state and its political subdivisions. In that article, the state and its political subdivisions, including municipalities and counties, are authorized to issue bonds. In most cases, bonds issued either by a city or a county are tax exempt; the tax-exempt status generally makes bonds issued by governmental entities an attractive investment instrument.

FIGA as Bond Guarantor after Hurricane Andrew
On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of

Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2% assessment in addition to the regular assessment of up to 2%. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. Beginning in 1993, FIGA members were assessed the full 2% regular assessment. That same year, and for the following 3 years—through 1996—the full 2% special assessment also was collected from FIGA members. Only in 1993 did FIGA impose both 2% assessments. By 2000, FIGA had sufficient funds to defease (i.e. "pay off") the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

Changes Made By the Bill

Under the bill, FIGA is authorized to contract with a city or county, or a combination of cities, counties, or cities and counties to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2% in addition to the regular FIGA assessment of up to 2%. The guaranty association is authorized to charge the emergency assessment for the life of the bonds. The bill also raises the limit FIGA may pay on a covered claim that is a homeowners' insurance claim from $300,000 to $500,000.

The bill eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding.

The powers and duties of FIGA are outlined in s. 631.57, F.S. The bill amends that law to authorize FIGA to enter into a contract with a municipality or a county, or a combination of the two, for the issuance of tax-exempt revenue bonds. Bond proceeds will be used by the city or county for hurricane recovery, although the proceeds are not required to be used exclusively within the boundaries of the issuing city or county. This means that the bond proceeds may be used by FIGA to settle unpaid claims or to refund unearned premiums to citizens of the state affected by the hurricane, even if the claimant's residence is not in the city or county that issues the bonds. Bonds may be issued by any local government substantially affected by a category 1 or stronger hurricane.

The bill authorizes FIGA to impose an emergency assessment of up to 2% for bond payments; the emergency assessment is in addition to the regular FIGA assessment of up to 2% . As with the FIGA regular assessment, the emergency assessment will be based upon an insurer's direct written premiums in the previous year, after the insurer makes any refunds. The bill specifically applies the emergency assessment only for bond payments and costs associated with their issuance. The FIGA board of directors may require the emergency assessment to be paid in a single payment or in 12 monthly installments.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer (CFO). The report must specify the amount of bond proceeds used each year, the number of claims settled, and analyze the amount of emergency assessment needed to retire the bonds as promised. The bill specifies that the emergency assessment is not a premium and thus, is not subject to the premium tax, the payment of commissions, or other fees.

Insurers are required by the bill to report their emergency assessments as part of the reports they file with the OIR related to setting rates. This reporting is intended to ensure that each insurer charges premiums sufficient to satisfy its reserve requirements and to meet the other liquidity requirements in law.

The bill includes several pages of legislative findings relating to the potential damage to the state if hurricane damage is not addressed and repaired quickly, especially if insurers become insolvent due to hurricane claims. The findings acknowledge the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. Otherwise, the findings

realize that great damage can occur to the economy and the citizens of the state. The findings also recognize the success of the FIGA bonds issued in 1993 and their potential for future use. The legislative findings likely will be used as part of the supporting documents that accompany any future bond issue for hurricane recovery.

The bill authorizes several uses for bonds issued for hurricane recovery. Among the authorized uses is the payment of covered claims of an insolvent insurer; to refinance or replace previous borrowings; to fund reserves for the bonds; to pay expenses incident to bond issuance; and other similar enumerated purposes. The state promises not to take any action that could endanger the availability of funds to repay the bonds.

Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes

As noted previously, there is no consensus as to the number of mobile/manufactured homes in Florida. Reports based on the same 2000 Census data place the number at over 600,000 and over 850,000. However, there is consensus that the majority of Florida's mobile and manufactured homes were built prior to 1995.

In 1974, Congress designated the U.S. Department of Housing and Urban Development (HUD) to set standards for the construction of mobile homes. On June 15, 1976, new country-wide regulations were implemented and HUD took full control over the manufacture of mobile homes. Mobile homes were constructed to the same standards nationwide until 1994 when HUD implemented changes in response to damage from Hurricane Andrew. The changes implemented three wind zones, with HUD specifying the wind zones for all areas of the United States. The changes also required mobile homes to be manufactured for each wind zone and restricted mobile home dealers from selling a mobile home to a customer that is not designed for the wind zone area where the customer intends to install the home.[77]

In 1996, the Department of Highway Safety and Motor Vehicles (DHSMV) began regulating the installation of mobile homes in Florida. Florida implemented more stringent tie-down standards, by rule, in 1999.[78] Florida's mobile home installation program is generally considered a model for the United States.[79]

DHSMV's assessment of mobile home damage after the 2004 hurricanes showed homes constructed after 1994 (in accordance with the enhanced construction requirements by HUD) withstood hurricane force winds and remained intact with minor to no damage. Homes installed pursuant to the more stringent tie-down standards remained on their foundation with no movement. Although DHSMV found some destroyed mobile homes in their assessment, many of the destroyed homes were installed prior to the enhanced tie-down standards being implemented.[80] DHSMV found similar results in its assessment of mobile home damage due to Hurricane Wilma.[81]

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[77] *See* Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 1; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

[78] *See* Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 2; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

[79] Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page 2.

[80] Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004, at page iv.

[81] Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005, at page iii.

Many in the mobile home industry have commented on the lack of homeowners' insurance for these homes in the private market and Citizens' policy numbers support this problem. As indicated previously, Citizens' mobile home policies in the PLA jumped from 12,028 in October 2003 to 62,029 in October 2005 (a 2-year period) and the number of such policies in the HRA jumped from 12,552 to 14,056 for the same time period.[82] Also, although new insurers are entering the market and are writing hurricane insurance for mobile homes, they are restricting their coverage to post-1994 mobile homes.[83] Additionally, a number of insurers historically writing hurricane insurance for mobile homes have revised their underwriting guidelines to exclude older mobile homes.[84]

The bill creates a ten-member Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. The task force is to study issues relating to hurricane mitigation and hurricane insurance for mobile and manufactured homes. OIR is to provide administrative support. The Task Force is to receive substantive staff support from the Governor's office, the DFS, the OIR, the DHSMV, and the DCA. The bill provides appointment of Task Force members by the Governor, the Chief Financial Officer, the President of Senate, and the Speaker of House of Representatives. The Task Force includes the Commissioner of OIR, the Executive Director of Citizens, and the CEO of Federal Alliance for Safe Homes as members.

The bill requires the Task Force to make recommendations to the Legislature regarding the creation and maintenance of insurance capacity for mobile and manufactured homes and the effectiveness of hurricane mitigation measures for such homes. It requires the Task Force to gather information on specific subjects, including number, age, size, and location of mobile and manufactured homes in Florida, the extent of hurricane mitigation measures prevent or lessen damage to such homes, and the extent to which insurance discounts for mitigated mobile or manufactured homes would increase insurance capacity for such homes. The Task Force must issue a report to the Legislature of their findings by January 1, 2007.

Report on Insurability of Attached or Free Standing Structures to Homes

The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market (Task Force) received testimony and information suggesting effective mitigation measures for carports, pool enclosures, and other attached structures may not exist, particularly those attached to mobile homes.[85] The Task Force recommended conducting an analysis to determine whether mobile homes with attached structures are insurable risks and whether or not they should be insured by the admitted market. Importantly, add-ons to mobile homes are not subject to the HUD mobile home construction standards. Rather, the Florida Building Code and local ordinances govern their construction.[86]

Furthermore, an investigation by the *Palm Beach Post* indicated insurers incurred significant losses from Hurricane Wilma due to pool enclosures that did not withstand hurricane force winds during the 2004 and 2005 hurricane seasons.[87]

The bill requires the OIR to submit a report to the Legislature by January 1, 2007, regarding the insurability of attached or free standing structures to residential, mobile or manufactured homes; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; whether mitigation to such structures can reduce loss; and the impact on homeowners of not having such structures insured. In writing the report, the OIR is required to work with the DHSMV, the DCA, the Florida Building Commission, the Florida Home Builders Association,

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[82] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 28.
[83] Id. at page 35.
[84] Id. at page 28.
[85] Id. at page 28.
[86] Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004, at page iv.
[87] http://www.palmbeachpost.com/storm/content/storm/reports/2005/screens/ (last viewed March 12, 2006).

representatives of the property and casualty insurance industry and representatives of the mobile and manufactured home industry.

Hurricane Deductible Buy-Down Program

The bill requires the OIR to submit a report to the Legislature by January 1, 2007, regarding requiring insurers to provide an opportunity for policyholders to decrease the amount of their hurricane deductible as long as the policyholder implements hurricane mitigation measures.

C. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Creates s. 215.558, F.S., relating to The Florida Hurricane Damage Prevention Endowment.

Section 3: Creates s. 215.5586, F.S., relating to wind certification and hurricane mitigation inspections.

Section 4: Creates s. 252.63, F.S., relating to the Commissioner of Insruance Regulation; powers in a state of emergency.

Section 5: Amends s. 626.918, F.S., relating to eligible surplus lines insurers.

Section 6: Amends s 627.062, F.S., relating to rate standards.

Section 7: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 8: Amends s. 627.06281, F.S., relating to public hurricane loss projection model; reporting of data by insurers.

Section 9: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 10: Amends s. 627.4035, F.S., relating to cash payment of premiums; claims.

Section 11: Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 12: Creates s. 627.7019, F.S., relating to standardization of requirements applicable to insurers after natural disasters.

Section 13: Amends s. 627.727, F.S., to correct a cross-reference.

Section 14: Amends s. 631.181, F.S., relating to filing and proof of claim.

Section 15: Amends s. 631.54, F.S., relating to definitions.

Section 16: Amends s. 631.55, F.S., to correct a cross reference.

Section 17: Amends s. 631.57, F.S., relating to powers and duties of the association.

Section 18: Creates s. 631.695, F.S., relating to revenue bond issuance through counties or municipalities.

Section 19: States that no provision in ss. 631.57 and 631.695, F.S., may be repealed until all bonds issued under the laws are paid in full.

Section 20: Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

Section 21: Creates the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

Section 22: Requires OIR to submit a report on the insurability of attached or free standing structures to homes.

Section 23: Requires OIR to submit a report on implementation of hurricane deductible buy-downs.

Section 24: Appropriates $100 million from the General Revenue Fund to the Florida Hurricane Damage Prevention Endowment, as a nonrecurring appropriation for the purposes specified in s. 215.558, F.S. Appropriates $5.5 million from the General Revenue Fund to the Department of Community Affairs, as a nonrecurring appropriation for the purposes specified in s. 215.5585, F.S.

Section 25: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Including a 25% rapid cash buildup in the FHCF premium is estimated to add an additional $200 million to the FHCF.

2. Expenditures:

   The bill appropriates $105,500,000 from the General Revenue Fund for the endowment and inspection programs. The bill does not provide $675,000 to the OIR to fund costs associated with the bill.

	FY 2006-07	FY 2007-08	FY 2008-09
Transfer to the Florida Hurricane Damage Prevention Endowment			
Non-Recurring			
General Revenue Fund	$100,000,000	$ 0	$ 0
Department of Community Affairs			
Hurricane Inspection Grant Program			
Non-Recurring			
General Revenue Fund	5,500,000	0	0
Office of Insurance Regulation			
Contractual Services			
Non-Recurring	425,000	0	0
Recurring	250,000	250,000	250,000
Total – Insurance Regulatory Trust Fund	675,000	250,000	250,000

Total Expenditures			
General Revenue Fund	105,500,000		
Insurance Regulatory Trust Fund	675,000	250,000	250,000

See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments are eligible to receive matching grant money for hurricane mitigation programs through the endowment program.

Cities and counties are authorized by the bill to issue tax-exempt revenue bonds for hurricane recovery. The bonds will be repaid by FIGA using an emergency assessment of up to 2 percent on the total premiums of insurers who are members of FIGA.

Bond proceeds may be used by a city or county substantially affected by a category 1 or stronger hurricane for rebuilding and repair of damaged structures. The proceeds will be available to a citizen whose insurer becomes insolvent following a hurricane; bond monies will settle the valid claims of insolvent insurers and refund unearned premiums to affected policyholders.

2. Expenditures:

A city or county that issues revenue bonds under the bill is not required to repay the bonds from its own revenues. Rather, FIGA is authorized to charge its members an emergency assessment of up to 2 percent annually, for the life of the bonds. Expenses associated with issuing the bonds will be paid from bond proceeds. This means the costs to a city or county that issues the bonds should be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Including a 25% rapid cash buildup in the FHCF premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The adoption of a residual market risk load in Citizens' rates will likely increase their premiums; however, over time, it should reduce the likelihood of assessments on all homeowners.

Allowing private insurers to use an individual rate to write homeowners' insurance for dwellings insured at over $1 million and condominium unit owners' contents policies insured for over $1 million may increase surplus for insurers; however, the insurers also assume the risk for these high dollar policies.

Homeowners with homes insured for over $1 million or with condominium unit contents insured for over $1 million may have an increase in homeowners' premiums because they are required by the bill to get homeowners' insurance from surplus lines insurers or from voluntary market insurers under an individual rate.

If a surplus lines insurer or authorized insurer decides to write a Citizen's nonhomestead policy, the policyholder's rates could increase above what would be charged by the Citizens nonhomestead rate. However, this provision may encourage surplus lines and authorized insurers to write policies for Citizens' policyholders thus reducing Citizens' exposure.

Excluding homes insured for over $1 million or with condominium unit contents insured for over $1 million should decrease the amount and likelihood of a future assessment against Florida homeowners and Citizens' policyholders as the exclusion will reduce Citizens' exposure.

Prohibiting Citizens from insuring mobile homes manufactured before 1994 at replacement costs will likely result in less insurance proceeds going to the mobile homeowner if there is a loss because depreciation will be taken into account; however, the exclusion may decrease the amount and likelihood of a future assessment against Florida homeowners and Citizens' policyholders as the exclusion will reduce Citizens' exposure.

If Citizens incurs a deficit in the future, the assessment against Florida homeowners will be less than under current law because the bill requires Citizens to spread the deficit assessment over Florida homeowners and its homestead policyholders.

Citizens' policyholders who choose to buy policies with coverages more restrictive than a standard homeowner's policy may have a lower premium; however, they will also have less coverage in case of loss.

Restricting Citizens' take-out bonuses to $100/policy will enable Citizens to save money. More money means either Citizens will not incur a deficit or any deficit incurred will be reduced by the amount of the additional money, leading to less assessments.

Restricting Citizens' take-out bonuses to $100/policy may reduce the number of policies taken out, thus maintaining Citizens' exposure.

Requiring Citizens to set rates in the nonhomestead account for a 250-year PML is likely to raise rates for these property owners.

Requiring Citizens to purchase reinsurance for a 250 year PML for the nonhomestead account may eliminate or reduce any future deficit in that account, thus eliminating or reducing any assessment among the account policyholders. However, Citizens' surplus will be reduced by the cost of the reinsurance.

Requiring properties insured by Citizens for $250,000 or more to have a 5% hurricane deductible may increase the deductible for policyholders because under current law, these policyholders may have a lower deductible. An increased deductible means more out-of-pocket costs to the policyholder if there is a loss.

The adoption of flex rating for property insurance may result in rate increases; however, any increase is limited to 10% statewide or 15% per rating territory per year. Additionally, flex rating may encourage insurers to increase rates in small increments rather than waiting and filling a large rate increase. Thus, homeowners will not incur large rate increases at one time; they may be spread out over a year's period. Additionally, because insurers will not have to do a full rate filing to charge a rate under the flex rating allowance, insurers will save administrative expenses associated with rate filings.

As many as 20,000 or more homeowners may receive free hurricane mitigation inspections via the inspection grant program. Additionally, approximately $55 million will be available to homeowners in the form of no-interest loans to pay for installation of hurricane mitigation measures. The number of homeowners that can take advantage of the no-interest loan program is indeterminate and will depend on the amount of the loans. Mitigated homes reduce loss during a hurricane which in turn saves the homeowner out-of-pocket costs associated with hurricane deductibles and finding and paying for temporary housing. It also saves the homeowner the emotional and psychological strains associated with quality of life, such as of being displaced from their home, having children displaced from their schools, etc. It is impossible to put a dollar amount on this type of savings.

Removing the requirement that insurers must pay replacement costs for personal property will decrease insurance proceeds to policyholders if there is a loss related to their insured personal property because depreciation will be taken into account. This may reduce premiums as an insurer's exposure will be reduced.

The bill ensures that FIGA will have funds sufficient to pay the valid claims and unearned premium of any insurer who becomes insolvent following a hurricane that hits Florida. This assurance should enable the economies of communities affected by a category 1 or stronger hurricane to recover quickly and efficiently.

Insurers who are members of FIGA will be required to pay an emergency assessment of up to 2 percent of their respective premiums for the previous year to repay the bonds. Based upon the outstanding insurance policies in Florida for 2003, a 2 percent assessment on FIGA members would cost insurers an estimated $188 million.

Increasing the FIGA limit for homeowner's claims from $300,000 to $500,000 will allow some homeowners to obtain an additional $200,000 from FIGA if their homeowner's insurer goes insolvent.

D. FISCAL COMMENTS:

Florida Hurricane Damage Prevention Endowment

The bill has a non-recurring appropriation of $100 million from the General Revenue Fund for the Florida Hurricane Damage Prevention Endowment that will be invested, rather then spent; it will be used to generate an income stream of approximately $5 million a year that will be used to pay lending institutions for interest on loans they make to homeowners for implementation of mitigation measures.

Hurricane Inspection Grant Program
An additional non-recurring appropriation of $5.5 million from the General Revenue Fund to the DCA is provided to fund the hurricane inspection grant program.

Office of Insurance Regulation
Impact: Section 6
Annual Reporting Requirement Estimate: $250,000 annually

Specify the impact of flexible rate regulation under paragraph (2)(j) on the degree of competition in insurance markets in this state -- year-by-year comparison of the number of companies participating in the market for each class of insurance and the relative rate levels, including – 1) the number of rate filings made under paragraph (2)(j), the rate levels under those filings, and the market share affected by those filings; 2) the number of filings made on a file and use basis, the rate levels under those filings, and the market share affected by those filings; 3) The number of filings made on a use and file basis, the rate levels under those filings, and the market share affected by those filings; 4) recommendations to promote competition in the insurance market and further protect insurance consumers.

Rationale:

- In order for the Office to make recommendations promoting competition and protecting insurance consumers, the Office will need a recurring appropriation of $250,000 to perform the comprehensive analysis and study, each year, as defined in the proposed committee bill;
- The cost is estimated based upon the Office hiring an outside consultant to perform the study. Cost estimate based on comparison with the $300,000 paid to Florida State University to perform a comprehensive sinkhole study in 2005.

Impact: Section 21 Task Force
Panel and Administrative Support Impact $100,000

Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. — (9 Members); To make recommendations relating to the creation and maintenance of insurance capacity sufficient to ensure that all mobile and manufactured home owners in this state are able to obtain appropriate insurance coverage; evaluate the effectiveness of hurricane mitigation measures for mobile or manufactured homes; Report to Governor, CFO, President of the Senate and Speaker of the House.

Rationale:
Contract with vendor for administration of Task Force; expense of meeting 2 times each month for 4 months. This cost is based upon a previous external contract with an external vendor to coordinate the Long Term Hurricane Solutions Task Force in FY 2005-2006.

Impact: Section 22 Report Directive
Report Production/Consultant Services $150,000

Report on the insurability of attached or free standing structure to residential homes, mobile or manufactured homes – such as carports, pool enclosures –

- Increase or decrease in insurance costs; feasibility of insuring such structures; impact to homeowners of not having coverage for such structures; ability of mitigation measures to reduce risk and loss;
- Must consult with DHSMV, DCA, Florida Home Builders Associations, representatives of mobile and manufactured home industry, insurers, and any other party OIR determines appropriate

Rationale:
The Office will need to hire external contractors/actuaries to produce results from engineering consultants, consultants from additional state agencies, industry representatives, and conduct loss cost surveys.

Impact: Section 23 Report Directive
Report Production/Consultant Services $175,000

Report of findings and recommendations on requiring residential property insurers to provide an opportunity for policyholders to decrease the monetary amount of a hurricane deductible predicated upon the policyholder demonstrating certifiable and verifiable mitigation measures that reduce hurricane damage; address the feasibility of requiring mitigation certification and the specific procedures necessary for implementation and include suggested legislation; and include other related information as the office determines is appropriate for the Legislature to consider.

Rationale:
OIR must, by directive, consult with consumers, insurers, builders, wind certification inspectors, organizations dedicated to promoting disaster safety and property loss mitigation, counties, municipalities, and state agencies as well as any other entity that the office determines could provide relevant information.
OIR will need to hire an outside consultant/actuary to complete the required study.

- The estimate is based upon the Office's last two actuarial studies: a) Medical Malpractice Presumed (Rating) Factor - $191,550 and b) Florida Health Insurance Plan - $150,000.

Comments on other fiscal issues:

FIGA

The costs to FIGA for implementing the bill should be minimal. Any costs incurred for preparing and offering the revenue bonds authorized by the bill will be paid from the bond proceeds.

Citizens

The number of nonhomestead properties in Florida that will be insured by Citizens and thus subject to higher rates is indeterminate. The number of properties currently in Florida that would be considered nonhomestead by the bill's provisions is also indeterminate.

Although Citizens could not estimate the impact on rates creating a homestead account with a 100 year PML and a nonhomestead account with a 250 year PML or its cost to purchase reinsurance for a 250 year PML for the nonhomestead account, the following information was provided by Citizens' on their current account structure:

Personal Lines Account

	Probable Maximum Loss	Estimated Cost of Reinsurance	Indicated Rate Change (HO3)*	Filed Actuarial Rate Change (HO3)	Difference in Rates
1 in 50 year event	$1.3 billion	$107-$119 million	6.1% **	21.3%	-15.2%
1 in 100 year event	$2.2 billion	$180-$207 million	19.5%	21.3%	-1.8%
1 in 250 year	$3.7 billion	$267-$310 million	36.1%	21.3%	14.8%

High Risk Account (Personal Residential Portion)

	Probable Maximum Loss	Estimated Cost of Reinsurance	Indicated Rate Change*	Filed Actuarial Rate Change	Difference in Rates
1 in 50 year event	$6.4 billion	$677-$755 million	62.1%***	45.2%	16.9%
1 in 100 year event	$10.3 billion	$.992-$1.1 billion	103.2%	45.2%	58.0%
1 in 250 year event	$17.0 billion	$1.36-$1.57 billion	155.2%	45.2%	110.0%

NOTE: *Estimates are based on current exposures in the PLA and the HRA (personal residential only).*

* Increase in rates necessary to cover costs of proposed reinsurance.

** Rate indication does not include the Note Financing Factor that would be needed to procure pre-event financing to the 1 in 100 year PML.

*** Rate indication does not include the 15% Catastrophe Financing that would be needed to procure pre-event financing to the 1 in 100 year PML.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill gives the DCA rule-making authority to adopt rules governing the wind certification and wind mitigation inspection program.

The bill gives the Financial Services Commission (FSC) rulemaking authority to adopt rules setting forth the standard rules insurers must follow regarding claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellations and non-renewals. The bill also requires the FSC to begin rulemaking by June 1, 2006.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill needs amending to provide an appropriation of $675,000 from the Insurance Regulatory Trust Fund for the Office of Insurance Regulation to carry out the administrative and reporting responsibilities in the bill. The bill does not currently provide funding for this purpose.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Insurance Committee considered the bill, adopted 22 amendments, and reported the bill favorably. The amendments made technical and substantive changes to the bill. The substantive changes made:

- allows agents to get claims and underwriting information for policies ineligible for Citizens due to the $1 million restriction in order to try to find coverage for the properties in the private market and provides a procedure for receipt of the information and a procedure for the policyholder to request Citizens to maintain the confidentiality of the information;

- adds and amends a provision in the laws governing FIGA. Eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding;

- requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy;

- provides for automatic approval of an insurer's rate request for the wind portion of a policy if the rate requested is lower than Citizens' approved rate;

- provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of insurers for depopulation activities;

- creates a panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. Requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones;

- allows an insurer in the private market to issue a homeowner's policy on nonhomestead property eligible for Citizens on an individual rate basis. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory;

- allows an insurer in the private market to issue a homeowner's policy on an individual rate basis on homes insured for $1 million or more and thus ineligible for coverage in Citizens. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory;

- removes the repeal of the Panhandle exemption in the building code;

- provides the Commissioner of the OIR with power to enact emergency rules during a state of emergency;
- clarifies the increase in the FIGA limit on claims from $300,000 to $500,000 only applies to homeowners' insurance claims and defines "homeowner's insurance" for use under the FIGA statute;
- clarifies an insurer retains the ability to determine whether damage can be repaired or replaced;
- decreases rate flexibility for property insurers from a statewide average of 10 percent increase or decrease to 5 percent; and
- decreases rate flexibility for property insurers in a single territory from 15 percent to 10 percent.

The staff analysis was updated to reflect the adoption of the amendments.

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 215.555, F.S.; revising a definition; revising
4 certain reimbursement contract criteria; revising certain
5 reimbursement premium requirements; revising certain
6 revenue bond emergency assessment requirements; creating
7 s. 215.558, F.S.; creating the Florida Hurricane Damage
8 Prevention Endowment; providing a purpose and legislative
9 intent; providing definitions; providing requirements and
10 authority for investment of endowment assets by the State
11 Board of Administration; requiring a report to the
12 Legislature; providing for payment of the board's
13 investment services' costs and fees from the endowment;
14 providing requirements of Department of Community Affairs
15 in providing financial incentives for residential
16 hurricane damage prevention activities; providing for an
17 interest-free loan program; providing program criteria and
18 requirements; creating an advisory council for certain
19 purposes; providing for appointment of members; requiring
20 members to serve without compensation; providing for per
21 diem and travel expenses; creating s. 215.5586, F.S.;
22 providing a purpose; requiring the Department of Community
23 Affairs to establish a wind certification and hurricane
24 mitigation inspection program; specifying inspection
25 requirements; providing qualification requirements for
26 inspection providers; requiring the department to adopt
27 rules; creating s. 252.63, F.S.; providing purpose and
28 intent; providing powers of the Commissioner of Insurance

29 Regulation during a state of emergency; providing a
30 purpose and intent; authorizing the commissioner to issue
31 certain orders in a state of emergency; providing for
32 effect and duration of such orders; providing for
33 legislative termination of such orders; requiring the
34 commissioner to publish such orders and an explanatory
35 statement; amending s. 626.918, F.S.; authorizing certain
36 letters of credit to fund an insurer's required
37 policyholder protection trust fund; providing a
38 definition; amending s. 627.062, F.S.; specifying certain
39 rate filings as not subject to office determination as
40 excessive or unfairly discriminatory; providing
41 limitations; providing a definition; prohibiting certain
42 rate filings under certain circumstances; preserving the
43 office's authority to disapprove certain rate filings
44 under certain circumstances; providing procedures for
45 insurers submitting certain rate filings; specifying
46 nonapplication to certain types of insurance; specifying
47 approval of certain rate filings under certain
48 circumstances; providing an exception; requiring the
49 office to provide annual reports on the impact of certain
50 rate regulations; specifying report requirements; amending
51 s. 627.0628, F.S.; prohibiting certain office or consumer
52 advocate questions of certain models reviewed by the
53 commission; amending s. 627.06281, F.S.; prohibiting the
54 office from using certain hurricane loss projection models
55 under certain circumstances; amending s. 627.351, F.S.,
56 relating to the Citizens Property Insurance Corporation;

57 providing additional legislative intent; specifying
58 application to homestead property; specifying the existing
59 three separate accounts of the corporation as providing
60 coverage only for homestead property; providing a
61 definition; providing for an additional separate account
62 for nonhomestead property; requiring separate maintenance
63 of revenues, assets, liabilities, losses, and expenses
64 attributable to the nonhomestead account; providing
65 authority and requirements for coverage rates for
66 nonhomestead properties; providing for office review of
67 such rates or rating plans for being inadequate or
68 unfairly discriminatory; authorizing the office to order
69 discontinuance of certain policies under certain
70 circumstances; requiring insurers to maintain certain
71 records; providing for reducing regular assessments by the
72 Citizen policyholder surcharge under certain
73 circumstances; providing for deficit assessments against
74 nonhomestead account policyholders under certain
75 circumstances; authorizing the board of governors of the
76 corporation to make loans from the homestead accounts to
77 the nonhomestead account under certain circumstances;
78 specifying ineligibility of certain nonhomestead account
79 policyholders for certain coverage under certain
80 circumstances; revising the requirements of the plan of
81 operation of the corporation; requiring additional
82 procedures for determining eligibility of a risk for
83 coverage; providing for determination of regular
84 assessments to which the Citizen policyholder surcharge

85 applies; specifying a minimum requirement for a hurricane
86 deductible for certain property; specifying contents of
87 required statements in applications for nonhomestead and
88 homestead account coverage; limiting coverage on certain
89 mobile or manufactured homes; requiring the corporation to
90 purchase certain catastrophe reinsurance; providing
91 additional legislative intent relating to rate adequacy in
92 the residual market; deleting provisions relating to a
93 rate methodology panel appointed by the corporation;
94 providing requirements and limitations for a corporation
95 adopted bonus payment program; providing a criterion for
96 calculating reduction or increase in probable maximum
97 loss; delaying application of certain high-risk area
98 boundary reduction provisions; providing for application
99 of provisions relating to homestead and nonhomestead
100 accounts to certain policies; requiring certain
101 corporation employees to comply with certain ethics code
102 requirements; requiring corporation employees to notify
103 the Division of Insurance Fraud of probable commissions of
104 fraud by corporation employees; requiring the corporation
105 to report on the feasibility of requiring authorized
106 insurers to issue and service specified policies of the
107 corporation; specifying report requirements; providing
108 immunity to producing agents and employees for specified
109 actions taken relating to removal of policies from the
110 corporation; providing a limitation; providing legislative
111 intent; creating a High Risk Eligibility Panel; providing
112 for appointment of panel members and member's terms;

113 providing for administration of the panel by the
114 corporation; prohibiting compensation and per diem and
115 travel expenses; providing an exception; requiring the
116 panel to report annually to the Legislature on the certain
117 areas that should be included in the Citizens Property
118 Insurance Corporation high risk account; specifying
119 factors to be considered by the panel; providing duties of
120 the office; authorizing the office to conduct public
121 hearings; requiring the panel to conduct an analysis of
122 property eligible for the high-risk account in specified
123 areas; requiring the panel to submit a report to the
124 office and corporation; providing requirements of the
125 report; amending s. 627.4035, F.S.; providing for a waiver
126 of a written authorization requirement to pay claims by
127 debit card or other electronic transfer; providing
128 construction relating to limiting the liability of an
129 insurer for certain replacement costs; amending s.
130 627.7011, F.S.; limiting certain law and ordinance
131 coverage; deleting application to personal property;
132 requiring insurers to issue separate checks for certain
133 expenses and requiring certain checks to be issued
134 directly to a policyholder; creating s. 627.7019, F.S.;
135 requiring the Financial Services Commission to adopt rules
136 imposing standardized requirements applicable to insurers
137 after certain natural events; providing criteria;
138 providing requirements of the Office of Insurance
139 Regulation; prohibiting certain conflicting emergency
140 rules; amending s. 627.727, F.S.; correcting a cross-

141 reference; amending s. 631.181, F.S.; providing an
142 exception to certain requirements for a signed statement
143 for certain claims; providing requirements; amending s.
144 631.54, F.S.; defining the term "homeowner's insurance";
145 amending s. 631.55, F.S.; correcting a cross-reference;
146 amending s. 631.57, F.S.; revising requirements and
147 limitations for obligations of the Florida Insurance
148 Guaranty Association for covered claims; authorizing the
149 association to contract with counties, municipalities, and
150 legal entities to issue revenue bonds for certain
151 purposes; authorizing the Office of Insurance Regulation
152 to levy assessments and emergency assessments on insurers
153 under certain circumstances for certain bond repayment
154 purposes; providing requirements for and limitations on
155 such assessments; providing for payment, collection, and
156 distribution of such assessments; requiring insurers to
157 include an analysis of revenues from such assessments in a
158 required report; providing rate filing requirements for
159 insurers relating to such assessments; providing for
160 continuing annual assessments under certain circumstances;
161 specifying emergency assessments as not premium and not
162 subject to certain taxes, fees, or commissions; specifying
163 insurer liability for emergency assessments; providing an
164 exception; creating s. 631.695, F.S.; providing
165 legislative findings and purposes; providing for issuance
166 of revenue bonds through counties and municipalities to
167 fund assistance programs for paying covered claims for
168 hurricane damage; providing procedures, requirements, and

169 limitations for counties, municipalities, and the Florida
170 Insurance Guaranty Association, Inc., relating to issuance
171 and validation of such bonds; prohibiting pledging the
172 funds, credit, property, and taxing power of the state,
173 counties, and municipalities for payment of bonds;
174 specifying authorized uses of bond proceeds; limiting the
175 term of bonds; specifying a state covenant to protect
176 bondholders from adverse actions relating to such bonds;
177 specifying exemptions for bonds, notes, and other
178 obligations of counties and municipalities from certain
179 taxes or assessments on property and revenues; authorizing
180 counties and municipalities to create a legal entity to
181 exercise certain powers; requiring the association to
182 issue an annual report on the status of certain uses of
183 bond proceeds; providing report requirements; requiring
184 the association to provide a copy of the report to the
185 Legislature and Chief Financial Officer; prohibiting
186 repeal of certain provisions relating to certain bonds
187 under certain circumstances; amending s. 817.234, F.S.;
188 providing an additional circumstance that constitutes
189 committing insurance fraud; creating the Task Force on
190 Hurricane Mitigation and Hurricane Insurance for Mobile
191 and Manufactured Homes; providing for administration by
192 the office; specifying additional agency administrative
193 staff; providing for appointment of task force members;
194 requiring members to serve without compensation; providing
195 for per diem and travel expenses; providing purpose and
196 intent; requiring the task force to address specified

197 issues; requiring a report to the Governor, Chief
198 Financial Officer, and Legislature; providing for
199 expiration of the task force; requiring the Office of
200 Insurance Regulation to submit reports to the Legislature
201 relating to the insurability of certain attached or free
202 standing structures and decreases in policyholder
203 hurricane deductibles based on policyholder hurricane
204 damage mitigation measures; providing report requirements;
205 providing duties of the office; providing appropriations;
206 providing effective dates.
207
208 Be It Enacted by the Legislature of the State of Florida:
209
210 Section 1. Paragraph (d) of subsection (2), paragraphs (c)
211 and (d) of subsection (4), paragraph (b) of subsection (5), and
212 paragraph (b) of subsection (6) of section 215.555, Florida
213 Statutes, are amended to read:
214 215.555 Florida Hurricane Catastrophe Fund.--
215 (2) DEFINITIONS.--As used in this section:
216 (d) "Losses" means direct incurred losses under covered
217 policies, which shall include losses for additional living
218 expenses not to exceed 40 percent of the insured value of a
219 residential structure or its contents and shall exclude loss
220 adjustment expenses. "Losses" does not include losses for fair
221 rental value, loss of rent or rental income ~~use~~, or business
222 interruption losses.
223 (4) REIMBURSEMENT CONTRACTS.--

224 (c)1. The contract shall also provide that the obligation
225 of the board with respect to all contracts covering a particular
226 contract year shall not exceed the actual claims-paying capacity
227 of the fund up to a limit of $15 billion for that contract year
228 adjusted based upon the reported exposure from the prior
229 contract year to reflect the percentage growth in exposure to
230 the fund for covered policies since 2003, provided the dollar
231 growth in the limit may not increase in any year by an amount
232 greater than the dollar growth of the ~~cash~~ balance of the fund
233 as of December 31 as defined by rule which occurred over the
234 prior calendar year.
235 2. In May before the start of the upcoming contract year
236 and in October during the contract year, the board shall publish
237 in the Florida Administrative Weekly a statement of the fund's
238 estimated borrowing capacity and the projected balance of the
239 fund as of December 31. After the end of each calendar year, the
240 board shall notify insurers of the estimated borrowing capacity
241 and the balance of the fund as of December 31 to provide
242 insurers with data necessary to assist them in determining their
243 retention and projected payout from the fund for loss
244 reimbursement purposes. In conjunction with the development of
245 the premium formula, as provided for in subsection (5), the
246 board shall publish factors or multiples that assist insurers in
247 determining their retention and projected payout for the next
248 contract year. For all regulatory and reinsurance purposes, an
249 insurer may calculate its projected payout from the fund as its
250 share of the total fund premium for the current contract year
251 multiplied by the sum of the projected balance of the fund as of

252 December 31 and the estimated borrowing capacity for that
253 contract year as reported under this subparagraph.
254 (d)1. For purposes of determining potential liability and
255 to aid in the sound administration of the fund, the contract
256 shall require each insurer to report such insurer's losses from
257 each covered event on an interim basis, as directed by the
258 board. The contract shall require the insurer to report to the
259 board no later than December 31 of each year, and quarterly
260 thereafter, its reimbursable losses from covered events for the
261 year. The contract shall require the board to determine and pay,
262 as soon as practicable after receiving these reports of
263 reimbursable losses, the initial amount of reimbursement due and
264 adjustments to this amount based on later loss information. The
265 adjustments to reimbursement amounts shall require the board to
266 pay, or the insurer to return, amounts reflecting the most
267 recent calculation of losses.
268 2. In determining reimbursements pursuant to this
269 subsection, the contract shall provide that the board shall:
270 ~~a. First reimburse insurers writing covered policies,~~
271 ~~which insurers are in full compliance with this section and have~~
272 ~~petitioned the Office of Insurance Regulation and qualified as~~
273 ~~limited apportionment companies under s. 627.351(2)(b)3. The~~
274 ~~amount of such reimbursement shall be the lesser of $10 million~~
275 ~~or an amount equal to 10 times the insurer's reimbursement~~
276 ~~premium for the current year. The amount of reimbursement paid~~
277 ~~under this sub-subparagraph may not exceed the full amount of~~
278 ~~reimbursement promised in the reimbursement contract. This sub-~~
279 ~~subparagraph does not apply with respect to any contract year in~~

280 ~~which the year-end projected cash balance of the fund, exclusive~~
281 ~~of any bonding capacity of the fund, exceeds $2 billion. Only~~
282 ~~one member of any insurer group may receive reimbursement under~~
283 ~~this sub-subparagraph.~~
284 a.~~b.~~ Next pay to each insurer such insurer's projected
285 payout, which is the amount of reimbursement it is owed, up to
286 an amount equal to the insurer's share of the actual premium
287 paid for that contract year, multiplied by the actual claims-
288 paying capacity available for that contract year; provided,
289 entities created pursuant to s. 627.351 shall be further
290 reimbursed in accordance with sub-subparagraph b. ~~c.~~
291 b.~~c.~~ Thereafter, establish the prorated reimbursement
292 level at the highest level for which any remaining fund balance
293 or bond proceeds are sufficient to reimburse entities created
294 pursuant to s. 627.351 based on reimbursable losses exceeding
295 the amounts payable pursuant to sub-subparagraph a. ~~b.~~ for the
296 current contract year.
297 (5) REIMBURSEMENT PREMIUMS.--
298 (b) The State Board of Administration shall select an
299 independent consultant to develop a formula for determining the
300 actuarially indicated premium to be paid to the fund. The
301 formula shall specify, for each zip code or other limited
302 geographical area, the amount of premium to be paid by an
303 insurer for each $1,000 of insured value under covered policies
304 in that zip code or other area. In establishing premiums, the
305 board shall consider the coverage elected under paragraph (4)(b)
306 and any factors that tend to enhance the actuarial
307 sophistication of ratemaking for the fund, including

308 deductibles, type of construction, type of coverage provided,
309 relative concentration of risks, ~~a factor providing for more~~
310 ~~rapid cash buildup in the fund until the fund capacity for a~~
311 ~~single hurricane season is fully funded,~~ and other such factors
312 deemed by the board to be appropriate. The formula may provide
313 for a procedure to determine the premiums to be paid by new
314 insurers that begin writing covered policies after the beginning
315 of a contract year, taking into consideration when the insurer
316 starts writing covered policies, the potential exposure of the
317 insurer, the potential exposure of the fund, the administrative
318 costs to the insurer and to the fund, and any other factors
319 deemed appropriate by the board. The formula shall include a
320 factor of 25 percent of the fund's actuarially indicated premium
321 in order to provide for more rapid cash buildup in the fund. The
322 formula must be approved by unanimous vote of the board. The
323 board may, at any time, revise the formula pursuant to the
324 procedure provided in this paragraph.
325 (6) REVENUE BONDS.--
326 (b) Emergency assessments.--
327 1. If the board determines that the amount of revenue
328 produced under subsection (5) is insufficient to fund the
329 obligations, costs, and expenses of the fund and the
330 corporation, including repayment of revenue bonds and that
331 portion of the debt service coverage not met by reimbursement
332 premiums, the board shall direct the Office of Insurance
333 Regulation to levy, by order, an emergency assessment on direct
334 premiums for all property and casualty lines of business in this
335 state, including property and casualty business of surplus lines

336 insurers regulated under part VIII of chapter 626, but not
337 including any workers' compensation premiums or medical
338 malpractice premiums. As used in this subsection, the term
339 "property and casualty business" includes all lines of business
340 identified on Form 2, Exhibit of Premiums and Losses, in the
341 annual statement required of authorized insurers by s. 624.424
342 and any rule adopted under this section, except for those lines
343 identified as accident and health insurance and except for
344 policies written under the National Flood Insurance Program. The
345 assessment shall be specified as a percentage of future premium
346 collections and is subject to annual adjustments by the board to
347 reflect changes in premiums subject to assessments collected
348 under this subparagraph in order to meet debt obligations. The
349 same percentage shall apply to all policies in lines of business
350 subject to the assessment issued or renewed during the 12-month
351 period beginning on the effective date of the assessment.
352 2. A premium is not subject to an annual assessment under
353 this paragraph in excess of 6 percent of premium with respect to
354 obligations arising out of losses attributable to any one
355 contract year, and a premium is not subject to an aggregate
356 annual assessment under this paragraph in excess of 10 percent
357 of premium. An annual assessment under this paragraph shall
358 continue <u>for as long as</u> ~~until~~ the revenue bonds issued with
359 respect to which the assessment was imposed are outstanding,
360 including any bonds the proceeds of which were used to refund
361 the revenue bonds, unless adequate provision has been made for
362 the payment of the bonds under the documents authorizing
363 issuance of the bonds.

364 3. With respect to each insurer collecting premiums that
365 are subject to the assessment, the insurer shall collect the
366 assessment at the same time as it collects the premium payment
367 for each policy and shall remit the assessment collected to the
368 fund or corporation as provided in the order issued by the
369 Office of Insurance Regulation. The office shall verify the
370 accurate and timely collection and remittance of emergency
371 assessments and shall report the information to the board in a
372 form and at a time specified by the board. Each insurer
373 collecting assessments shall provide the information with
374 respect to premiums and collections as may be required by the
375 office to enable the office to monitor and verify compliance
376 with this paragraph.
377 4. With respect to assessments of surplus lines premiums,
378 each surplus lines agent shall collect the assessment at the
379 same time as the agent collects the surplus lines tax required
380 by s. 626.932, and the surplus lines agent shall remit the
381 assessment to the Florida Surplus Lines Service Office created
382 by s. 626.921 at the same time as the agent remits the surplus
383 lines tax to the Florida Surplus Lines Service Office. The
384 emergency assessment on each insured procuring coverage and
385 filing under s. 626.938 shall be remitted by the insured to the
386 Florida Surplus Lines Service Office at the time the insured
387 pays the surplus lines tax to the Florida Surplus Lines Service
388 Office. The Florida Surplus Lines Service Office shall remit the
389 collected assessments to the fund or corporation as provided in
390 the order levied by the Office of Insurance Regulation. The
391 Florida Surplus Lines Service Office shall verify the proper

392 application of such emergency assessments and shall assist the
393 board in ensuring the accurate and timely collection and
394 remittance of assessments as required by the board. The Florida
395 Surplus Lines Service Office shall annually calculate the
396 aggregate written premium on property and casualty business,
397 other than workers' compensation and medical malpractice,
398 procured through surplus lines agents and insureds procuring
399 coverage and filing under s. 626.938 and shall report the
400 information to the board in a form and at a time specified by
401 the board.
402 5. Any assessment authority not used for a particular
403 contract year may be used for a subsequent contract year. If,
404 for a subsequent contract year, the board determines that the
405 amount of revenue produced under subsection (5) is insufficient
406 to fund the obligations, costs, and expenses of the fund and the
407 corporation, including repayment of revenue bonds and that
408 portion of the debt service coverage not met by reimbursement
409 premiums, the board shall direct the Office of Insurance
410 Regulation to levy an emergency assessment up to an amount not
411 exceeding the amount of unused assessment authority from a
412 previous contract year or years, plus an additional 4 percent
413 provided that the assessments in the aggregate do not exceed the
414 limits specified in subparagraph 2.
415 6. The assessments otherwise payable to the corporation
416 under this paragraph shall be paid to the fund unless and until
417 the Office of Insurance Regulation and the Florida Surplus Lines
418 Service Office have received from the corporation and the fund a
419 notice, which shall be conclusive and upon which they may rely

420 without further inquiry, that the corporation has issued bonds
421 and the fund has no agreements in effect with local governments
422 under paragraph (c). On or after the date of the notice and
423 until the date the corporation has no bonds outstanding, the
424 fund shall have no right, title, or interest in or to the
425 assessments, except as provided in the fund's agreement with the
426 corporation.
427 7. Emergency assessments are not premium and are not
428 subject to the premium tax, to the surplus lines tax, to any
429 fees, or to any commissions. An insurer is liable for all
430 assessments that it collects and must treat the failure of an
431 insured to pay an assessment as a failure to pay the premium. An
432 insurer is not liable for uncollectible assessments.
433 8. When an insurer is required to return an unearned
434 premium, it shall also return any collected assessment
435 attributable to the unearned premium. A credit adjustment to the
436 collected assessment may be made by the insurer with regard to
437 future remittances that are payable to the fund or corporation,
438 but the insurer is not entitled to a refund.
439 9. When a surplus lines insured or an insured who has
440 procured coverage and filed under s. 626.938 is entitled to the
441 return of an unearned premium, the Florida Surplus Lines Service
442 Office shall provide a credit or refund to the agent or such
443 insured for the collected assessment attributable to the
444 unearned premium prior to remitting the emergency assessment
445 collected to the fund or corporation.
446 10. The exemption of medical malpractice insurance
447 premiums from emergency assessments under this paragraph is

448 repealed May 31, 2010 ~~2007~~, and medical malpractice insurance
449 premiums shall be subject to emergency assessments attributable
450 to loss events occurring in the contract years commencing on
451 June 1, 2010 ~~2007~~.
452 Section 2. Section 215.558, Florida Statutes, is created
453 to read:
454 215.558 Florida Hurricane Damage Prevention Endowment.--
455 (1) PURPOSE AND INTENT.--The purpose of this section is to
456 provide a continuing source of funding for financial incentives
457 to encourage residential property owners of this state to
458 retrofit their properties to make them less vulnerable to
459 hurricane damage, to help decrease the cost of residential
460 property and casualty insurance, and to provide matching funds
461 to local governments and nonprofit entities for projects that
462 will reduce hurricane damage to residential properties. It is
463 the intent of the Legislature that this section be construed
464 liberally to effectuate its purpose.
465 (2) DEFINITIONS.--As used in this section:
466 (a) "Board" means the State Board of Administration.
467 (b) "Corpus" means the money that has been appropriated to
468 the endowment by the 2006 Legislature, together with any amounts
469 subsequently appropriated to the endowment that are specifically
470 designated as contributions to the corpus and any grants, gifts,
471 or donations to the endowment that are specifically designated
472 as contributions to the corpus.
473 (c) "Earnings" means any money in the endowment in excess
474 of the corpus, including any income generated by investments,
475 any increase in the market value of investments net of decreases

476 in market value, and any appropriations, grants, gifts, or
477 donations to the endowment not specifically designated as
478 contributions to the corpus.
479 (d) "Endowment" means the Florida Hurricane Damage
480 Prevention Endowment Fund created by s. 215.5585.
481 (e) "Program administrator" means the Department of
482 Community Affairs.
483 (3) ADMINISTRATION.--
484 (a) The board shall invest endowment assets as provided in
485 this section.
486 (b) The board may invest and reinvest funds of the
487 endowment in accordance with s. 215.47 and consistent with board
488 policy.
489 (c) The investment objective shall be long-term
490 preservation of the value of the corpus and a specified regular
491 annual cash outflow for appropriation, as nonrecurring revenue,
492 for the purposes specified in subsection (4).
493 (d) In accordance with s. 215.44, the board shall report
494 on the financial status of the endowment in its annual
495 investment report to the Legislature.
496 (e) Costs and fees of the board for investment services
497 shall be deducted from the assets of the endowment.
498 (4) FINANCIAL INCENTIVES FOR RESIDENTIAL HURRICANE DAMAGE
499 PREVENTION ACTIVITIES.--
500 (a) Not less than 80 percent of the net earnings of the
501 endowment shall be expended for financial incentives to
502 residential property owners as described in paragraph (b), and
503 no more than the remainder of the net earnings of the endowment

504 shall be expended for matching fund grants to local governments
505 and nonprofit entities for projects that will reduce hurricane
506 damage to residential properties as described in paragraph (c).
507 Any funds authorized for expenditure but not expended for these
508 purposes shall be returned to the endowment.
509 (b)1. The program administrator, by rule, shall establish
510 a request for a proposal process to annually solicit proposals
511 from lending institutions under which the lending institution
512 will provide interest-free loans to homestead property owners to
513 pay for inspections of homestead property to determine what
514 mitigation measures are needed and for improvements to existing
515 residential properties intended to reduce the homestead
516 property's vulnerability to hurricane damage, in exchange for
517 funding from the endowment.
518 2. In order to qualify for funding under this paragraph,
519 an interest-free loan program must include an inspection of
520 homestead property to determine what mitigation measures are
521 needed, a means for verifying that the improvements to be paid
522 for from loan proceeds have been demonstrated to reduce a
523 homestead property's vulnerability to hurricane damage, and a
524 means for verifying that the proceeds were actually spent on
525 such improvements. The program must include a method for
526 awarding loans according to the following priorities:
527 a. The highest priority must be given to single-family
528 owner-occupied homestead dwellings, insured at $500,000 or less,
529 located in the areas designated as high-risk areas for purposes
530 of coverage by the Citizens Property Insurance Corporation.
531 b. The next highest priority must be given to single-

532 family owner-occupied homestead dwellings, insured at $500,000
533 or less, covered by the Citizens Property Insurance Corporation,
534 wherever located.
535 c. The next highest priority must be given to single-
536 family owner-occupied homestead dwellings, insured at $500,000
537 or less, that are more than 40 years old.
538 d. The next highest priority must be given to all other
539 single-family owner-occupied homestead dwellings insured at
540 $500,000 or less.
541 3. The program administrator shall evaluate proposals
542 based on the following factors:
543 a. The degree to which the proposal meets the requirements
544 of subparagraph 2.
545 b. The lending institution's plan for marketing the loans.
546 c. The anticipated number of loans to be granted relative
547 to the total amount of funding sought.
548 4. The program administrator shall annually solicit
549 proposals from local governments and nonprofit entities for
550 projects that will reduce hurricane damage to homestead
551 properties. The program administrator may provide up to 50
552 percent of the funding for such projects. The projects may
553 include educational programs, repair services, property
554 inspections, and hurricane vulnerability analyses and such other
555 projects as the program administrator determines to be
556 consistent with the purposes of this section.
557 (5) ADVISORY COUNCIL.--There is created an advisory
558 council to provide advice and assistance to the program
559 administrator with regard to its administration of the

560 endowment. The advisory council shall consist of:
561 (a) A representative of lending institutions, selected by
562 the Financial Services Commission from a list of at least three
563 persons recommended by the Florida Bankers Association.
564 (b) A representative of residential property insurers,
565 selected by the Financial Services Commission from a list of at
566 least three persons recommended by the Florida Insurance
567 Council.
568 (c) A representative of home builders, selected by the
569 Financial Services Commission from a list of at least three
570 persons recommended by the Florida Home Builders Association.
571 (d) A faculty member of a state university selected by the
572 Financial Services Commission who is an expert in hurricane-
573 resistant construction methodologies and materials.
574 (e) Two members of the House of Representatives selected
575 by the Speaker of the House of Representatives.
576 (f) Two members of the Senate selected by the President of
577 the Senate.
578 (g) The senior officer of the Florida Hurricane
579 Catastrophe Fund.
580 (h) The executive director of Citizens Property Insurance
581 Corporation.
582 (i) The director of the Division of Emergency Management
583 of the Department of Community Affairs.
584
585 Members appointed under paragraphs (a)-(d) shall serve at the
586 pleasure of the Financial Services Commission. Members appointed
587 under paragraphs (e) and (f) shall serve at the pleasure of the

588 appointing officer. All other members shall serve ex officio.
589 Members of the advisory council shall serve without compensation
590 but may receive reimbursement as provided in s. 112.061 for per
591 diem and travel expenses incurred in the performance of their
592 official duties.
593 Section 3. Section 215.5586, Florida Statutes, is created
594 to read:
595 215.5586 Wind certification and hurricane mitigation
596 inspections.--
597 (1) The purpose of this section is to provide wind
598 certification and hurricane mitigation inspections to eligible
599 homeowners in this state for assistance in retrofitting the
600 properties of those homeowners to become less vulnerable to
601 hurricane damage.
602 (2) The Department of Community Affairs shall establish a
603 request for proposals to solicit proposals from wind
604 certification entities to provide, at no cost to homeowners,
605 wind certification and hurricane mitigation inspections. The
606 inspections provided to homeowners, at a minimum, must include
607 the following:
608 (a) A home inspection and report that summarizes the
609 results and identifies corrective actions a homeowner may take
610 to mitigate hurricane damage.
611 (b) A range of cost estimates regarding the mitigation
612 features.
613 (c) Insurer-specific information regarding premium
614 discounts correlated to recommended mitigation features
615 identified by the inspection.

616 (d) A hurricane resistance rating scale specifying the
617 home's current, as well as projected, wind resistance
618 capabilities.
619 (3) To qualify for selection by the department as a
620 provider of wind certification and hurricane mitigation
621 inspections, the entity, at a minimum, must:
622 (a) Use wind certification and hurricane mitigation
623 inspectors who have:
624 1. Prior experience in residential construction or
625 inspection and have received specialized training in hurricane
626 mitigation procedures.
627 2. Undergone drug testing and background checks.
628 3. Been certified, in a manner satisfactory to the
629 department, to conduct the inspections.
630 (b) Provide a quality assurance program including a re-
631 inspection component.
632 (4) The Department of Community Affairs shall adopt rules
633 pursuant to ss. 120.536(1) and 120.54 governing the wind
634 certification and wind mitigation inspection program.
635 Section 4. Section 252.63, Florida Statutes, is created to
636 read:
637 252.63 Commissioner of Insurance Regulation; powers in a
638 state of emergency.--
639 (1) It is the purpose and intent of this section to
640 provide the Commissioner of Insurance Regulation the authority
641 to temporarily modify or suspend provisions of the Florida
642 Insurance Code in order to expedite the recovery of communities
643 affected by a disaster or other emergency and encourage

644 insurance companies, entities, and persons subject to the
645 Florida Insurance Code and the jurisdiction of the office to
646 meet the insurance needs of such communities.
647 (2)(a) When the Governor declares a state of emergency
648 pursuant to s. 252.36, the commissioner may issue:
649 1. One or more general orders applicable to all insurance
650 companies, entities, and persons, as defined in s. 624.04, that
651 are subject to the Florida Insurance Code and that serve any
652 portion of the area of the state under the state of emergency;
653 or
654 2. One or more specific orders to particular insurance
655 companies, entities, and persons that are subject to the Florida
656 Insurance Code, as defined in s. 624.01, which orders may modify
657 or suspend, as to those companies, entities, and persons, all or
658 any part of the Florida Insurance Code, or any applicable rule,
659 consistent with the stated purposes of the Florida Insurance
660 Code.
661 (b) An order issued by the commissioner under this section
662 becomes effective upon issuance and continues for 120 days
663 unless terminated sooner by the commissioner. The commissioner
664 may extend an order for one additional period of 120 days if he
665 or she determines that the emergency conditions that gave rise
666 to the initial order still exist. By concurrent resolution, the
667 Legislature may terminate any order issued under this section.
668 (3) The commissioner shall publish in the next available
669 publication of the Florida Administrative Weekly a copy of the
670 text of any order issued under this section, together with a
671 statement describing the modification or suspension and

672 explaining how the modification or suspension will facilitate
673 recovery from the emergency.
674 Section 5. Subsections (1) and (2) of section 626.918,
675 Florida Statutes, are amended to read:
676 626.918 Eligible surplus lines insurers.--
677 (1) A ~~No~~ surplus lines agent may not ~~shall~~ place any
678 coverage with any unauthorized insurer which is not then an
679 eligible surplus lines insurer, except as permitted under
680 subsections (5) and (6).
681 (2) An ~~No~~ unauthorized insurer may not ~~shall~~ be or become
682 an eligible surplus lines insurer unless made eligible by the
683 office in accordance with the following conditions:
684 (a) Eligibility of the insurer must be requested in
685 writing by the Florida Surplus Lines Service Office.~~;~~
686 (b) The insurer must be currently an authorized insurer in
687 the state or country of its domicile as to the kind or kinds of
688 insurance proposed to be so placed and must have been such an
689 insurer for not less than the 3 years next preceding or must be
690 the wholly owned subsidiary of such authorized insurer or must
691 be the wholly owned subsidiary of an already eligible surplus
692 lines insurer as to the kind or kinds of insurance proposed for
693 a period of not less than the 3 years next preceding. However,
694 the office may waive the 3-year requirement if the insurer
695 provides a product or service not readily available to the
696 consumers of this state or has operated successfully for a
697 period of at least 1 year next preceding and has capital and
698 surplus of not less than $25 million.~~;~~

699 (c) Before granting eligibility, the requesting surplus
700 lines agent or the insurer shall furnish the office with a duly
701 authenticated copy of its current annual financial statement in
702 the English language and with all monetary values therein
703 expressed in United States dollars, at an exchange rate (in the
704 case of statements originally made in the currencies of other
705 countries) then-current and shown in the statement, and with
706 such additional information relative to the insurer as the
707 office may request.~~;~~
708 (d)1.a. The insurer must have and maintain surplus as to
709 policyholders of not less than $15 million; in addition, an
710 alien insurer must also have and maintain in the United States a
711 trust fund for the protection of all its policyholders in the
712 United States under terms deemed by the office to be reasonably
713 adequate, in an amount not less than $5.4 million. Any such
714 surplus as to policyholders or trust fund shall be represented
715 by investments consisting of eligible investments for like funds
716 of like domestic insurers under part II of chapter 625 provided,
717 however, that in the case of an alien insurance company, any
718 such surplus as to policyholders may be represented by
719 investments permitted by the domestic regulator of such alien
720 insurance company if such investments are substantially similar
721 in terms of quality, liquidity, and security to eligible
722 investments for like funds of like domestic insurers under part
723 II of chapter 625. Clean, irrevocable, unconditional, and
724 evergreen letters of credit issued or confirmed by a qualified
725 United States financial institution, as defined in subparagraph
726 2., may be used to fund the trust.~~;~~

727 b.~~2.~~ For those surplus lines insurers that were eligible
728 on January 1, 1994, and that maintained their eligibility
729 thereafter, the required surplus as to policyholders shall be:
730 (I)~~a.~~ On December 31, 1994, and until December 30, 1995,
731 $2.5 million.
732 (II)~~b.~~ On December 31, 1995, and until December 30, 1996,
733 $3.5 million.
734 (III)~~c.~~ On December 31, 1996, and until December 30, 1997,
735 $4.5 million.
736 (IV)~~d.~~ On December 31, 1997, and until December 30, 1998,
737 $5.5 million.
738 (V)~~e.~~ On December 31, 1998, and until December 30, 1999,
739 $6.5 million.
740 (VI)~~f.~~ On December 31, 1999, and until December 30, 2000,
741 $8 million.
742 (VII)~~g.~~ On December 31, 2000, and until December 30, 2001,
743 $9.5 million.
744 (VIII)~~h.~~ On December 31, 2001, and until December 30,
745 2002, $11 million.
746 (IX)~~i.~~ On December 31, 2002, and until December 30, 2003,
747 $13 million.
748 (X)~~j.~~ On December 31, 2003, and thereafter, $15 million.
749 c.~~3.~~ The capital and surplus requirements as set forth in
750 sub-subparagraph b. ~~subparagraph 2.~~ do not apply in the case of
751 an insurance exchange created by the laws of individual states,
752 where the exchange maintains capital and surplus pursuant to the
753 requirements of that state, or maintains capital and surplus in
754 an amount not less than $50 million in the aggregate. For an

755 insurance exchange which maintains funds in the amount of at
756 least $12 million for the protection of all insurance exchange
757 policyholders, each individual syndicate shall maintain minimum
758 capital and surplus in an amount not less than $3 million. If
759 the insurance exchange does not maintain funds in the amount of
760 at least $12 million for the protection of all insurance
761 exchange policyholders, each individual syndicate shall meet the
762 minimum capital and surplus requirements set forth in sub-
763 subparagraph b. ~~subparagraph 2.;~~
764 d.~~4.~~ A surplus lines insurer which is a member of an
765 insurance holding company that includes a member which is a
766 Florida domestic insurer as set forth in its holding company
767 registration statement, as set forth in s. 628.801 and rules
768 adopted thereunder, may elect to maintain surplus as to
769 policyholders in an amount equal to the requirements of s.
770 624.408, subject to the requirement that the surplus lines
771 insurer shall at all times be in compliance with the
772 requirements of chapter 625.
773
774 The election shall be submitted to the office and shall be
775 effective upon the office's being satisfied that the
776 requirements of sub-subparagraph d. ~~subparagraph 4.~~ have been
777 met. The initial date of election shall be the date of office
778 approval. The election approval application shall be on a form
779 adopted by commission rule. The office may approve an election
780 form submitted pursuant to sub-subparagraph d. ~~subparagraph 4.~~
781 only if it was on file with the former Department of Insurance
782 before February 28, 1998.~~;~~

783 2. For purposes of letters of credit under subparagraph
784 1., the term "qualified United States financial institution"
785 means an institution that:
786 a. Is organized or, in the case of a United States office
787 of a foreign banking organization, is licensed under the laws of
788 the United States or any state.
789 b. Is regulated, supervised, and examined by authorities
790 of the United States or any state having regulatory authority
791 over banks and trust companies.
792 c. Has been determined by the office or the Securities
793 Valuation Office of the National Association of Insurance
794 Commissioners to meet such standards of financial condition and
795 standing as are considered necessary and appropriate to regulate
796 the quality of financial institutions whose letters of credit
797 are acceptable to the office.
798 (e) The insurer must be of good reputation as to the
799 providing of service to its policyholders and the payment of
800 losses and claims.~~;~~
801 (f) The insurer must be eligible, as for authority to
802 transact insurance in this state, under s. 624.404(3).~~; and~~
803 (g) This subsection does not apply as to unauthorized
804 insurers made eligible under s. 626.917 as to wet marine and
805 aviation risks.
806 Section 6. Paragraph (j) is added to subsection (2) of
807 section 627.062, Florida Statutes, and subsections (9) and (10)
808 are added to that section, to read:
809 627.062 Rate standards.--
810 (2) As to all such classes of insurance:

811 (j) Effective January 1, 2007, notwithstanding any other
812 provision of this section:
813 1. With respect to any residential property insurance
814 subject to regulation under this section, a rate filing,
815 including, but not limited to, any rate changes, rating factors,
816 territories, classification, discounts, and credits, with
817 respect to any policy form, including endorsements issued with
818 the form, that results in an overall average statewide premium
819 increase or decrease of no more than 5 percent above or below
820 the premium that would result from the insurer's rates then in
821 effect shall not be subject to a determination by the office
822 that the rate is excessive or unfairly discriminatory except as
823 provided in subparagraph 3., or any other provision of law,
824 provided all changes specified in the filing do not result in an
825 overall premium increase of more than 10 percent for any one
826 territory, for reasons related solely to the rate change. As
827 used in this subparagraph, the term "insurer's rates then in
828 effect" includes only rates that have been lawfully in effect
829 under this section or rates that have been determined to be
830 lawful through administrative proceedings or judicial
831 proceedings.
832 2. An insurer may not make filings under this paragraph
833 with respect to any policy form, including endorsements issued
834 with the form, if the overall premium changes resulting from
835 such filings exceed the amounts specified in this paragraph in
836 any 12-month period. An insurer may proceed under other
837 provisions of this section or other provisions of law if the

838 insurer seeks to exceed the premium or rate limitations of this
839 paragraph.
840 3. This paragraph does not affect the authority of the
841 office to disapprove a rate as inadequate or to disapprove a
842 filing for the unlawful use of unfairly discriminatory rating
843 factors that are prohibited by the laws of this state. An
844 insurer electing to implement a rate change under this paragraph
845 shall submit a filing to the office at least 30 days prior to
846 the effective date of the rate change. The office shall have 30
847 days after the filing's submission to review the filing and
848 determine if the rate is inadequate or uses unfairly
849 discriminatory rating factors. Absent a finding by the office
850 within such 30-day period that the rate is inadequate or that
851 the insurer has used unfairly discriminatory rating factors, the
852 filing is deemed approved. If the office finds during the 30-day
853 period that the filing will result in inadequate premiums or
854 otherwise endanger the insurer's solvency, the office shall
855 suspend the rate decrease. If the insurer is implementing an
856 overall rate increase, the results of which continue to produce
857 an inadequate rate, such increase shall proceed pending
858 additional action by the office to ensure the adequacy of the
859 rate.
860 4. This paragraph does not apply to rate filings for any
861 insurance other than residential property insurance.
862
863 The provisions of this subsection shall not apply to workers'
864 compensation and employer's liability insurance and to motor
865 vehicle insurance.

866 (9) Notwithstanding any other provision of this section,
867 any rate filing or applicable portion of the rate filing that
868 includes the peril of wind in the high-risk account of the
869 Citizens Property Insurance Corporation shall be deemed approved
870 upon submission to the office if the filing or the applicable
871 portion of the filing requests approval of a rate that is less
872 than the approved rate for similar risks insured in the high-
873 risk account of the corporation unless the office determines
874 that such rate is inadequate or unfairly discriminatory as
875 provided in subsection (2).
876 (10)(a) Beginning January 1, 2007, the office shall
877 annually provide a report to the President of the Senate, the
878 Speaker of the House of Representatives, the minority party
879 leader of each house of the Legislature, and the chairs of the
880 standing committees of each house of the Legislature having
881 jurisdiction over insurance issues, specifying the impact of
882 flexible rate regulation under paragraph (2)(j) on the degree of
883 competition in insurance markets in this state.
884 (b) The report shall include a year-by-year comparison of
885 the number of companies participating in the market for each
886 class of insurance and the relative rate levels. The report
887 shall also specify:
888 1. The number of rate filings made under paragraph (2)(j),
889 the rate levels under those filings, and the market share
890 affected by those filings.
891 2. The number of filings made on a file and use basis, the
892 rate levels under those filings, and the market share affected
893 by those filings.

894 3. The number of filings made on a use and file basis, the
895 rate levels under those filings, and the market share affected
896 by those filings.
897 4. Recommendations to promote competition in the insurance
898 market and further protect insurance consumers.
899 Section 7. Paragraph (c) of subsection (3) of section
900 627.0628, Florida Statutes, is amended to read:
901 627.0628 Florida Commission on Hurricane Loss Projection
902 Methodology; public records exemption; public meetings
903 exemption.--
904 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--
905 (c) With respect to a rate filing under s. 627.062, an
906 insurer may employ actuarial methods, principles, standards,
907 models, or output ranges found by the commission to be accurate
908 or reliable to determine hurricane loss factors for use in a
909 rate filing under s. 627.062. Such findings and factors are
910 admissible and relevant in consideration of a rate filing by the
911 office or in any arbitration or administrative or judicial
912 review only if the office and the consumer advocate appointed
913 pursuant to s. 627.0613 have a reasonable opportunity to review
914 ~~access to~~ all of the basic assumptions and factors that were
915 used in developing the actuarial methods, principles, standards,
916 models, or output ranges. After review of the specific models by
917 the commission, the office and the consumer advocate may not
918 pose any questions generated from their respective reviews that
919 duplicate or compromise the conclusions of the commission
920 relative to the accuracy or reliability of the models in
921 producing hurricane loss factors for use in a rate filing under

922 s. 627.062~~, and are not precluded from disclosing such~~
923 ~~information in a rate proceeding~~.
924 Section 8. Section 627.06281, Florida Statutes, is amended
925 to read:
926 627.06281 Public hurricane loss projection model;
927 reporting of data by insurers.--
928 (1) Within 30 days after a written request for loss data
929 and associated exposure data by the office or a type I center
930 within the State University System established to study
931 mitigation, residential property insurers and licensed rating
932 and advisory organizations that compile residential property
933 insurance loss data shall provide loss data and associated
934 exposure data for residential property insurance policies to the
935 office or to a type I center within the State University System
936 established to study mitigation, as directed by the office, for
937 the purposes of developing, maintaining, and updating a public
938 model for hurricane loss projections. The loss data and
939 associated exposure data provided shall be in writing.
940 (2) The office may not use the public model for hurricane
941 loss projection referred to in subsection (1) for any purpose
942 under s. 627.062 or s. 627.351 until the model has been
943 submitted to the Florida Commission on Hurricane Loss Projection
944 Methodology for review under s. 627.0628 and the commission has
945 found the model to be accurate and reliable pursuant to the same
946 process and standards as the commission uses for the review of
947 other hurricane loss projection models.
948 Section 9. Subsection (6) of section 627.351, Florida
949 Statutes, is amended to read:

950 627.351 Insurance risk apportionment plans.--
951 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--
952 (a)1.a. The Legislature finds that actual and threatened
953 catastrophic losses to property in this state from hurricanes
954 have caused insurers to be unwilling or unable to provide
955 property insurance coverage to the extent sought and needed. It
956 is in the public interest and a public purpose to assist in
957 ensuring ~~assuring~~ that homestead property in the state is
958 insured so as to facilitate the remediation, reconstruction, and
959 replacement of damaged or destroyed property in order to reduce
960 or avoid the negative effects otherwise resulting to the public
961 health, safety, and welfare; to the economy of the state; and to
962 the revenues of the state and local governments needed to
963 provide for the public welfare. It is necessary, therefore, to
964 provide property insurance to applicants who are in good faith
965 entitled to procure insurance through the voluntary market but
966 are unable to do so. The Legislature intends by this subsection
967 that property insurance be provided and that it continues, as
968 long as necessary, through an entity organized to achieve
969 efficiencies and economies, while providing service to
970 policyholders, applicants, and agents that is no less than the
971 quality generally provided in the voluntary market, all toward
972 the achievement of the foregoing public purposes. Because it is
973 essential for the corporation to have the maximum financial
974 resources to pay claims following a catastrophic hurricane, it
975 is the intent of the Legislature that the income of the
976 corporation be exempt from federal income taxation and that

977 interest on the debt obligations issued by the corporation be
978 exempt from federal income taxation.
979 b. The Legislature finds and declares that:
980 (I) The commitment of the state, as expressed in sub-
981 subparagraph a., to providing a means of ensuring the
982 availability of property insurance through a residual market
983 mechanism is hereby reaffirmed.
984 (II) Despite legislative efforts to ensure that the
985 residual market for property insurance is self-supporting to the
986 greatest reasonable extent, residual market policyholders are to
987 some degree subsidized by the general public through assessments
988 on owners of property insured in the voluntary market and their
989 insurers and through the potential use of general revenues of
990 the state to eliminate or reduce residual market deficits.
991 (III) The degree of such subsidy is a matter of public
992 policy. It is the intent of the Legislature to better control
993 the subsidy through at least the following means:
994 (A) Restructuring the residual market mechanism to provide
995 separate treatment of homestead and nonhomestead properties,
996 with the intent of continuing to provide an insurance program
997 with limited subsidies for homestead properties while providing
998 a nonsubsidized insurance program for nonhomestead properties.
999 (B) Redefining the concept of rate adequacy in the
1000 subsidized residual market with the intent of ensuring a rate
1001 structure that will enable the subsidized residual market to be
1002 self-supporting except in the event of hurricane losses of a
1003 legislatively specified magnitude. It is the intent of the
1004 Legislature that the funding of the subsidized residual market

1005 be structured to be self-supporting up to the point of its 100-
1006 year probable maximum loss and that the funding be structured to
1007 make reliance on assessments or other sources of public funding
1008 necessary only in the event of a 100-year probable maximum loss
1009 or larger loss.
1010 2. The Residential Property and Casualty Joint
1011 Underwriting Association originally created by this statute
1012 shall be known, as of July 1, 2002, as the Citizens Property
1013 Insurance Corporation. The corporation shall provide insurance
1014 for homesteaded residential property and may provide insurance
1015 for residential and commercial property, for applicants who are
1016 in good faith entitled, but are unable, to procure insurance
1017 through the voluntary market. The corporation shall operate
1018 pursuant to a plan of operation approved by order of the office.
1019 The plan is subject to continuous review by the office. The
1020 office may, by order, withdraw approval of all or part of a plan
1021 if the office determines that conditions have changed since
1022 approval was granted and that the purposes of the plan require
1023 changes in the plan. For the purposes of this subsection,
1024 residential coverage includes both personal lines residential
1025 coverage, which consists of the type of coverage provided by
1026 homeowner's, mobile home owner's, dwelling, tenant's,
1027 condominium unit owner's, and similar policies, and commercial
1028 lines residential coverage, which consists of the type of
1029 coverage provided by condominium association, apartment
1030 building, and similar policies.
1031 3. It is the intent of the Legislature that policyholders,
1032 applicants, and agents of the corporation receive service and

1033 treatment of the highest possible level but never less than that
1034 generally provided in the voluntary market. It also is intended
1035 that the corporation be held to service standards no less than
1036 those applied to insurers in the voluntary market by the office
1037 with respect to responsiveness, timeliness, customer courtesy,
1038 and overall dealings with policyholders, applicants, or agents
1039 of the corporation.
1040 (b)1. All insurers authorized to write one or more subject
1041 lines of business in this state are subject to assessment by the
1042 corporation and, for the purposes of this subsection, are
1043 referred to collectively as "assessable insurers." Insurers
1044 writing one or more subject lines of business in this state
1045 pursuant to part VIII of chapter 626 are not assessable
1046 insurers, but insureds who procure one or more subject lines of
1047 business in this state pursuant to part VIII of chapter 626 are
1048 subject to assessment by the corporation and are referred to
1049 collectively as "assessable insureds." An authorized insurer's
1050 assessment liability shall begin on the first day of the
1051 calendar year following the year in which the insurer was issued
1052 a certificate of authority to transact insurance for subject
1053 lines of business in this state and shall terminate 1 year after
1054 the end of the first calendar year during which the insurer no
1055 longer holds a certificate of authority to transact insurance
1056 for subject lines of business in this state.
1057 2.a. All revenues, assets, liabilities, losses, and
1058 expenses of the corporation shall be divided into <u>four</u> ~~three~~
1059 separate accounts as follows:
1060 <u>(I) Three separate homestead accounts that may provide</u>

1061 coverage only for homestead properties. The term "homestead
1062 property" means a residential property that has been granted a
1063 homestead exemption under chapter 196. The term also includes a
1064 property that is qualified for such exemption but has not
1065 applied for the exemption as of the date of issuance of the
1066 policy, provided the policyholder obtains the exemption within 1
1067 year after initial issuance of the policy. The term also
1068 includes an owner-occupied mobile or manufactured home as
1069 defined in s. 320.01 permanently affixed to real property
1070 regardless of whether the owner of the mobile or manufactured
1071 home is also the owner of the land on which the mobile or
1072 manufactured home is permanently affixed. However, the term does
1073 not include a mobile home that is being held for display by a
1074 licensed mobile home dealer or a licensed mobile home
1075 manufacturer and is not owner-occupied. For the purposes of this
1076 sub-sub-subparagraph, the term "homestead property" also
1077 includes property covered by tenant's insurance and commercial
1078 lines residential policies. The accounts providing coverage only
1079 for homestead properties are:
1080 (A) ~~(I)~~ A personal lines account for personal residential
1081 policies issued by the corporation or issued by the Residential
1082 Property and Casualty Joint Underwriting Association and renewed
1083 by the corporation that provide comprehensive, multiperil
1084 coverage on risks that are not located in areas eligible for
1085 coverage in the Florida Windstorm Underwriting Association as
1086 those areas were defined on January 1, 2002, and for such
1087 policies that do not provide coverage for the peril of wind on
1088 risks that are located in such areas;

1089 (B) ~~(II)~~ A commercial lines account for commercial
1090 residential policies issued by the corporation or issued by the
1091 Residential Property and Casualty Joint Underwriting Association
1092 and renewed by the corporation that provide coverage for basic
1093 property perils on risks that are not located in areas eligible
1094 for coverage in the Florida Windstorm Underwriting Association
1095 as those areas were defined on January 1, 2002, and for such
1096 policies that do not provide coverage for the peril of wind on
1097 risks that are located in such areas; and
1098 (C) ~~(III)~~ A high-risk account for personal residential
1099 policies and commercial residential ~~and commercial~~
1100 ~~nonresidential~~ property policies issued by the corporation or
1101 transferred to the corporation that provide coverage for the
1102 peril of wind on risks that are located in areas eligible for
1103 coverage in the Florida Windstorm Underwriting Association as
1104 those areas were defined on January 1, 2002. The high-risk
1105 account must also include quota share primary insurance under
1106 subparagraph (c)2. The area eligible for coverage under the
1107 high-risk account also includes the area within Port Canaveral,
1108 which is bordered on the south by the City of Cape Canaveral,
1109 bordered on the west by the Banana River, and bordered on the
1110 north by Federal Government property. The office may remove
1111 territory from the area eligible for wind-only and quota share
1112 coverage if, after a public hearing, the office finds that
1113 authorized insurers in the voluntary market are willing and able
1114 to write sufficient amounts of personal and commercial
1115 residential coverage for all perils in the territory, including
1116 coverage for the peril of wind, such that risks covered by wind-

1117 only policies in the removed territory could be issued a policy
1118 by the corporation in either the personal lines or commercial
1119 lines account without a significant increase in the
1120 corporation's probable maximum loss in such account. Removal of
1121 territory from the area eligible for wind-only or quota share
1122 coverage does not alter the assignment of wind coverage written
1123 in such areas to the high-risk account.
1124 (II)(A) A separate nonhomestead account for all properties
1125 that otherwise meet all of the criteria for eligibility for
1126 coverage within one of the three homestead accounts described in
1127 sub-sub-subparagraph (I) but that do not meet the definition of
1128 homestead property specified in sub-sub-subparagraph (I). The
1129 nonhomestead account shall provide the same types of coverage as
1130 are provided by the three homestead accounts, including wind-
1131 only coverage in the high-risk account area. In order to be
1132 eligible for coverage in the nonhomestead account, at the
1133 initial issuance of the policy and at renewal the property owner
1134 shall provide the corporation with a sworn affidavit stating
1135 that the property has been rejected for coverage by at least
1136 three authorized insurers and at least three surplus lines
1137 insurers.
1138 (B) An authorized insurer may provide coverage to a
1139 nonhomestead property owner on an individual risk rate basis.
1140 Rates and forms of an authorized insurer for nonhomestead
1141 properties are not subject to ss. 627.062 and 627.0629, except
1142 s. 627.0629(2)(b). Such rates and forms are subject to all other
1143 applicable provisions of this code and rules adopted under this
1144 code. During the course of an insurer's market conduct

1145 examination, the office may review the rate for any nonhomestead
1146 property to determine if such rate is inadequate or unfairly
1147 discriminatory. Rates on nonhomestead property may be found
1148 inadequate by the office if they are clearly insufficient,
1149 together with the investment income attributable to the insurer,
1150 to sustain projected losses and expenses in the class of
1151 business to which such rates apply. Rates on nonhomestead
1152 property may also be found inadequate as to the premium charged
1153 to a risk or group of risks if discounts or credits are allowed
1154 that exceed a reasonable reflection of expense savings and
1155 reasonably expected loss experience from the risk or group of
1156 risks. Rates on nonhomestead property may be found to be
1157 unfairly discriminatory as to a risk or group of risks by the
1158 office if the application of premium discounts, credits, or
1159 surcharges among such risks does not bear a reasonable
1160 relationship to the expected loss and expense experience among
1161 the various risks. A rating plan, including discounts, credits,
1162 or surcharges on nonhomestead property, may also be found to be
1163 unfairly discriminatory if the plan fails to clearly and
1164 equitably reflect consideration of the policyholder's
1165 participation in a risk management program adjusted pursuant to
1166 s. 627.0625. The office may order an insurer to discontinue
1167 using a rate for new policies or upon renewal of a policy if the
1168 office finds the rate to be inadequate or unfairly
1169 discriminatory. Insurers shall maintain records and
1170 documentation relating to rates and forms subject to this sub-
1171 sub-sub-subparagraph for a period of at least 5 years after the
1172 effective date of the policy.

1173 b. The three separate homestead accounts must be
1174 maintained as long as financing obligations entered into by the
1175 Florida Windstorm Underwriting Association or Residential
1176 Property and Casualty Joint Underwriting Association are
1177 outstanding, in accordance with the terms of the corresponding
1178 financing documents. When the financing obligations are no
1179 longer outstanding, in accordance with the terms of the
1180 corresponding financing documents, the corporation may use a
1181 single homestead account for all revenues, assets, liabilities,
1182 losses, and expenses of the corporation. All revenues, assets,
1183 liabilities, losses, and expenses attributable to the
1184 nonhomestead account shall be maintained separately.
1185 c. Creditors of the Residential Property and Casualty
1186 Joint Underwriting Association shall have a claim against, and
1187 recourse to, the accounts referred to in sub-sub-sub-
1188 subparagraphs ~~sub-sub-subparagraphs~~ a.(I)(A) and (B)~~(II)~~ and
1189 shall have no claim against, or recourse to, the account
1190 referred to in sub-sub-sub-subparagraph ~~sub-sub-subparagraph~~
1191 a.(I)(C)~~(III)~~. Creditors of the Florida Windstorm Underwriting
1192 Association shall have a claim against, and recourse to, the
1193 account referred to in sub-sub-sub-subparagraph ~~sub-sub-~~
1194 ~~subparagraph~~ a.(I)(C)~~(III)~~ and shall have no claim against, or
1195 recourse to, the accounts referred to in sub-sub-sub-
1196 subparagraphs ~~sub-sub-subparagraphs~~ a.(I)(A) and (B)~~(II)~~.
1197 d. Revenues, assets, liabilities, losses, and expenses not
1198 attributable to particular accounts shall be prorated among the
1199 accounts.

1200 e. The Legislature finds that the revenues of the
1201 corporation are revenues that are necessary to meet the
1202 requirements set forth in documents authorizing the issuance of
1203 bonds under this subsection.
1204 f. No part of the income of the corporation may inure to
1205 the benefit of any private person.
1206 3. With respect to a deficit in any of the homestead
1207 accounts ~~an account~~:
1208 a. When the deficit incurred in a particular calendar year
1209 is not greater than 10 percent of the aggregate statewide direct
1210 written premium for the subject lines of business for the prior
1211 calendar year, the entire deficit shall be recovered through
1212 regular assessments of assessable insurers under paragraph (g)
1213 and assessable insureds.
1214 b. When the deficit incurred in a particular calendar year
1215 exceeds 10 percent of the aggregate statewide direct written
1216 premium for the subject lines of business for the prior calendar
1217 year, the corporation shall levy regular assessments on
1218 assessable insurers under paragraph (g) and on assessable
1219 insureds in an amount equal to the greater of 10 percent of the
1220 deficit or 10 percent of the aggregate statewide direct written
1221 premium for the subject lines of business for the prior calendar
1222 year. Any remaining deficit shall be recovered through emergency
1223 assessments under sub-subparagraph d.
1224 c. Each assessable insurer's share of the amount being
1225 assessed under sub-subparagraph a. or sub-subparagraph b. shall
1226 be in the proportion that the assessable insurer's direct
1227 written premium for the subject lines of business for the year

1228 preceding the year in which the deficit is incurred ~~assessment~~
1229 bears to the aggregate statewide direct written premium for the
1230 subject lines of business for that year. The assessment
1231 percentage applicable to each assessable insured is the ratio of
1232 the amount being assessed under sub-subparagraph a. or sub-
1233 subparagraph b. to the aggregate statewide direct written
1234 premium for the subject lines of business for the prior year.
1235 Assessments levied by the corporation on assessable insurers
1236 under sub-subparagraphs a. and b. shall be paid as required by
1237 the corporation's plan of operation and paragraph (g).
1238 Notwithstanding any other provision in this subsection, the
1239 aggregate amount of a regular assessment levied in connection
1240 with a deficit incurred in a particular calendar year shall be
1241 reduced by the aggregate amount of the Citizens Property
1242 Insurance Corporation policyholder surcharge imposed under
1243 subparagraph (c)10. Assessments levied by the corporation on
1244 assessable insureds under sub-subparagraphs a. and b. shall be
1245 collected by the surplus lines agent at the time the surplus
1246 lines agent collects the surplus lines tax required by s.
1247 626.932 and shall be paid to the Florida Surplus Lines Service
1248 Office at the time the surplus lines agent pays the surplus
1249 lines tax to the Florida Surplus Lines Service Office. Upon
1250 receipt of regular assessments from surplus lines agents, the
1251 Florida Surplus Lines Service Office shall transfer the
1252 assessments directly to the corporation as determined by the
1253 corporation.
1254 d. Upon a determination by the board of governors that a
1255 deficit in an account exceeds the amount that will be recovered

1256 through regular assessments under sub-subparagraph a. or sub-
1257 subparagraph b., the board shall levy, after verification by the
1258 office, emergency assessments, for as many years as necessary to
1259 cover the deficits, to be collected by assessable insurers and
1260 the corporation and collected from assessable insureds upon
1261 issuance or renewal of policies for subject lines of business,
1262 excluding National Flood Insurance policies. The amount of the
1263 emergency assessment collected in a particular year shall be a
1264 uniform percentage of that year's direct written premium for
1265 subject lines of business and all accounts of the corporation,
1266 excluding National Flood Insurance Program policy premiums, as
1267 annually determined by the board and verified by the office. The
1268 office shall verify the arithmetic calculations involved in the
1269 board's determination within 30 days after receipt of the
1270 information on which the determination was based.
1271 Notwithstanding any other provision of law, the corporation and
1272 each assessable insurer that writes subject lines of business
1273 shall collect emergency assessments from its policyholders
1274 without such obligation being affected by any credit,
1275 limitation, exemption, or deferment. Emergency assessments
1276 levied by the corporation on assessable insureds shall be
1277 collected by the surplus lines agent at the time the surplus
1278 lines agent collects the surplus lines tax required by s.
1279 626.932 and shall be paid to the Florida Surplus Lines Service
1280 Office at the time the surplus lines agent pays the surplus
1281 lines tax to the Florida Surplus Lines Service Office. The
1282 emergency assessments so collected shall be transferred directly
1283 to the corporation on a periodic basis as determined by the

1284 corporation and shall be held by the corporation solely in the
1285 applicable account. The aggregate amount of emergency
1286 assessments levied for an account under this sub-subparagraph in
1287 any calendar year may not exceed the greater of 10 percent of
1288 the amount needed to cover the original deficit, plus interest,
1289 fees, commissions, required reserves, and other costs associated
1290 with financing of the original deficit, or 10 percent of the
1291 aggregate statewide direct written premium for subject lines of
1292 business and for all accounts of the corporation for the prior
1293 year, plus interest, fees, commissions, required reserves, and
1294 other costs associated with financing the original deficit.
1295 e. The corporation may pledge the proceeds of assessments,
1296 projected recoveries from the Florida Hurricane Catastrophe
1297 Fund, other insurance and reinsurance recoverables, Citizens
1298 policyholder ~~market equalization~~ surcharges and other
1299 surcharges, and other funds available to the corporation as the
1300 source of revenue for and to secure bonds issued under paragraph
1301 (g), bonds or other indebtedness issued under subparagraph
1302 (c)3., or lines of credit or other financing mechanisms issued
1303 or created under this subsection, or to retire any other debt
1304 incurred as a result of deficits or events giving rise to
1305 deficits, or in any other way that the board determines will
1306 efficiently recover such deficits. The purpose of the lines of
1307 credit or other financing mechanisms is to provide additional
1308 resources to assist the corporation in covering claims and
1309 expenses attributable to a catastrophe. As used in this
1310 subsection, the term "assessments" includes regular assessments
1311 under sub-subparagraph a., sub-subparagraph b., or subparagraph

1312 (g)1. and emergency assessments under sub-subparagraph d.
1313 Emergency assessments collected under sub-subparagraph d. are
1314 not part of an insurer's rates, are not premium, and are not
1315 subject to premium tax, fees, or commissions; however, failure
1316 to pay the emergency assessment shall be treated as failure to
1317 pay premium. The emergency assessments under sub-subparagraph d.
1318 shall continue as long as any bonds issued or other indebtedness
1319 incurred with respect to a deficit for which the assessment was
1320 imposed remain outstanding, unless adequate provision has been
1321 made for the payment of such bonds or other indebtedness
1322 pursuant to the documents governing such bonds or other
1323 indebtedness.
1324 f. As used in this subsection, the term "subject lines of
1325 business" means insurance written by assessable insurers or
1326 procured by assessable insureds on real or personal property, as
1327 defined in s. 624.604, including insurance for fire, industrial
1328 fire, allied lines, farmowners multiperil, homeowners
1329 multiperil, commercial multiperil, and mobile homes, and
1330 including liability coverage on all such insurance, but
1331 excluding inland marine as defined in s. 624.607(3) and
1332 excluding vehicle insurance as defined in s. 624.605(1) other
1333 than insurance on mobile homes used as permanent dwellings.
1334 g. The Florida Surplus Lines Service Office shall
1335 determine annually the aggregate statewide written premium in
1336 subject lines of business procured by assessable insureds and
1337 shall report that information to the corporation in a form and
1338 at a time the corporation specifies to ensure that the

1339 corporation can meet the requirements of this subsection and the
1340 corporation's financing obligations.
1341 h. The Florida Surplus Lines Service Office shall verify
1342 the proper application by surplus lines agents of assessment
1343 percentages for regular assessments and emergency assessments
1344 levied under this subparagraph on assessable insureds and shall
1345 assist the corporation in ensuring the accurate, timely
1346 collection and payment of assessments by surplus lines agents as
1347 required by the corporation.
1348 4. With respect to a deficit in the nonhomestead account
1349 or to any cash flow shortfall that the board determines will
1350 create an inability for the nonhomestead account to pay claims
1351 when due:
1352 a. The board shall levy an immediate assessment against
1353 the premium of each nonhomestead account policyholder, expressed
1354 as a uniform percentage of the premium for the policy then in
1355 effect. The maximum amount of such assessment is 100 percent of
1356 such premium.
1357 b. If the assessment under sub-subparagraph a. is
1358 insufficient to enable the account to pay claims and eliminate
1359 the deficit in the account, the board may levy an additional
1360 assessment to be collected at the time of any issuance or
1361 renewal of a nonhomestead account policy during the 1-year
1362 period following the levy of the assessment under sub-
1363 subparagraph a., expressed as a uniform percentage of the
1364 premium for the policy for the forthcoming policy period. The
1365 maximum amount of such assessment is 100 percent of such
1366 premium.

1367 c. If the assessments under sub-subparagraphs a. and b.
1368 are insufficient to enable the account to pay claims and
1369 eliminate the deficit in the account, the board may make a loan
1370 from any of the homestead accounts to the nonhomestead account,
1371 subject to approval by the office and provided that such loan
1372 does not impair the financial status of any of the homestead
1373 accounts.
1374 5. A policyholder in a nonhomestead account who has not
1375 paid a deficit assessment levied by the corporation shall be
1376 ineligible for coverage by a surplus lines insurer or authorized
1377 insurer.
1378 (c) The plan of operation of the corporation:
1379 1. Must provide for adoption of residential property and
1380 casualty insurance policy forms, rates, and underwriting rules
1381 and commercial residential and nonresidential property insurance
1382 forms, rates, and underwriting rules which ~~forms~~ must be
1383 approved by the office prior to use. The corporation shall adopt
1384 the following policy forms:
1385 a. Standard personal lines policy forms that are
1386 comprehensive multiperil policies providing full coverage of a
1387 residential property equivalent to the coverage provided in the
1388 private insurance market under an HO-3, HO-4, or HO-6 policy.
1389 b. Basic personal lines policy forms that are policies
1390 similar to an HO-8 policy or a dwelling fire policy that provide
1391 coverage meeting the requirements of the secondary mortgage
1392 market, but which coverage is more limited than the coverage
1393 under a standard policy.

1394 c. Commercial lines residential policy forms that are
1395 generally similar to the basic perils of full coverage
1396 obtainable for commercial residential structures in the admitted
1397 voluntary market.
1398 d. Personal lines and commercial lines residential
1399 property insurance forms that cover the peril of wind only. The
1400 forms are applicable only to residential properties located in
1401 areas eligible for coverage under the high-risk account referred
1402 to in sub-subparagraph (b)2.a.
1403 e. Commercial lines nonresidential property insurance
1404 forms that cover the peril of wind only. The forms are
1405 applicable only to nonresidential properties located in areas
1406 eligible for coverage under the high-risk account referred to in
1407 sub-subparagraph (b)2.a.
1408 f. The corporation may adopt variations of the policy
1409 forms listed in sub-subparagraphs a.-e. that contain more
1410 restrictive coverage.
1411 2.a. Must provide that the corporation adopt a program in
1412 which the corporation and authorized insurers enter into quota
1413 share primary insurance agreements for hurricane coverage, as
1414 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1415 property insurance forms for eligible risks which cover the
1416 peril of wind only. As used in this subsection, the term:
1417 (I) "Quota share primary insurance" means an arrangement
1418 in which the primary hurricane coverage of an eligible risk is
1419 provided in specified percentages by the corporation and an
1420 authorized insurer. The corporation and authorized insurer are
1421 each solely responsible for a specified percentage of hurricane

1422 coverage of an eligible risk as set forth in a quota share
1423 primary insurance agreement between the corporation and an
1424 authorized insurer and the insurance contract. The
1425 responsibility of the corporation or authorized insurer to pay
1426 its specified percentage of hurricane losses of an eligible
1427 risk, as set forth in the quota share primary insurance
1428 agreement, may not be altered by the inability of the other
1429 party to the agreement to pay its specified percentage of
1430 hurricane losses. Eligible risks that are provided hurricane
1431 coverage through a quota share primary insurance arrangement
1432 must be provided policy forms that set forth the obligations of
1433 the corporation and authorized insurer under the arrangement,
1434 clearly specify the percentages of quota share primary insurance
1435 provided by the corporation and authorized insurer, and
1436 conspicuously and clearly state that neither the authorized
1437 insurer nor the corporation may be held responsible beyond its
1438 specified percentage of coverage of hurricane losses.
1439 (II) "Eligible risks" means personal lines residential and
1440 commercial lines residential risks that meet the underwriting
1441 criteria of the corporation and are located in areas that were
1442 eligible for coverage by the Florida Windstorm Underwriting
1443 Association on January 1, 2002.
1444 b. The corporation may enter into quota share primary
1445 insurance agreements with authorized insurers at corporation
1446 coverage levels of 90 percent and 50 percent.
1447 c. If the corporation determines that additional coverage
1448 levels are necessary to maximize participation in quota share
1449 primary insurance agreements by authorized insurers, the

1450 corporation may establish additional coverage levels. However,
1451 the corporation's quota share primary insurance coverage level
1452 may not exceed 90 percent.
1453 d. Any quota share primary insurance agreement entered
1454 into between an authorized insurer and the corporation must
1455 provide for a uniform specified percentage of coverage of
1456 hurricane losses, by county or territory as set forth by the
1457 corporation board, for all eligible risks of the authorized
1458 insurer covered under the quota share primary insurance
1459 agreement.
1460 e. Any quota share primary insurance agreement entered
1461 into between an authorized insurer and the corporation is
1462 subject to review and approval by the office. However, such
1463 agreement shall be authorized only as to insurance contracts
1464 entered into between an authorized insurer and an insured who is
1465 already insured by the corporation for wind coverage.
1466 f. For all eligible risks covered under quota share
1467 primary insurance agreements, the exposure and coverage levels
1468 for both the corporation and authorized insurers shall be
1469 reported by the corporation to the Florida Hurricane Catastrophe
1470 Fund. For all policies of eligible risks covered under quota
1471 share primary insurance agreements, the corporation and the
1472 authorized insurer shall maintain complete and accurate records
1473 for the purpose of exposure and loss reimbursement audits as
1474 required by Florida Hurricane Catastrophe Fund rules. The
1475 corporation and the authorized insurer shall each maintain
1476 duplicate copies of policy declaration pages and supporting
1477 claims documents.

1478 g. The corporation board shall establish in its plan of
1479 operation standards for quota share agreements which ensure that
1480 there is no discriminatory application among insurers as to the
1481 terms of quota share agreements, pricing of quota share
1482 agreements, incentive provisions if any, and consideration paid
1483 for servicing policies or adjusting claims.
1484 h. The quota share primary insurance agreement between the
1485 corporation and an authorized insurer must set forth the
1486 specific terms under which coverage is provided, including, but
1487 not limited to, the sale and servicing of policies issued under
1488 the agreement by the insurance agent of the authorized insurer
1489 producing the business, the reporting of information concerning
1490 eligible risks, the payment of premium to the corporation, and
1491 arrangements for the adjustment and payment of hurricane claims
1492 incurred on eligible risks by the claims adjuster and personnel
1493 of the authorized insurer. Entering into a quota sharing
1494 insurance agreement between the corporation and an authorized
1495 insurer shall be voluntary and at the discretion of the
1496 authorized insurer.
1497 3. May provide that the corporation may employ or
1498 otherwise contract with individuals or other entities to provide
1499 administrative or professional services that may be appropriate
1500 to effectuate the plan. The corporation shall have the power to
1501 borrow funds, by issuing bonds or by incurring other
1502 indebtedness, and shall have other powers reasonably necessary
1503 to effectuate the requirements of this subsection, including,
1504 without limitation, the power to issue bonds and incur other
1505 indebtedness in order to refinance outstanding bonds or other

1506 indebtedness. The corporation may, but is not required to, seek
1507 judicial validation of its bonds or other indebtedness under
1508 chapter 75. The corporation may issue bonds or incur other
1509 indebtedness, or have bonds issued on its behalf by a unit of
1510 local government pursuant to subparagraph (g)2., in the absence
1511 of a hurricane or other weather-related event, upon a
1512 determination by the corporation, subject to approval by the
1513 office, that such action would enable it to efficiently meet the
1514 financial obligations of the corporation and that such
1515 financings are reasonably necessary to effectuate the
1516 requirements of this subsection. The corporation is authorized
1517 to take all actions needed to facilitate tax-free status for any
1518 such bonds or indebtedness, including formation of trusts or
1519 other affiliated entities. The corporation shall have the
1520 authority to pledge assessments, projected recoveries from the
1521 Florida Hurricane Catastrophe Fund, other reinsurance
1522 recoverables, market equalization and other surcharges, and
1523 other funds available to the corporation as security for bonds
1524 or other indebtedness. In recognition of s. 10, Art. I of the
1525 State Constitution, prohibiting the impairment of obligations of
1526 contracts, it is the intent of the Legislature that no action be
1527 taken whose purpose is to impair any bond indenture or financing
1528 agreement or any revenue source committed by contract to such
1529 bond or other indebtedness.
1530 4.a. Must require that the corporation operate subject to
1531 the supervision and approval of a board of governors consisting
1532 of 8 individuals who are residents of this state, from different
1533 geographical areas of this state. The Governor, the Chief

1534 Financial Officer, the President of the Senate, and the Speaker
1535 of the House of Representatives shall each appoint two members
1536 of the board, effective August 1, 2005. At least one of the two
1537 members appointed by each appointing officer must have
1538 demonstrated expertise in insurance. The Chief Financial Officer
1539 shall designate one of the appointees as chair. All board
1540 members serve at the pleasure of the appointing officer. All
1541 board members, including the chair, must be appointed to serve
1542 for 3-year terms beginning annually on a date designated by the
1543 plan. Any board vacancy shall be filled for the unexpired term
1544 by the appointing officer. The Chief Financial Officer shall
1545 appoint a technical advisory group to provide information and
1546 advice to the board of governors in connection with the board's
1547 duties under this subsection. The executive director and senior
1548 managers of the corporation shall be engaged by the board, as
1549 recommended by the Chief Financial Officer, and serve at the
1550 pleasure of the board. The executive director is responsible for
1551 employing other staff as the corporation may require, subject to
1552 review and concurrence by the board and the Chief Financial
1553 Officer.
1554 b. The board shall create a Market Accountability Advisory
1555 Committee to assist the corporation in developing awareness of
1556 its rates and its customer and agent service levels in
1557 relationship to the voluntary market insurers writing similar
1558 coverage. The members of the advisory committee shall consist of
1559 the following 11 persons, one of whom must be elected chair by
1560 the members of the committee: four representatives, one
1561 appointed by the Florida Association of Insurance Agents, one by

1562 the Florida Association of Insurance and Financial Advisors, one
1563 by the Professional Insurance Agents of Florida, and one by the
1564 Latin American Association of Insurance Agencies; three
1565 representatives appointed by the insurers with the three highest
1566 voluntary market share of residential property insurance
1567 business in the state; one representative from the Office of
1568 Insurance Regulation; one consumer appointed by the board who is
1569 insured by the corporation at the time of appointment to the
1570 committee; one representative appointed by the Florida
1571 Association of Realtors; and one representative appointed by the
1572 Florida Bankers Association. All members must serve for 3-year
1573 terms and may serve for consecutive terms. The committee shall
1574 report to the corporation at each board meeting on insurance
1575 market issues which may include rates and rate competition with
1576 the voluntary market; service, including policy issuance, claims
1577 processing, and general responsiveness to policyholders,
1578 applicants, and agents; and matters relating to depopulation.
1579 5. Must provide a procedure for determining the
1580 eligibility of a risk for coverage, as follows:
1581 a. Subject to the provisions of s. 627.3517, with respect
1582 to personal lines residential risks, if the risk is offered
1583 coverage from an authorized insurer at the insurer's approved
1584 rate under either a standard policy including wind coverage or,
1585 if consistent with the insurer's underwriting rules as filed
1586 with the office, a basic policy including wind coverage, the
1587 risk is not eligible for any policy issued by the corporation.
1588 If the risk is not able to obtain any such offer, the risk is
1589 eligible for either a standard policy including wind coverage or

1590 a basic policy including wind coverage issued by the
1591 corporation; however, if the risk could not be insured under a
1592 standard policy including wind coverage regardless of market
1593 conditions, the risk shall be eligible for a basic policy
1594 including wind coverage unless rejected under subparagraph 8.
1595 The corporation shall determine the type of policy to be
1596 provided on the basis of objective standards specified in the
1597 underwriting manual and based on generally accepted underwriting
1598 practices.
1599 (I) If the risk accepts an offer of coverage through the
1600 market assistance plan or an offer of coverage through a
1601 mechanism established by the corporation before a policy is
1602 issued to the risk by the corporation or during the first 30
1603 days of coverage by the corporation, and the producing agent who
1604 submitted the application to the plan or to the corporation is
1605 not currently appointed by the insurer, the insurer shall:
1606 (A) Pay to the producing agent of record of the policy,
1607 for the first year, an amount that is the greater of the
1608 insurer's usual and customary commission for the type of policy
1609 written or a fee equal to the usual and customary commission of
1610 the corporation; or
1611 (B) Offer to allow the producing agent of record of the
1612 policy to continue servicing the policy for a period of not less
1613 than 1 year and offer to pay the agent the greater of the
1614 insurer's or the corporation's usual and customary commission
1615 for the type of policy written.
1616

1617 If the producing agent is unwilling or unable to accept
1618 appointment, the new insurer shall pay the agent in accordance
1619 with sub-sub-sub-subparagraph (A).
1620 (II) When the corporation enters into a contractual
1621 agreement for a take-out plan, the producing agent of record of
1622 the corporation policy is entitled to retain any unearned
1623 commission on the policy, and the insurer shall:
1624 (A) Pay to the producing agent of record of the
1625 corporation policy, for the first year, an amount that is the
1626 greater of the insurer's usual and customary commission for the
1627 type of policy written or a fee equal to the usual and customary
1628 commission of the corporation; or
1629 (B) Offer to allow the producing agent of record of the
1630 corporation policy to continue servicing the policy for a period
1631 of not less than 1 year and offer to pay the agent the greater
1632 of the insurer's or the corporation's usual and customary
1633 commission for the type of policy written.
1634
1635 If the producing agent is unwilling or unable to accept
1636 appointment, the new insurer shall pay the agent in accordance
1637 with sub-sub-sub-subparagraph (A).
1638 b. With respect to commercial lines residential risks, if
1639 the risk is offered coverage under a policy including wind
1640 coverage from an authorized insurer at its approved rate, the
1641 risk is not eligible for any policy issued by the corporation.
1642 If the risk is not able to obtain any such offer, the risk is
1643 eligible for a policy including wind coverage issued by the
1644 corporation.

1645 (I) If the risk accepts an offer of coverage through the
1646 market assistance plan or an offer of coverage through a
1647 mechanism established by the corporation before a policy is
1648 issued to the risk by the corporation or during the first 30
1649 days of coverage by the corporation, and the producing agent who
1650 submitted the application to the plan or the corporation is not
1651 currently appointed by the insurer, the insurer shall:
1652 (A) Pay to the producing agent of record of the policy,
1653 for the first year, an amount that is the greater of the
1654 insurer's usual and customary commission for the type of policy
1655 written or a fee equal to the usual and customary commission of
1656 the corporation; or
1657 (B) Offer to allow the producing agent of record of the
1658 policy to continue servicing the policy for a period of not less
1659 than 1 year and offer to pay the agent the greater of the
1660 insurer's or the corporation's usual and customary commission
1661 for the type of policy written.
1662
1663 If the producing agent is unwilling or unable to accept
1664 appointment, the new insurer shall pay the agent in accordance
1665 with sub-sub-sub-subparagraph (A).
1666 (II) When the corporation enters into a contractual
1667 agreement for a take-out plan, the producing agent of record of
1668 the corporation policy is entitled to retain any unearned
1669 commission on the policy, and the insurer shall:
1670 (A) Pay to the producing agent of record of the
1671 corporation policy, for the first year, an amount that is the
1672 greater of the insurer's usual and customary commission for the

1673 type of policy written or a fee equal to the usual and customary
1674 commission of the corporation; or
1675 (B) Offer to allow the producing agent of record of the
1676 corporation policy to continue servicing the policy for a period
1677 of not less than 1 year and offer to pay the agent the greater
1678 of the insurer's or the corporation's usual and customary
1679 commission for the type of policy written.
1680
1681 If the producing agent is unwilling or unable to accept
1682 appointment, the new insurer shall pay the agent in accordance
1683 with sub-sub-sub-subparagraph (A).
1684 c. To preserve existing incentives for carriers to write
1685 dwellings in the voluntary market and not in the corporation,
1686 the corporation shall continue to offer authorized insurers,
1687 including insurers writing dwellings valued at $1 million or
1688 more, the same voluntary writing credits that were available on
1689 January 1, 2006, to carriers writing wind coverage for dwellings
1690 in the areas eligible for coverage in the high-risk account.
1691 d. With respect to personal lines residential risks, if
1692 the risk is a dwelling with an insured value of $1 million or
1693 more, or if the risk is one that is excluded from the coverage
1694 to be provided by the condominium association under s.
1695 718.111(11)(b) and that is insured by the condominium unit owner
1696 for a combined dwelling and contents replacement cost of $1
1697 million or more, the risk is not eligible for any policy issued
1698 by the corporation. Rates and forms for personal lines
1699 residential risks not eligible for coverage by the corporation
1700 specified by this sub-subparagraph are not subject to ss.

1701 627.062 and 627.0629. Such rates and forms are subject to all
1702 other applicable provisions of this code and rules adopted under
1703 this code. During the course of an insurer's market conduct
1704 examination, the office may review the rate for any risk to
1705 which the provisions of this sub-subparagraph are applicable to
1706 determine if such rate is inadequate or unfairly discriminatory.
1707 Rates on personal lines residential risks not eligible for
1708 coverage by the corporation may be found inadequate by the
1709 office if they are clearly insufficient, together with the
1710 investment income attributable to such risks, to sustain
1711 projected losses and expenses in the class of business to which
1712 such rates apply. Rates on personal lines residential risks not
1713 eligible for coverage by the corporation may also be found
1714 inadequate as to the premium charged to a risk or group of risks
1715 if discounts or credits are allowed that exceed a reasonable
1716 reflection of expense savings and reasonably expected loss
1717 experience from the risk or group of risks. Rates on personal
1718 lines residential risks not eligible for coverage by the
1719 corporation may be found to be unfairly discriminatory as to a
1720 risk or group of risks by the office if the application of
1721 premium discounts, credits, or surcharges among such risks does
1722 not bear a reasonable relationship to the expected loss and
1723 expense experience among the various risks. A rating plan,
1724 including discounts, credits, or surcharges on personal lines
1725 residential risks not eligible for coverage by the corporation
1726 may also be found to be unfairly discriminatory if the plan
1727 fails to clearly and equitably reflect consideration of the
1728 policyholder's participation in a risk management program

1729 adjusted pursuant to s. 627.0625. The office may order an
1730 insurer to discontinue using a rate for new policies or upon
1731 renewal of a policy if the office finds the rate to be
1732 inadequate or unfairly discriminatory. Insurers must maintain
1733 records and documentation relating to rates and forms subject to
1734 this sub-subparagraph for a period of at least 5 years after the
1735 effective date of the policy.
1736 e. For policies subject to nonrenewal as a result of the
1737 risk being no longer eligible for coverage pursuant to sub-
1738 subparagraph d., the corporation shall, directly or through the
1739 market assistance plan, make information from confidential
1740 underwriting and claims files of policyholders available only to
1741 licensed general lines agents who register with the corporation
1742 to receive such information according to the following
1743 procedures:
1744 (I) By August 1, 2006, the corporation shall provide
1745 policyholders who are not eligible for renewal pursuant to sub-
1746 subparagraph d. the opportunity to request in writing, within 30
1747 days after the notification is sent, that information from their
1748 confidential underwriting and claims files not be released to
1749 licensed general lines agents registered pursuant to sub-sub-
1750 subparagraph e.(II);
1751 (II) By August 1, 2006, the corporation shall make
1752 available to licensed general lines agents the registration
1753 procedures to be used to obtain confidential information from
1754 underwriting and claims files for policies not eligible for
1755 renewal pursuant to sub-subparagraph d. As a condition of
1756 registration, the corporation shall require the licensed general

1757 lines agent to attest that the agent has the experience and
1758 relationships with authorized or surplus lines carriers to
1759 attempt to offer replacement coverage for policies not eligible
1760 for renewal pursuant to sub-subparagraph d.
1761 (III) By September 1, 2006, the corporation shall make
1762 available through a secured website to licensed general lines
1763 agents registered pursuant to sub-sub-subparagraph e.(II)
1764 application, rating, loss history, mitigation, and policy type
1765 information relating to all policies not eligible for renewal
1766 pursuant to sub-subparagraph d. and for which the policyholder
1767 has not requested the corporation withhold such information
1768 pursuant to sub-sub-subparagraph e.(I). The licensed general
1769 lines agent registered pursuant to sub-sub-subparagraph e.(II)
1770 may use such information to contact and assist the policyholder
1771 in securing replacement policies and the agent may disclose to
1772 the policyholder such information was obtained from the
1773 corporation.
1774 f. With respect to nonhomestead property, eligibility must
1775 be determined in accordance with sub-sub-sub-subparagraph
1776 (b)2.a.(II)(A).
1777 6. Must include rules for classifications of risks and
1778 rates therefor.
1779 7. Must provide that if premium and investment income for
1780 an account attributable to a particular calendar year are in
1781 excess of projected losses and expenses for the account
1782 attributable to that year, such excess shall be held in surplus
1783 in the account. Such surplus shall be available to defray
1784 deficits in that account as to future years and shall be used

1785 for that purpose prior to assessing assessable insurers and
1786 assessable insureds as to any calendar year.
1787 8. Must provide objective criteria and procedures to be
1788 uniformly applied for all applicants in determining whether an
1789 individual risk is so hazardous as to be uninsurable. In making
1790 this determination and in establishing the criteria and
1791 procedures, the following shall be considered:
1792 a. Whether the likelihood of a loss for the individual
1793 risk is substantially higher than for other risks of the same
1794 class; and
1795 b. Whether the uncertainty associated with the individual
1796 risk is such that an appropriate premium cannot be determined.
1797
1798 The acceptance or rejection of a risk by the corporation shall
1799 be construed as the private placement of insurance, and the
1800 provisions of chapter 120 shall not apply.
1801 9. Must provide that the corporation shall make its best
1802 efforts to procure catastrophe reinsurance at reasonable rates,
1803 to cover its projected 100-year probable maximum loss <u>in the</u>
1804 <u>homestead accounts</u> as determined by the board of governors.
1805 10. Must provide that in the event of regular deficit
1806 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
1807 (b)3.b., in the personal lines <u>homestead</u> account, the commercial
1808 lines residential <u>homestead</u> account, or the high-risk <u>homestead</u>
1809 account, the corporation shall levy upon corporation <u>homestead</u>
1810 <u>account</u> policyholders in its next rate filing, or by a separate
1811 rate filing solely for this purpose, a <u>Citizens policyholder</u>
1812 ~~market equalization~~ surcharge arising from a regular assessment

1813 in such account in a percentage equal to the total amount of
1814 such regular assessments divided by the aggregate statewide
1815 direct written premium for subject lines of business for the
1816 ~~prior calendar~~ year preceding the year in which the deficit to
1817 which the regular assessment related is incurred. Citizens
1818 policyholder ~~Market equalization~~ surcharges under this
1819 subparagraph are not considered premium and are not subject to
1820 commissions, fees, or premium taxes; however, failure to pay the
1821 Citizens policyholder ~~a market equalization~~ surcharge shall be
1822 treated as failure to pay premium. Notwithstanding any other
1823 provision of this section, for purposes of the Citizens
1824 policyholder surcharges to be levied pursuant to this
1825 subparagraph, the total amount of the regular assessment to
1826 which such Citizens policyholder surcharge relates shall be
1827 determined as set forth in sub-subparagraphs (b)3.a., b., and c.
1828 11. The policies issued by the corporation must provide
1829 that, if the corporation or the market assistance plan obtains
1830 an offer from an authorized insurer to cover the risk at its
1831 approved rates, the risk is no longer eligible for renewal
1832 through the corporation.
1833 12. Corporation policies and applications must include a
1834 notice that the corporation policy could, under this section, be
1835 replaced with a policy issued by an authorized insurer that does
1836 not provide coverage identical to the coverage provided by the
1837 corporation or an insurer writing coverage pursuant to part VIII
1838 of chapter 626. The notice shall also specify that acceptance of
1839 corporation coverage creates a conclusive presumption that the
1840 applicant or policyholder is aware of this potential.

1841 13. May establish, subject to approval by the office,
1842 different eligibility requirements and operational procedures
1843 for any line or type of coverage for any specified county or
1844 area if the board determines that such changes to the
1845 eligibility requirements and operational procedures are
1846 justified due to the voluntary market being sufficiently stable
1847 and competitive in such area or for such line or type of
1848 coverage and that consumers who, in good faith, are unable to
1849 obtain insurance through the voluntary market through ordinary
1850 methods would continue to have access to coverage from the
1851 corporation. When coverage is sought in connection with a real
1852 property transfer, such requirements and procedures shall not
1853 provide for an effective date of coverage later than the date of
1854 the closing of the transfer as established by the transferor,
1855 the transferee, and, if applicable, the lender.
1856 14. Must provide that, with respect to the high-risk
1857 homestead account, any assessable insurer with a surplus as to
1858 policyholders of $25 million or less writing 25 percent or more
1859 of its total countrywide property insurance premiums in this
1860 state may petition the office, within the first 90 days of each
1861 calendar year, to qualify as a limited apportionment company. In
1862 no event shall a limited apportionment company be required to
1863 participate in the portion of any assessment, within the high-
1864 risk account, pursuant to sub-subparagraph (b)3.a. or sub-
1865 subparagraph (b)3.b. in the aggregate which exceeds $50 million
1866 after payment of available high-risk account funds in any
1867 calendar year. However, a limited apportionment company shall
1868 collect from its policyholders any emergency assessment imposed

1869 under sub-subparagraph (b)3.d. The plan shall provide that, if
1870 the office determines that any regular assessment will result in
1871 an impairment of the surplus of a limited apportionment company,
1872 the office may direct that all or part of such assessment be
1873 deferred as provided in subparagraph (g)4. However, there shall
1874 be no limitation or deferment of an emergency assessment to be
1875 collected from policyholders under sub-subparagraph (b)3.d.
1876 15. Must provide that the corporation appoint as its
1877 licensed agents only those agents who also hold an appointment
1878 as defined in s. 626.015(3) with an insurer who at the time of
1879 the agent's initial appointment by the corporation is authorized
1880 to write and is actually writing personal lines residential
1881 property coverage, commercial residential property coverage, or
1882 commercial nonresidential property coverage within the state.
1883 16. Must provide that the hurricane deductible for any
1884 property in the nonhomestead account with an insured value of
1885 $250,000 or more must be at least 5 percent of the insured
1886 value.
1887 17. Must provide that the application for coverage under
1888 the nonhomestead account and the declaration page of each
1889 nonhomestead account policy include a statement in boldface 12-
1890 point type specifying that public subsidies do not support the
1891 corporation's coverage of nonhomestead property; that if the
1892 nonhomestead account of the corporation sustains a deficit or is
1893 unable to pay claims, the nonhomestead policyholder shall be
1894 subject to an immediate assessment in an amount up to 100
1895 percent of the premium and a further assessment upon renewal of
1896 the policy; and that the applicant or policyholder may wish to

1897 seek alternative coverage from an authorized insurer or surplus
1898 lines insurer that will not be subject to such potential
1899 assessments.
1900 18. Must provide that the application for coverage under
1901 any of the homestead accounts and the declaration page of each
1902 homestead account policy include a statement in boldface 12-
1903 point type specifying that a false declaration of homestead
1904 status for purposes of obtaining coverage in any of the
1905 homestead accounts may constitute the offense of insurance
1906 fraud, as prohibited and punishable as a felony under s.
1907 817.234.
1908 19. Must limit coverage on mobile or manufactured homes
1909 built prior to 1994 to actual cash value of the dwelling rather
1910 than replacement costs of the dwelling.
1911 20. Must provide for purchase by the corporation of
1912 catastrophe reinsurance on the nonhomestead account in amounts
1913 sufficient, together with coverage under the Florida Hurricane
1914 Catastrophe Fund, to cover the account's 250-year probable
1915 maximum loss.
1916 (d)1.a. It is the intent of the Legislature that the rates
1917 for coverage provided by the corporation be actuarially sound
1918 and not competitive with approved rates charged in the admitted
1919 voluntary market, so that the corporation functions as a
1920 residual market mechanism to provide insurance only when the
1921 insurance cannot be procured in the voluntary market. Rates
1922 shall include a residual market risk load that reflects the
1923 concentrated exposure of the corporation and the impact of
1924 adverse selection as well as an appropriate catastrophe loading

1925 factor that reflects the actual catastrophic exposure of the
1926 corporation.
1927 b. It is the intent of the Legislature to reaffirm the
1928 requirement of rate adequacy in the residual market. Recognizing
1929 that rates may comply with the intent expressed in sub-
1930 subparagraph a. and yet be inadequate and recognizing the public
1931 need to limit subsidies within the residual market, it is the
1932 further intent of the Legislature to establish statutory
1933 standards for rate adequacy. Such standards are intended to
1934 supplement the standard specified in s. 627.062(2)(e)3.,
1935 providing that rates are inadequate if they are clearly
1936 insufficient to sustain projected losses and expenses in the
1937 class of business to which they apply.
1938 2. For each county, the average rates of the corporation
1939 for each line of business for personal lines residential
1940 policies excluding rates for wind-only policies shall be no
1941 lower than the average rates charged by the insurer that had the
1942 highest average rate in that county among the 20 insurers with
1943 the greatest total direct written premium in the state for that
1944 line of business in the preceding year, except that with respect
1945 to mobile home coverages, the average rates of the corporation
1946 shall be no lower than the average rates charged by the insurer
1947 that had the highest average rate in that county among the 5
1948 insurers with the greatest total written premium for mobile home
1949 owner's policies in the state in the preceding year.
1950 3. Rates for personal lines residential wind-only policies
1951 must be actuarially sound and not competitive with approved
1952 rates charged by authorized insurers. Corporation rate manuals

1953 shall include a rate surcharge for seasonal occupancy. To ensure
1954 that personal lines residential wind-only rates are not
1955 competitive with approved rates charged by authorized insurers,
1956 the corporation, in conjunction with the office, shall develop a
1957 wind-only ratemaking methodology, which methodology shall be
1958 contained in each rate filing made by the corporation with the
1959 office. If the office determines that the wind-only rates or
1960 rating factors filed by the corporation fail to comply with the
1961 wind-only ratemaking methodology provided for in this
1962 subsection, it shall so notify the corporation and require the
1963 corporation to amend its rates or rating factors to come into
1964 compliance within 90 days of notice from the office.
1965 4. For the purposes of establishing a pilot program to
1966 evaluate issues relating to the availability and affordability
1967 of insurance in an area where historically there has been little
1968 market competition, the provisions of subparagraph 2. do not
1969 apply to coverage provided by the corporation in Monroe County
1970 if the office determines that a reasonable degree of competition
1971 does not exist for personal lines residential policies. The
1972 provisions of subparagraph 3. do not apply to coverage provided
1973 by the corporation in Monroe County if the office determines
1974 that a reasonable degree of competition does not exist for
1975 personal lines residential policies in the area of that county
1976 which is eligible for wind-only coverage. In this county, the
1977 rates for personal lines residential coverage shall be
1978 actuarially sound and not excessive, inadequate, or unfairly
1979 discriminatory and are subject to the other provisions of the
1980 paragraph and s. 627.062. The commission shall adopt rules

1981 establishing the criteria for determining whether a reasonable
1982 degree of competition exists for personal lines residential
1983 policies in Monroe County. By March 1, 2006, the office shall
1984 submit a report to the Legislature providing an evaluation of
1985 the implementation of the pilot program affecting Monroe County.
1986 5. Rates for commercial lines coverage shall not be
1987 subject to the requirements of subparagraph 2., but shall be
1988 subject to all other requirements of this paragraph and s.
1989 627.062.
1990 6.a. Nothing in this paragraph shall require or allow the
1991 corporation to adopt a rate that is inadequate under s. 627.062
1992 or under sub-subparagraph b. or sub-subparagraph c.
1993 b. With respect to rates for coverage in any homestead
1994 account, a rate is deemed inadequate if the rate is not
1995 sufficient to generate, by means of cash flow, procurement of
1996 coverage under the Florida Hurricane Catastrophe Fund;
1997 procurement of reinsurance; and investment income, moneys
1998 sufficient to pay all claims and expenses reasonably expected to
1999 result from a 100-year probable maximum loss event without
2000 resort to any regular or emergency assessments, long-term debt,
2001 state revenues, or other funding sources that reflect any
2002 subsidy from persons or entities other than corporation
2003 homestead accounts policyholders.
2004 c. With respect to rates for coverage in the nonhomestead
2005 account, a rate is deemed inadequate if the rate is not
2006 sufficient to generate, by means of cash flow, procurement of
2007 coverage under the Florida Hurricane Catastrophe Fund;
2008 procurement of reinsurance; and investment income, moneys

2009 sufficient to pay all claims and expenses reasonably expected to
2010 result from a 250-year probable maximum loss event without
2011 resort to any assessments, debt, state revenues, or other
2012 funding sources that reflect any subsidy from persons or
2013 entities other than corporation nonhomestead account
2014 policyholders.
2015 7. The corporation shall certify to the office at least
2016 twice annually that its personal lines rates comply with the
2017 requirements of subparagraphs 1., ~~and~~ 2., and 6. If any
2018 adjustment in the rates or rating factors of the corporation is
2019 necessary to ensure such compliance, the corporation shall make
2020 and implement such adjustments and file its revised rates and
2021 rating factors with the office. If the office thereafter
2022 determines that the revised rates and rating factors fail to
2023 comply with the provisions of subparagraphs 1. and 2., it shall
2024 notify the corporation and require the corporation to amend its
2025 rates or rating factors in conjunction with its next rate
2026 filing. The office must notify the corporation by electronic
2027 means of any rate filing it approves for any insurer among the
2028 insurers referred to in subparagraph 2.
2029 8. In addition to the rates otherwise determined pursuant
2030 to this paragraph, the corporation shall impose and collect an
2031 amount equal to the premium tax provided for in s. 624.509 to
2032 augment the financial resources of the corporation.
2033 ~~9.a. To assist the corporation in developing additional~~
2034 ~~ratemaking methods to assure compliance with subparagraphs 1.~~
2035 ~~and 4., the corporation shall appoint a rate methodology panel~~
2036 ~~consisting of one person recommended by the Florida Association~~

2037 ~~of Insurance Agents, one person recommended by the Professional~~
2038 ~~Insurance Agents of Florida, one person recommended by the~~
2039 ~~Florida Association of Insurance and Financial Advisors, one~~
2040 ~~person recommended by the insurer with the highest voluntary~~
2041 ~~market share of residential property insurance business in the~~
2042 ~~state, one person recommended by the insurer with the second-~~
2043 ~~highest voluntary market share of residential property insurance~~
2044 ~~business in the state, one person recommended by an insurer~~
2045 ~~writing commercial residential property insurance in this state,~~
2046 ~~one person recommended by the Office of Insurance Regulation,~~
2047 ~~and one board member designated by the board chairman, who shall~~
2048 ~~serve as chairman of the panel.~~
2049 ~~b. By January 1, 2004, the rate methodology panel shall~~
2050 ~~provide a report to the corporation of its findings and~~
2051 ~~recommendations for the use of additional ratemaking methods and~~
2052 ~~procedures, including the use of a rate equalization surcharge~~
2053 ~~in an amount sufficient to assure that the total cost of~~
2054 ~~coverage for policyholders or applicants to the corporation is~~
2055 ~~sufficient to comply with subparagraph 1.~~
2056 ~~c. Within 30 days after such report, the corporation shall~~
2057 ~~present to the President of the Senate, the Speaker of the House~~
2058 ~~of Representatives, the minority party leaders of each house of~~
2059 ~~the Legislature, and the chairs of the standing committees of~~
2060 ~~each house of the Legislature having jurisdiction of insurance~~
2061 ~~issues, a plan for implementing the additional ratemaking~~
2062 ~~methods and an outline of any legislation needed to facilitate~~
2063 ~~use of the new methods.~~

2064 ~~d. The plan must include a provision that producer~~
2065 ~~commissions paid by the corporation shall not be calculated in~~
2066 ~~such a manner as to include any rate equalization surcharge.~~
2067 ~~However, without regard to the plan to be developed or its~~
2068 ~~implementation, producer commissions paid by the corporation for~~
2069 ~~each account, other than the quota share primary program, shall~~
2070 ~~remain fixed as to percentage, effective rate, calculation, and~~
2071 ~~payment method until January 1, 2004.~~
2072 9.~~10.~~ ~~By January 1, 2004,~~ The corporation shall provide
2073 ~~develop~~ a notice to policyholders or applicants that the rates
2074 of Citizens Property Insurance Corporation are intended to be
2075 higher than the rates of any admitted carrier and providing
2076 other information the corporation deems necessary to assist
2077 consumers in finding other voluntary admitted insurers willing
2078 to insure their property.
2079 (e) If coverage in an account is deactivated pursuant to
2080 paragraph (f), coverage through the corporation shall be
2081 reactivated by order of the office only under one of the
2082 following circumstances:
2083 1. If the market assistance plan receives a minimum of 100
2084 applications for coverage within a 3-month period, or 200
2085 applications for coverage within a 1-year period or less for
2086 residential coverage, unless the market assistance plan provides
2087 a quotation from admitted carriers at their filed rates for at
2088 least 90 percent of such applicants. Any market assistance plan
2089 application that is rejected because an individual risk is so
2090 hazardous as to be uninsurable using the criteria specified in
2091 subparagraph (c)8. shall not be included in the minimum

2092 percentage calculation provided herein. In the event that there
2093 is a legal or administrative challenge to a determination by the
2094 office that the conditions of this subparagraph have been met
2095 for eligibility for coverage in the corporation, any eligible
2096 risk may obtain coverage during the pendency of such challenge.
2097 2. In response to a state of emergency declared by the
2098 Governor under s. 252.36, the office may activate coverage by
2099 order for the period of the emergency upon a finding by the
2100 office that the emergency significantly affects the availability
2101 of residential property insurance.
2102 (f)1. The corporation shall file with the office quarterly
2103 statements of financial condition, an annual statement of
2104 financial condition, and audited financial statements in the
2105 manner prescribed by law. In addition, the corporation shall
2106 report to the office monthly on the types, premium, exposure,
2107 and distribution by county of its policies in force, and shall
2108 submit other reports as the office requires to carry out its
2109 oversight of the corporation.
2110 2. The activities of the corporation shall be reviewed at
2111 least annually by the office to determine whether coverage shall
2112 be deactivated in an account on the basis that the conditions
2113 giving rise to its activation no longer exist.
2114 (g)1. The corporation shall certify to the office its
2115 needs for annual assessments as to a particular calendar year,
2116 and for any interim assessments that it deems to be necessary to
2117 sustain operations as to a particular year pending the receipt
2118 of annual assessments. Upon verification, the office shall
2119 approve such certification, and the corporation shall levy such

2120 annual or interim assessments. Such assessments shall be
2121 prorated as provided in paragraph (b). The corporation shall
2122 take all reasonable and prudent steps necessary to collect the
2123 amount of assessment due from each assessable insurer,
2124 including, if prudent, filing suit to collect such assessment.
2125 If the corporation is unable to collect an assessment from any
2126 assessable insurer, the uncollected assessments shall be levied
2127 as an additional assessment against the assessable insurers and
2128 any assessable insurer required to pay an additional assessment
2129 as a result of such failure to pay shall have a cause of action
2130 against such nonpaying assessable insurer. Assessments shall be
2131 included as an appropriate factor in the making of rates. The
2132 failure of a surplus lines agent to collect and remit any
2133 regular or emergency assessment levied by the corporation is
2134 considered to be a violation of s. 626.936 and subjects the
2135 surplus lines agent to the penalties provided in that section.
2136 2. The governing body of any unit of local government, any
2137 residents of which are insured by the corporation, may issue
2138 bonds as defined in s. 125.013 or s. 166.101 from time to time
2139 to fund an assistance program, in conjunction with the
2140 corporation, for the purpose of defraying deficits of the
2141 corporation. In order to avoid needless and indiscriminate
2142 proliferation, duplication, and fragmentation of such assistance
2143 programs, any unit of local government, any residents of which
2144 are insured by the corporation, may provide for the payment of
2145 losses, regardless of whether or not the losses occurred within
2146 or outside of the territorial jurisdiction of the local
2147 government. Revenue bonds under this subparagraph may not be

2148 issued until validated pursuant to chapter 75, unless a state of
2149 emergency is declared by executive order or proclamation of the
2150 Governor pursuant to s. 252.36 making such findings as are
2151 necessary to determine that it is in the best interests of, and
2152 necessary for, the protection of the public health, safety, and
2153 general welfare of residents of this state and declaring it an
2154 essential public purpose to permit certain municipalities or
2155 counties to issue such bonds as will permit relief to claimants
2156 and policyholders of the corporation. Any such unit of local
2157 government may enter into such contracts with the corporation
2158 and with any other entity created pursuant to this subsection as
2159 are necessary to carry out this paragraph. Any bonds issued
2160 under this subparagraph shall be payable from and secured by
2161 moneys received by the corporation from emergency assessments
2162 under sub-subparagraph (b)3.d., and assigned and pledged to or
2163 on behalf of the unit of local government for the benefit of the
2164 holders of such bonds. The funds, credit, property, and taxing
2165 power of the state or of the unit of local government shall not
2166 be pledged for the payment of such bonds. If any of the bonds
2167 remain unsold 60 days after issuance, the office shall require
2168 all insurers subject to assessment to purchase the bonds, which
2169 shall be treated as admitted assets; each insurer shall be
2170 required to purchase that percentage of the unsold portion of
2171 the bond issue that equals the insurer's relative share of
2172 assessment liability under this subsection. An insurer shall not
2173 be required to purchase the bonds to the extent that the office
2174 determines that the purchase would endanger or impair the
2175 solvency of the insurer.

2176 3.a. The corporation shall adopt one or more programs
2177 subject to approval by the office for the reduction of both new
2178 and renewal writings in the corporation. Any program the
2179 corporation adopts for the payment of bonuses to an insurer for
2180 each risk the insurer removes from the corporation shall comply
2181 with s. 627.3511(2) and may not exceed the amount referenced in
2182 s. 627.3511(2) for each risk removed. The corporation may
2183 consider any prudent and not unfairly discriminatory approach to
2184 reducing corporation writings, and may adopt a credit against
2185 assessment liability or other liability that provides an
2186 incentive for insurers to take risks out of the corporation and
2187 to keep risks out of the corporation by maintaining or
2188 increasing voluntary writings in counties or areas in which
2189 corporation risks are highly concentrated and a program to
2190 provide a formula under which an insurer voluntarily taking
2191 risks out of the corporation by maintaining or increasing
2192 voluntary writings will be relieved wholly or partially from
2193 assessments under sub-subparagraphs (b)3.a. and b. When the
2194 corporation enters into a contractual agreement for a take-out
2195 plan, the producing agent of record of the corporation policy is
2196 entitled to retain any unearned commission on such policy, and
2197 the insurer shall either:
2198 (I) Pay to the producing agent of record of the policy,
2199 for the first year, an amount which is the greater of the
2200 insurer's usual and customary commission for the type of policy
2201 written or a policy fee equal to the usual and customary
2202 commission of the corporation; or

2203 (II) Offer to allow the producing agent of record of the
2204 policy to continue servicing the policy for a period of not less
2205 than 1 year and offer to pay the agent the insurer's usual and
2206 customary commission for the type of policy written. If the
2207 producing agent is unwilling or unable to accept appointment by
2208 the new insurer, the new insurer shall pay the agent in
2209 accordance with sub-sub-subparagraph (I).
2210 b. Any credit or exemption from regular assessments
2211 adopted under this subparagraph shall last no longer than the 3
2212 years following the cancellation or expiration of the policy by
2213 the corporation. With the approval of the office, the board may
2214 extend such credits for an additional year if the insurer
2215 guarantees an additional year of renewability for all policies
2216 removed from the corporation, or for 2 additional years if the
2217 insurer guarantees 2 additional years of renewability for all
2218 policies so removed.
2219 c. There shall be no credit, limitation, exemption, or
2220 deferment from emergency assessments to be collected from
2221 policyholders pursuant to sub-subparagraph (b)3.d.
2222 4. The plan shall provide for the deferment, in whole or
2223 in part, of the assessment of an assessable insurer, other than
2224 an emergency assessment collected from policyholders pursuant to
2225 sub-subparagraph (b)3.d., if the office finds that payment of
2226 the assessment would endanger or impair the solvency of the
2227 insurer. In the event an assessment against an assessable
2228 insurer is deferred in whole or in part, the amount by which
2229 such assessment is deferred may be assessed against the other

2230 assessable insurers in a manner consistent with the basis for
2231 assessments set forth in paragraph (b).
2232 (h) Nothing in this subsection shall be construed to
2233 preclude the issuance of residential property insurance coverage
2234 pursuant to part VIII of chapter 626.
2235 (i) There shall be no liability on the part of, and no
2236 cause of action of any nature shall arise against, any
2237 assessable insurer or its agents or employees, the corporation
2238 or its agents or employees, members of the board of governors or
2239 their respective designees at a board meeting, corporation
2240 committee members, or the office or its representatives, for any
2241 action taken by them in the performance of their duties or
2242 responsibilities under this subsection. Such immunity does not
2243 apply to:
2244 1. Any of the foregoing persons or entities for any
2245 willful tort;
2246 2. The corporation or its producing agents for breach of
2247 any contract or agreement pertaining to insurance coverage;
2248 3. The corporation with respect to issuance or payment of
2249 debt; or
2250 4. Any assessable insurer with respect to any action to
2251 enforce an assessable insurer's obligations to the corporation
2252 under this subsection.
2253 (j) For the purposes of s. 199.183(1), the corporation
2254 shall be considered a political subdivision of the state and
2255 shall be exempt from the corporate income tax. The premiums,
2256 assessments, investment income, and other revenue of the
2257 corporation are funds received for providing property insurance

2258 coverage as required by this subsection, paying claims for
2259 Florida citizens insured by the corporation, securing and
2260 repaying debt obligations issued by the corporation, and
2261 conducting all other activities of the corporation, and shall
2262 not be considered taxes, fees, licenses, or charges for services
2263 imposed by the Legislature on individuals, businesses, or
2264 agencies outside state government. Bonds and other debt
2265 obligations issued by or on behalf of the corporation are not to
2266 be considered "state bonds" within the meaning of s. 215.58(8).
2267 The corporation is not subject to the procurement provisions of
2268 chapter 287, and policies and decisions of the corporation
2269 relating to incurring debt, levying of assessments and the sale,
2270 issuance, continuation, terms and claims under corporation
2271 policies, and all services relating thereto, are not subject to
2272 the provisions of chapter 120. The corporation is not required
2273 to obtain or to hold a certificate of authority issued by the
2274 office, nor is it required to participate as a member insurer of
2275 the Florida Insurance Guaranty Association. However, the
2276 corporation is required to pay, in the same manner as an
2277 authorized insurer, assessments pledged by the Florida Insurance
2278 Guaranty Association to secure bonds issued or other
2279 indebtedness incurred to pay covered claims arising from insurer
2280 insolvencies caused by, or proximately related to, hurricane
2281 losses. It is the intent of the Legislature that the tax
2282 exemptions provided in this paragraph will augment the financial
2283 resources of the corporation to better enable the corporation to
2284 fulfill its public purposes. Any bonds issued by the
2285 corporation, their transfer, and the income therefrom, including

2286 any profit made on the sale thereof, shall at all times be free
2287 from taxation of every kind by the state and any political
2288 subdivision or local unit or other instrumentality thereof;
2289 however, this exemption does not apply to any tax imposed by
2290 chapter 220 on interest, income, or profits on debt obligations
2291 owned by corporations other than the corporation.
2292 (k) Upon a determination by the office that the conditions
2293 giving rise to the establishment and activation of the
2294 corporation no longer exist, the corporation is dissolved. Upon
2295 dissolution, the assets of the corporation shall be applied
2296 first to pay all debts, liabilities, and obligations of the
2297 corporation, including the establishment of reasonable reserves
2298 for any contingent liabilities or obligations, and all remaining
2299 assets of the corporation shall become property of the state and
2300 shall be deposited in the Florida Hurricane Catastrophe Fund.
2301 However, no dissolution shall take effect as long as the
2302 corporation has bonds or other financial obligations outstanding
2303 unless adequate provision has been made for the payment of the
2304 bonds or other financial obligations pursuant to the documents
2305 authorizing the issuance of the bonds or other financial
2306 obligations.
2307 (l)1. Effective July 1, 2002, policies of the Residential
2308 Property and Casualty Joint Underwriting Association shall
2309 become policies of the corporation. All obligations, rights,
2310 assets and liabilities of the Residential Property and Casualty
2311 Joint Underwriting Association, including bonds, note and debt
2312 obligations, and the financing documents pertaining to them
2313 become those of the corporation as of July 1, 2002. The

2314 corporation is not required to issue endorsements or
2315 certificates of assumption to insureds during the remaining term
2316 of in-force transferred policies.
2317 2. Effective July 1, 2002, policies of the Florida
2318 Windstorm Underwriting Association are transferred to the
2319 corporation and shall become policies of the corporation. All
2320 obligations, rights, assets, and liabilities of the Florida
2321 Windstorm Underwriting Association, including bonds, note and
2322 debt obligations, and the financing documents pertaining to them
2323 are transferred to and assumed by the corporation on July 1,
2324 2002. The corporation is not required to issue endorsement or
2325 certificates of assumption to insureds during the remaining term
2326 of in-force transferred policies.
2327 3. The Florida Windstorm Underwriting Association and the
2328 Residential Property and Casualty Joint Underwriting Association
2329 shall take all actions as may be proper to further evidence the
2330 transfers and shall provide the documents and instruments of
2331 further assurance as may reasonably be requested by the
2332 corporation for that purpose. The corporation shall execute
2333 assumptions and instruments as the trustees or other parties to
2334 the financing documents of the Florida Windstorm Underwriting
2335 Association or the Residential Property and Casualty Joint
2336 Underwriting Association may reasonably request to further
2337 evidence the transfers and assumptions, which transfers and
2338 assumptions, however, are effective on the date provided under
2339 this paragraph whether or not, and regardless of the date on
2340 which, the assumptions or instruments are executed by the
2341 corporation. Subject to the relevant financing documents

2342 pertaining to their outstanding bonds, notes, indebtedness, or
2343 other financing obligations, the moneys, investments,
2344 receivables, choses in action, and other intangibles of the
2345 Florida Windstorm Underwriting Association shall be credited to
2346 the high-risk account of the corporation, and those of the
2347 personal lines residential coverage account and the commercial
2348 lines residential coverage account of the Residential Property
2349 and Casualty Joint Underwriting Association shall be credited to
2350 the personal lines account and the commercial lines account,
2351 respectively, of the corporation.
2352 ~~4. Effective July 1, 2002, a new applicant for property~~
2353 ~~insurance coverage who would otherwise have been eligible for~~
2354 ~~coverage in the Florida Windstorm Underwriting Association is~~
2355 ~~eligible for coverage from the corporation as provided in this~~
2356 ~~subsection.~~
2357 4.~~5.~~ The transfer of all policies, obligations, rights,
2358 assets, and liabilities from the Florida Windstorm Underwriting
2359 Association to the corporation and the renaming of the
2360 Residential Property and Casualty Joint Underwriting Association
2361 as the corporation shall in no way affect the coverage with
2362 respect to covered policies as defined in s. 215.555(2)(c)
2363 provided to these entities by the Florida Hurricane Catastrophe
2364 Fund. The coverage provided by the Florida Hurricane Catastrophe
2365 Fund to the Florida Windstorm Underwriting Association based on
2366 its exposures as of June 30, 2002, and each June 30 thereafter
2367 shall be redesignated as coverage for the high-risk account of
2368 the corporation. Notwithstanding any other provision of law, the
2369 coverage provided by the Florida Hurricane Catastrophe Fund to

2370 the Residential Property and Casualty Joint Underwriting
2371 Association based on its exposures as of June 30, 2002, and each
2372 June 30 thereafter shall be transferred to the personal lines
2373 account and the commercial lines account of the corporation.
2374 Notwithstanding any other provision of law, the high-risk
2375 account shall be treated, for all Florida Hurricane Catastrophe
2376 Fund purposes, as if it were a separate participating insurer
2377 with its own exposures, reimbursement premium, and loss
2378 reimbursement. Likewise, the personal lines and commercial lines
2379 accounts shall be viewed together, for all Florida Hurricane
2380 Catastrophe Fund purposes, as if the two accounts were one and
2381 represent a single, separate participating insurer with its own
2382 exposures, reimbursement premium, and loss reimbursement. The
2383 coverage provided by the Florida Hurricane Catastrophe Fund to
2384 the corporation shall constitute and operate as a full transfer
2385 of coverage from the Florida Windstorm Underwriting Association
2386 and Residential Property and Casualty Joint Underwriting to the
2387 corporation.
2388 (m) Notwithstanding any other provision of law:
2389 1. The pledge or sale of, the lien upon, and the security
2390 interest in any rights, revenues, or other assets of the
2391 corporation created or purported to be created pursuant to any
2392 financing documents to secure any bonds or other indebtedness of
2393 the corporation shall be and remain valid and enforceable,
2394 notwithstanding the commencement of and during the continuation
2395 of, and after, any rehabilitation, insolvency, liquidation,
2396 bankruptcy, receivership, conservatorship, reorganization, or

2397 similar proceeding against the corporation under the laws of
2398 this state.
2399 2. No such proceeding shall relieve the corporation of its
2400 obligation, or otherwise affect its ability to perform its
2401 obligation, to continue to collect, or levy and collect,
2402 assessments, market equalization or other surcharges under
2403 subparagraph (c)10., or any other rights, revenues, or other
2404 assets of the corporation pledged pursuant to any financing
2405 documents.
2406 3. Each such pledge or sale of, lien upon, and security
2407 interest in, including the priority of such pledge, lien, or
2408 security interest, any such assessments, market equalization or
2409 other surcharges, or other rights, revenues, or other assets
2410 which are collected, or levied and collected, after the
2411 commencement of and during the pendency of, or after, any such
2412 proceeding shall continue unaffected by such proceeding. As used
2413 in this subsection, the term "financing documents" means any
2414 agreement or agreements, instrument or instruments, or other
2415 document or documents now existing or hereafter created
2416 evidencing any bonds or other indebtedness of the corporation or
2417 pursuant to which any such bonds or other indebtedness has been
2418 or may be issued and pursuant to which any rights, revenues, or
2419 other assets of the corporation are pledged or sold to secure
2420 the repayment of such bonds or indebtedness, together with the
2421 payment of interest on such bonds or such indebtedness, or the
2422 payment of any other obligation or financial product, as defined
2423 in the plan of operation of the corporation related to such
2424 bonds or indebtedness.

2425 4. Any such pledge or sale of assessments, revenues,
2426 contract rights, or other rights or assets of the corporation
2427 shall constitute a lien and security interest, or sale, as the
2428 case may be, that is immediately effective and attaches to such
2429 assessments, revenues, or contract rights or other rights or
2430 assets, whether or not imposed or collected at the time the
2431 pledge or sale is made. Any such pledge or sale is effective,
2432 valid, binding, and enforceable against the corporation or other
2433 entity making such pledge or sale, and valid and binding against
2434 and superior to any competing claims or obligations owed to any
2435 other person or entity, including policyholders in this state,
2436 asserting rights in any such assessments, revenues, or contract
2437 rights or other rights or assets to the extent set forth in and
2438 in accordance with the terms of the pledge or sale contained in
2439 the applicable financing documents, whether or not any such
2440 person or entity has notice of such pledge or sale and without
2441 the need for any physical delivery, recordation, filing, or
2442 other action.
2443 (n)1. The following records of the corporation are
2444 confidential and exempt from the provisions of s. 119.07(1) and
2445 s. 24(a), Art. I of the State Constitution:
2446 a. Underwriting files, except that a policyholder or an
2447 applicant shall have access to his or her own underwriting
2448 files.
2449 b. Claims files, until termination of all litigation and
2450 settlement of all claims arising out of the same incident,
2451 although portions of the claims files may remain exempt, as
2452 otherwise provided by law. Confidential and exempt claims file

2453 records may be released to other governmental agencies upon
2454 written request and demonstration of need; such records held by
2455 the receiving agency remain confidential and exempt as provided
2456 for herein.
2457 c. Records obtained or generated by an internal auditor
2458 pursuant to a routine audit, until the audit is completed, or if
2459 the audit is conducted as part of an investigation, until the
2460 investigation is closed or ceases to be active. An investigation
2461 is considered "active" while the investigation is being
2462 conducted with a reasonable, good faith belief that it could
2463 lead to the filing of administrative, civil, or criminal
2464 proceedings.
2465 d. Matters reasonably encompassed in privileged attorney-
2466 client communications.
2467 e. Proprietary information licensed to the corporation
2468 under contract and the contract provides for the confidentiality
2469 of such proprietary information.
2470 f. All information relating to the medical condition or
2471 medical status of a corporation employee which is not relevant
2472 to the employee's capacity to perform his or her duties, except
2473 as otherwise provided in this paragraph. Information which is
2474 exempt shall include, but is not limited to, information
2475 relating to workers' compensation, insurance benefits, and
2476 retirement or disability benefits.
2477 g. Upon an employee's entrance into the employee
2478 assistance program, a program to assist any employee who has a
2479 behavioral or medical disorder, substance abuse problem, or
2480 emotional difficulty which affects the employee's job

2481 performance, all records relative to that participation shall be
2482 confidential and exempt from the provisions of s. 119.07(1) and
2483 s. 24(a), Art. I of the State Constitution, except as otherwise
2484 provided in s. 112.0455(11).
2485 h. Information relating to negotiations for financing,
2486 reinsurance, depopulation, or contractual services, until the
2487 conclusion of the negotiations.
2488 i. Minutes of closed meetings regarding underwriting
2489 files, and minutes of closed meetings regarding an open claims
2490 file until termination of all litigation and settlement of all
2491 claims with regard to that claim, except that information
2492 otherwise confidential or exempt by law will be redacted.
2493
2494 When an authorized insurer is considering underwriting a risk
2495 insured by the corporation, relevant underwriting files and
2496 confidential claims files may be released to the insurer
2497 provided the insurer agrees in writing, notarized and under
2498 oath, to maintain the confidentiality of such files. When a file
2499 is transferred to an insurer that file is no longer a public
2500 record because it is not held by an agency subject to the
2501 provisions of the public records law. Underwriting files and
2502 confidential claims files may also be released to staff of and
2503 the board of governors of the market assistance plan established
2504 pursuant to s. 627.3515, who must retain the confidentiality of
2505 such files, except such files may be released to authorized
2506 insurers that are considering assuming the risks to which the
2507 files apply, provided the insurer agrees in writing, notarized
2508 and under oath, to maintain the confidentiality of such files.

2509 Finally, the corporation or the board or staff of the market
2510 assistance plan may make the following information obtained from
2511 underwriting files and confidential claims files available to
2512 licensed general lines insurance agents: name, address, and
2513 telephone number of the residential property owner or insured;
2514 location of the risk; rating information; loss history; and
2515 policy type. The receiving licensed general lines insurance
2516 agent must retain the confidentiality of the information
2517 received.
2518 2. Portions of meetings of the corporation are exempt from
2519 the provisions of s. 286.011 and s. 24(b), Art. I of the State
2520 Constitution wherein confidential underwriting files or
2521 confidential open claims files are discussed. All portions of
2522 corporation meetings which are closed to the public shall be
2523 recorded by a court reporter. The court reporter shall record
2524 the times of commencement and termination of the meeting, all
2525 discussion and proceedings, the names of all persons present at
2526 any time, and the names of all persons speaking. No portion of
2527 any closed meeting shall be off the record. Subject to the
2528 provisions hereof and s. 119.07(1)(b)-(d), the court reporter's
2529 notes of any closed meeting shall be retained by the corporation
2530 for a minimum of 5 years. A copy of the transcript, less any
2531 exempt matters, of any closed meeting wherein claims are
2532 discussed shall become public as to individual claims after
2533 settlement of the claim.
2534 (o) It is the intent of the Legislature that the
2535 amendments to this subsection enacted in 2002 should, over time,
2536 reduce the probable maximum windstorm losses in the residual

2537 markets and should reduce the potential assessments to be levied
2538 on property insurers and policyholders statewide. In furtherance
2539 of this intent:
2540 1. The board shall, on or before February 1 of each year,
2541 provide a report to the President of the Senate and the Speaker
2542 of the House of Representatives showing the reduction or
2543 increase in the 100-year probable maximum loss attributable to
2544 wind-only coverages and the quota share program under this
2545 subsection combined, as compared to the benchmark 100-year
2546 probable maximum loss of the Florida Windstorm Underwriting
2547 Association. For purposes of this paragraph, the benchmark 100-
2548 year probable maximum loss of the Florida Windstorm Underwriting
2549 Association shall be the calculation dated February 2001 and
2550 based on November 30, 2000, exposures. In order to ensure
2551 comparability of data, the board shall use the same methods for
2552 calculating its probable maximum loss as were used to calculate
2553 the benchmark probable maximum loss. The reduction or increase
2554 in probable maximum loss shall be calculated without taking into
2555 account the probable maximum loss attributable to the
2556 nonhomestead account.
2557 2. Beginning February 1, 2013 ~~2007~~, if the report under
2558 subparagraph 1. for any year indicates that the 100-year
2559 probable maximum loss attributable to wind-only coverages and
2560 the quota share program combined does not reflect a reduction of
2561 at least 25 percent from the benchmark, the board shall reduce
2562 the boundaries of the high-risk area eligible for wind-only
2563 coverages under this subsection in a manner calculated to reduce

2564 such probable maximum loss to an amount at least 25 percent
2565 below the benchmark.
2566 3. Beginning February 1, 2018 ~~2012~~, if the report under
2567 subparagraph 1. for any year indicates that the 100-year
2568 probable maximum loss attributable to wind-only coverages and
2569 the quota share program combined does not reflect a reduction of
2570 at least 50 percent from the benchmark, the boundaries of the
2571 high-risk area eligible for wind-only coverages under this
2572 subsection shall be reduced by the elimination of any area that
2573 is not seaward of a line 1,000 feet inland from the Intracoastal
2574 Waterway.
2575 (p) In enacting the provisions of this section, the
2576 Legislature recognizes that both the Florida Windstorm
2577 Underwriting Association and the Residential Property and
2578 Casualty Joint Underwriting Association have entered into
2579 financing arrangements that obligate each entity to service its
2580 debts and maintain the capacity to repay funds secured under
2581 these financing arrangements. It is the intent of the
2582 Legislature that nothing in this section be construed to
2583 compromise, diminish, or interfere with the rights of creditors
2584 under such financing arrangements. It is further the intent of
2585 the Legislature to preserve the obligations of the Florida
2586 Windstorm Underwriting Association and Residential Property and
2587 Casualty Joint Underwriting Association with regard to
2588 outstanding financing arrangements, with such obligations
2589 passing entirely and unchanged to the corporation and,
2590 specifically, to the applicable account of the corporation. So
2591 long as any bonds, notes, indebtedness, or other financing

2592 obligations of the Florida Windstorm Underwriting Association or
2593 the Residential Property and Casualty Joint Underwriting
2594 Association are outstanding, under the terms of the financing
2595 documents pertaining to them, the governing board of the
2596 corporation shall have and shall exercise the authority to levy,
2597 charge, collect, and receive all premiums, assessments,
2598 surcharges, charges, revenues, and receipts that the
2599 associations had authority to levy, charge, collect, or receive
2600 under the provisions of subsection (2) and this subsection,
2601 respectively, as they existed on January 1, 2002, to provide
2602 moneys, without exercise of the authority provided by this
2603 subsection, in at least the amounts, and by the times, as would
2604 be provided under those former provisions of subsection (2) or
2605 this subsection, respectively, so that the value, amount, and
2606 collectability of any assets, revenues, or revenue source
2607 pledged or committed to, or any lien thereon securing such
2608 outstanding bonds, notes, indebtedness, or other financing
2609 obligations will not be diminished, impaired, or adversely
2610 affected by the amendments made by this act and to permit
2611 compliance with all provisions of financing documents pertaining
2612 to such bonds, notes, indebtedness, or other financing
2613 obligations, or the security or credit enhancement for them, and
2614 any reference in this subsection to bonds, notes, indebtedness,
2615 financing obligations, or similar obligations, of the
2616 corporation shall include like instruments or contracts of the
2617 Florida Windstorm Underwriting Association and the Residential
2618 Property and Casualty Joint Underwriting Association to the

2619 extent not inconsistent with the provisions of the financing
2620 documents pertaining to them.
2621 (q) The corporation shall not require the securing of
2622 flood insurance as a condition of coverage if the insured or
2623 applicant executes a form approved by the office affirming that
2624 flood insurance is not provided by the corporation and that if
2625 flood insurance is not secured by the applicant or insured in
2626 addition to coverage by the corporation, the risk will not be
2627 covered for flood damage. A corporation policyholder electing
2628 not to secure flood insurance and executing a form as provided
2629 herein making a claim for water damage against the corporation
2630 shall have the burden of proving the damage was not caused by
2631 flooding. Notwithstanding other provisions of this subsection,
2632 the corporation may deny coverage to an applicant or insured who
2633 refuses to execute the form described herein.
2634 (r) A salaried employee of the corporation who performs
2635 policy administration services subsequent to the effectuation of
2636 a corporation policy is not required to be licensed as an agent
2637 under the provisions of s. 626.112.
2638 (s) The transition to homestead and nonhomestead accounts
2639 shall begin on October 1, 2006. A policy issued on or after that
2640 date shall be issued in the applicable homestead account or the
2641 nonhomestead account, based upon whether the property
2642 constitutes homestead property as provided in subparagraph (b)2.
2643 A policy in effect on October 1, 2006, shall be placed in the
2644 applicable homestead account or the nonhomestead account, based
2645 upon whether the property constitutes homestead property as
2646 provided in subparagraph (b)2., upon the first renewal of such

2647 policy after October 1, 2006.
2648 (t) Any employee of the corporation whose position is
2649 managerial, policymaking, or professional in nature and all
2650 members of the corporation's board of governors shall comply
2651 with the Code of Ethics for public officers and employers found
2652 in ss. 112.311-112.326.
2653 (u) An employee of the corporation shall notify the
2654 Division of Insurance Fraud within 48 hours after having
2655 information that would lead a reasonable person to suspect that
2656 fraud may have been committed by any employee of the
2657 corporation.
2658 (v) By February 1, 2007, the corporation shall submit a
2659 report to the President of the Senate, the Speaker of the House
2660 of Representatives, the minority party leaders of the Senate and
2661 the House of Representatives, and the chairs of the standing
2662 committees of the Senate and the House of Representatives having
2663 jurisdiction over matters relating to property and casualty
2664 insurance. In preparing the report, the corporation shall
2665 consult with the Office of Insurance Regulation, the Department
2666 of Financial Services, and any other party the corporation
2667 determines is appropriate. The report shall include findings and
2668 recommendations on the feasibility of requiring authorized
2669 insurers that issue and service personal and commercial
2670 residential policies and commercial nonresidential policies that
2671 provide coverage for basic property perils except for the peril
2672 of wind to issue and service for a fee personal and commercial
2673 residential policies and commercial nonresidential policies
2674 providing coverage for the peril of wind issued by the

2675 corporation. The report shall include:
2676 1. The expense savings to the corporation of issuing and
2677 servicing such policies as determined through a cost benefit
2678 analysis.
2679 2. The expenses and liability to authorized insurers
2680 associated with issuing and servicing such policies.
2681 3. The impact on service to policyholders of the
2682 corporation relating to issuing and servicing such policies.
2683 4. The impact on the producing agent of the corporation of
2684 issuing and servicing such policies.
2685 5. Recommendations as to the amount of the fee that should
2686 be paid to authorized insurers for issuing and servicing such
2687 policies.
2688 6. The impact issuing and servicing such policies will
2689 have on the corporation's number of policies, total insured
2690 value, and probable maximum loss.
2691 (w) There shall be no liability on the part of, and no
2692 cause of action of any nature shall arise against, producing
2693 agents of record or their employees for any action taken by them
2694 in the performance of their duties or responsibilities relating
2695 to the removal of policies from the corporation. Such immunity
2696 only applies to actions that may arise due to differences in
2697 coverage or procedures between any take-out insurer and the
2698 corporation or for insolvency of any take-out insurer.
2699 (x) The Legislature finds that the total area eligible for
2700 the high-risk account of the corporation has a material impact
2701 on the availability of wind coverage from the voluntary admitted
2702 market, deficits of the corporation, assessments to be levied on

2703 property insurers and policyholders statewide, the ability and
2704 willingness of authorized insurers to write wind coverage in the
2705 high-risk areas, the probable maximum windstorm losses of the
2706 corporation, general commerce in coastal areas, and the overall
2707 financial condition of the state. Therefore, in furtherance of
2708 these findings and intent:
2709 1. The High Risk Eligibility Panel is created.
2710 2. The members of the panel shall be appointed as follows:
2711 a. The board shall appoint two board members.
2712 b. The Governor shall appoint one member.
2713 c. The Chief Financial Officer shall appoint one member.
2714 d. The Commissioner of Insurance Regulation shall appoint
2715 a representative of the office to serve as a member.
2716 e. The President of the Senate shall appoint one member.
2717 f. The Speaker of the House of Representatives shall
2718 appoint one member.
2719
2720 Members of the panel must be residents of this state with
2721 insurance expertise. Members shall elect a chair and shall serve
2722 3-year terms each. The panel shall operate independently of any
2723 state agency and shall be administered by the corporation. The
2724 panel shall make an annual report to the President of the Senate
2725 and the Speaker of the House of Representatives on or before
2726 February 1 of each year recommending the areas that should be
2727 eligible for the high-risk account of the corporation. Members
2728 shall not receive compensation and are not entitled to receive
2729 reimbursement for per diem and travel expenses as provided in s.
2730 112.061, except for any panel member who is a state employee.

2731 3. The Legislature's intent provided in subparagraphs
2732 (a)1. and 2. shall provide guidance for the panel to use in the
2733 panel's recommendations to the Legislature required in
2734 subparagraph 1. The panel shall consider the following factors
2735 in fulfilling its responsibilities under this paragraph:
2736 a. The number of commercial risks in a given area that are
2737 unable to find wind coverage from the voluntary admitted market.
2738 b. Reports from members of the mortgage industry
2739 indicating difficulty in finding forced placed policies for
2740 commercial wind coverage.
2741 c. The number of approved excess and surplus lines
2742 carriers certifying an unwillingness to provide commercial wind
2743 coverage similar to that approved for use by the office for the
2744 voluntary admitted market.
2745 d. Other relevant factors.
2746
2747 The office and the corporation shall provide the panel with any
2748 information the panel considers necessary to determine areas
2749 eligible for the high-risk account of the corporation. For the
2750 purpose of making accurate determinations for areas eligible for
2751 the high-risk account of the corporation, the panel may
2752 interview and request and receive information from residents of
2753 this state in areas impacted by this paragraph, including, but
2754 not limited to, insurance agents, insurance companies,
2755 actuaries, and other insurance professionals. Upon request of
2756 the panel, the office may conduct public hearings in areas that
2757 may be impacted by the panel's recommendations.
2758 4. Notwithstanding other provisions of this paragraph, the

2759 panel shall conduct an analysis to determine the areas to be
2760 eligible for the high-risk account of the corporation for any
2761 county that contains an eligible area extending more than 2
2762 miles from the coast, any coastal county that does not have
2763 areas designated as eligible for the high-risk account, and
2764 counties with barrier islands whether or not such islands or
2765 portions of such islands are currently eligible for the high
2766 risk account. The panel shall submit a report, including its
2767 analysis, to the office and to the corporation by November 30,
2768 2006. The report shall specify changes to the areas eligible for
2769 the high-risk account for such affected counties based on its
2770 analysis.
2771 Section 10. Paragraph (b) of subsection (3) of section
2772 627.4035, Florida Statutes, is amended, and subsection (4) is
2773 added to that section, to read:
2774 627.4035 Cash payment of premiums; claims.--
2775 (3) All payments of claims made in this state under any
2776 contract of insurance shall be paid:
2777 (b) If authorized in writing by the recipient or the
2778 recipient's representative, by debit card or any other form of
2779 electronic transfer. Any fees or costs to be charged against the
2780 recipient must be disclosed in writing to the recipient or the
2781 recipient's representative at the time of written authorization.
2782 However, the written authorization requirement may be waived by
2783 the recipient or the recipient's representative if the insurer
2784 verifies the identity of the insured or the insured's recipient
2785 and does not charge a fee for the transaction. If the funds are

2786 misdirected, the insurer would remain liable for the payment of
2787 the claim.
2788 (4) Nothing in this section shall be construed as
2789 prohibiting an insurer from limiting its liability under a
2790 policy or endorsement providing that loss will be adjusted on
2791 the basis of replacement costs to the lesser of:
2792 (a) The limit of liability shown on the policy
2793 declarations page;
2794 (b) The reasonable and necessary cost to repair the
2795 damaged, destroyed, or stolen covered property; or
2796 (c) The reasonable and necessary cost to replace the
2797 damaged, destroyed, or stolen covered property.
2798 Section 11. Subsections (2) and (3) of section 627.7011,
2799 Florida Statutes, are amended, and subsection (6) is added to
2800 that section, to read:
2801 627.7011 Homeowners' policies; offer of replacement cost
2802 coverage and law and ordinance coverage.--
2803 (2) Unless the insurer obtains the policyholder's written
2804 refusal of the policies or endorsements specified in subsection
2805 (1), any policy covering the dwelling is deemed to include the
2806 law and ordinance coverage limited to 25 percent of the dwelling
2807 limit ~~specified in paragraph (1)(b)~~. The rejection or selection
2808 of alternative coverage shall be made on a form approved by the
2809 office. The form shall fully advise the applicant of the nature
2810 of the coverage being rejected. If this form is signed by a
2811 named insured, it will be conclusively presumed that there was
2812 an informed, knowing rejection of the coverage or election of
2813 the alternative coverage on behalf of all insureds. Unless the

2814 policyholder requests in writing the coverage specified in this
2815 section, it need not be provided in or supplemental to any other
2816 policy that renews, insures, extends, changes, supersedes, or
2817 replaces an existing policy when the policyholder has rejected
2818 the coverage specified in this section or has selected
2819 alternative coverage. The insurer must provide such policyholder
2820 with notice of the availability of such coverage in a form
2821 approved by the office at least once every 3 years. The failure
2822 to provide such notice constitutes a violation of this code, but
2823 does not affect the coverage provided under the policy.
2824 (3) In the event of a loss for which a dwelling ~~or~~
2825 ~~personal property~~ is insured on the basis of replacement costs,
2826 the insurer shall pay the replacement cost without reservation
2827 or holdback of any depreciation in value, whether or not the
2828 insured replaces or repairs the dwelling ~~or property~~.
2829 (6) Insurers shall issue separate checks for living
2830 expenses, contents, and casualty proceeds. Checks for living
2831 expenses and contents should be issued directly to the
2832 policyholder.
2833 Section 12. Effective upon this act becoming a law,
2834 section 627.7019, Florida Statutes, is created to read:
2835 627.7019 Standardization of requirements applicable to
2836 insurers after natural disasters.--
2837 (1) The commission shall adopt by rule, pursuant to s.
2838 120.54(1)-(3), standardized requirements that may be applied to
2839 insurers as a consequence of a hurricane or other natural
2840 disaster. The rules shall address the following areas:
2841 (a) Claims reporting requirements.

2842 (b) Grace periods for payment of premiums and performance
2843 of other duties by insureds.
2844 (c) Temporary postponement of cancellations and
2845 nonrenewals.
2846 (2) The rules adopted pursuant to this section shall
2847 require the office to issue an order within 72 hours after the
2848 occurrence of a hurricane or other natural disaster specifying,
2849 by line of insurance, which of the standardized requirements
2850 apply, the geographic areas in which they apply, the time at
2851 which applicability commences, and the time at which
2852 applicability terminates.
2853 (3) The commission and the office may not adopt an
2854 emergency rule under s. 120.54(4) in conflict with any provision
2855 of the rules adopted under this section.
2856 (4) The commission shall initiate rulemaking under this
2857 section no later than June 1, 2006.
2858 Section 13. Subsection (5) of section 627.727, Florida
2859 Statutes, is amended to read:
2860 627.727 Motor vehicle insurance; uninsured and
2861 underinsured vehicle coverage; insolvent insurer protection.--
2862 (5) Any person having a claim against an insolvent insurer
2863 as defined in s. 631.54(6) ~~(5)~~ under the provisions of this
2864 section shall present such claim for payment to the Florida
2865 Insurance Guaranty Association only. In the event of a payment
2866 to any person in settlement of a claim arising under the
2867 provisions of this section, the association is not subrogated or
2868 entitled to any recovery against the claimant's insurer. The
2869 association, however, has the rights of recovery as set forth in

2870 chapter 631 in the proceeds recoverable from the assets of the
2871 insolvent insurer.
2872 Section 14. Paragraph (f) is added to subsection (2) of
2873 section 631.181, Florida Statutes, to read:
2874 631.181 Filing and proof of claim.--
2875 (2)
2876 (f) The signed statement required by this section shall
2877 not be required on claims for which adequate claims file
2878 documentation exists within the records of the insolvent
2879 insurer. Claims for payment of unearned premium shall not be
2880 required to use the signed statement required by this section if
2881 the receiver certifies to the guaranty fund that the records of
2882 the insolvent insurer are sufficient to determine the amount of
2883 unearned premium owed to each policyholder of the insurer and
2884 such information is remitted to the guaranty fund by the
2885 receiver in electronic or other mutually agreed-upon format.
2886 Section 15. Subsections (5), (6), (7), and (8) of section
2887 631.54, Florida Statutes, are renumbered as subsections (6),
2888 (7), (8), and (9), respectively, and a new subsection (5) is
2889 added to that section, to read:
2890 631.54 Definitions.--As used in this part:
2891 (5) "Homeowner's insurance" means personal lines
2892 residential property insurance coverage that consists of the
2893 type of coverage provided under homeowner's, dwelling, and
2894 similar policies for repair or replacement of the insured
2895 structure and contents, which policies are written directly to
2896 the individual homeowner. Residential coverage for personal
2897 lines as set forth in this section includes policies that

2898 provide coverage for particular perils such as windstorm and
2899 hurricane coverage but excludes all coverage for mobile homes,
2900 renter's insurance, or tenant's coverage. The term "homeowner's
2901 insurance" excludes commercial residential policies covering
2902 condominium associations or homeowners' associations, which
2903 associations have a responsibility to provide insurance coverage
2904 on residential units within the association, and also excludes
2905 coverage for the common elements of a homeowners' association.
2906 Section 16. Subsection (1) of section 631.55, Florida
2907 Statutes, is amended to read:
2908 631.55 Creation of the association.--
2909 (1) There is created a nonprofit corporation to be known
2910 as the "Florida Insurance Guaranty Association, Incorporated."
2911 All insurers defined as member insurers in s. 631.54(7) ~~(6)~~ shall
2912 be members of the association as a condition of their authority
2913 to transact insurance in this state, and, further, as a
2914 condition of such authority, an insurer shall agree to reimburse
2915 the association for all claim payments the association makes on
2916 said insurer's behalf if such insurer is subsequently
2917 rehabilitated. The association shall perform its functions under
2918 a plan of operation established and approved under s. 631.58 and
2919 shall exercise its powers through a board of directors
2920 established under s. 631.56. The corporation shall have all
2921 those powers granted or permitted nonprofit corporations, as
2922 provided in chapter 617.
2923 Section 17. Paragraph (a) of subsection (1), paragraph (d)
2924 of subsection (2), and paragraph (a) of subsection (3) of
2925 section 631.57, Florida Statutes, are amended, and paragraph (e)

2926 is added to subsection (3) of that section, to read:
2927 631.57 Powers and duties of the association.--
2928 (1) The association shall:
2929 (a)1. Be obligated to the extent of the covered claims
2930 existing:
2931 a. Prior to adjudication of insolvency and arising within
2932 30 days after the determination of insolvency;
2933 b. Before the policy expiration date if less than 30 days
2934 after the determination; or
2935 c. Before the insured replaces the policy or causes its
2936 cancellation, if she or he does so within 30 days of the
2937 determination.
2938 2. The obligation under subparagraph 1. shall include only
2939 the amount of each covered claim that is in excess of $100 and
2940 is less than $300,000, except policies providing coverage for
2941 homeowner's insurance shall provide for an additional $200,000
2942 for the portion of a covered claim that relates only to the
2943 damage to the structure and contents.
2944 3.a.~~2.~~ Notwithstanding subparagraph 2., the obligation
2945 under subparagraph 1. for ~~shall include only that amount of each~~
2946 ~~covered claim which is in excess of $100 and is less than~~
2947 ~~$300,000, except with respect to~~ policies covering condominium
2948 associations or homeowners' associations, which associations
2949 have a responsibility to provide insurance coverage on
2950 residential units within the association, ~~the obligation~~ shall
2951 include that amount of each covered property insurance claim
2952 which is less than $100,000 multiplied by the number of
2953 condominium units or other residential units; however, as to

2954 homeowners' associations, this sub-subparagraph ~~subparagraph~~
2955 applies only to claims for damage or loss to residential units
2956 and structures attached to residential units.
2957 b. Notwithstanding sub-subparagraph a., the association
2958 has no obligation to pay covered claims that are to be paid from
2959 the proceeds of bonds issued under s. 631.695. However, the
2960 association shall assign and pledge the first available moneys
2961 from all or part of the assessments to be made under paragraph
2962 (3)(a) to or on behalf of the issuer of such bonds for the
2963 benefit of the holders of such bonds. The association shall
2964 administer any such covered claims and present valid covered
2965 claims for payment in accordance with the provisions of the
2966 assistance program in connection with which such bonds have been
2967 issued.
2968 3. In no event shall the association be obligated to a
2969 policyholder or claimant in an amount in excess of the
2970 obligation of the insolvent insurer under the policy from which
2971 the claim arises.
2972 (2) The association may:
2973 (d) Negotiate and become a party to such contracts as are
2974 necessary to carry out the purpose of this part. Additionally,
2975 the association may enter into such contracts with a
2976 municipality, a county, or a legal entity created pursuant to s.
2977 163.01(7)(g) as are necessary in order for the municipality,
2978 county, or legal entity to issue bonds under s. 631.695. In
2979 connection with the issuance of any such bonds and the entering
2980 into of any such necessary contracts, the association may agree

2981 to such terms and conditions as the association deems necessary
2982 and proper.
2983 (3)(a) To the extent necessary to secure the funds for the
2984 respective accounts for the payment of covered claims, ~~and also~~
2985 to pay the reasonable costs to administer the same, and to the
2986 extent necessary to secure the funds for the account specified
2987 in s. 631.55(2)(c) or to retire indebtedness, including, without
2988 limitation, the principal, redemption premium, if any, and
2989 interest on, and related costs of issuance of, bonds issued
2990 under s. 631.695 and the funding of any reserves and other
2991 payments required under the bond resolution or trust indenture
2992 pursuant to which such bonds have been issued, the office, upon
2993 certification of the board of directors, shall levy assessments
2994 in the proportion that each insurer's net direct written
2995 premiums in this state in the classes protected by the account
2996 bears to the total of said net direct written premiums received
2997 in this state by all such insurers for the preceding calendar
2998 year for the kinds of insurance included within such account.
2999 Assessments shall be remitted to and administered by the board
3000 of directors in the manner specified by the approved plan. Each
3001 insurer so assessed shall have at least 30 days' written notice
3002 as to the date the assessment is due and payable. Every
3003 assessment shall be made as a uniform percentage applicable to
3004 the net direct written premiums of each insurer in the kinds of
3005 insurance included within the account in which the assessment is
3006 made. The assessments levied against any insurer shall not
3007 exceed in any one year more than 2 percent of that insurer's net
3008 direct written premiums in this state for the kinds of insurance

3009 included within such account during the calendar year next
3010 preceding the date of such assessments.
3011 (e)1.a. In addition to assessments otherwise authorized in
3012 paragraph (a) and to the extent necessary to secure the funds
3013 for the account specified in s. 631.55(2)(c) or to retire
3014 indebtedness, including, without limitation, the principal,
3015 redemption premium, if any, and interest on, and related costs
3016 of issuance of, bonds issued under s. 631.695 and the funding of
3017 any reserves and other payments required under the bond
3018 resolution or trust indenture pursuant to which such bonds have
3019 been issued, the office, upon certification of the board of
3020 directors, shall levy emergency assessments upon insurers
3021 holding a certificate of authority. The emergency assessments
3022 payable under this paragraph by any insurer shall not exceed in
3023 any single year more than 2 percent of that insurer's direct
3024 written premiums, net of refunds, in this state during the
3025 preceding calendar year for the kinds of insurance within the
3026 account specified in s. 631.55(2)(c).
3027 b. Any emergency assessments authorized under this
3028 paragraph shall be levied by the office upon insurers referred
3029 to in sub-subparagraph a., upon certification as to the need for
3030 such assessments by the board of directors, in each year that
3031 bonds issued under s. 631.695 and secured by such emergency
3032 assessments are outstanding, in such amounts up to such 2-
3033 percent limit as required in order to provide for the full and
3034 timely payment of the principal of, redemption premium, if any,
3035 and interest on, and related costs of issuance of, such bonds.
3036 The emergency assessments provided for in this paragraph are

3037 assigned and pledged to the municipality, county, or legal
3038 entity issuing bonds under s. 631.695 for the benefit of the
3039 holders of such bonds, in order to enable such municipality,
3040 county, or legal entity to provide for the payment of the
3041 principal of, redemption premium, if any, and interest on such
3042 bonds, the cost of issuance of such bonds, and the funding of
3043 any reserves and other payments required under the bond
3044 resolution or trust indenture pursuant to which such bonds have
3045 been issued, without the necessity of any further action by the
3046 association, the office, or any other party. To the extent bonds
3047 are issued under s. 631.695 and the association determines to
3048 secure such bonds by a pledge of revenues received from the
3049 emergency assessments, such bonds, upon such pledge of revenues,
3050 shall be secured by and payable from the proceeds of such
3051 emergency assessments, and the proceeds of emergency assessments
3052 levied under this paragraph shall be remitted directly to and
3053 administered by the trustee or custodian appointed for such
3054 bonds.
3055 c. Emergency assessments under this paragraph may be
3056 payable in a single payment or, at the option of the
3057 association, may be payable in 12 monthly installments with the
3058 first installment being due and payable at the end of the month
3059 after an emergency assessment is levied and subsequent
3060 installments being due not later than the end of each succeeding
3061 month.
3062 d. If emergency assessments are imposed, the report
3063 required by s. 631.695(7) shall include an analysis of the
3064 revenues generated from the emergency assessments imposed under

3065 this paragraph.
3066 e. If emergency assessments are imposed, the references in
3067 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
3068 assessments levied under paragraph (a) shall include emergency
3069 assessments imposed under this paragraph.
3070 2. In order to ensure that insurers paying emergency
3071 assessments levied under this paragraph continue to charge rates
3072 that are neither inadequate nor excessive, within 90 days after
3073 being notified of such assessments, each insurer that is to be
3074 assessed pursuant to this paragraph shall submit a rate filing
3075 for coverage included within the account specified in s.
3076 631.55(2)(c) and for which rates are required to be filed under
3077 s. 627.062. If the filing reflects a rate change that, as a
3078 percentage, is equal to the difference between the rate of such
3079 assessment and the rate of the previous year's assessment under
3080 this paragraph, the filing shall consist of a certification so
3081 stating and shall be deemed approved when made. Any rate change
3082 of a different percentage shall be subject to the standards and
3083 procedures of s. 627.062.
3084 3. An annual assessment under this paragraph shall
3085 continue while the bonds issued with respect to which the
3086 assessment was imposed are outstanding, including any bonds the
3087 proceeds of which were used to refund bonds issued pursuant to
3088 s. 631.695, unless adequate provision has been made for the
3089 payment of the bonds in the documents authorizing the issuance
3090 of such bonds.
3091 4. Emergency assessments under this paragraph are not
3092 premium and are not subject to the premium tax, to any fees, or

3093 to any commissions. An insurer is liable for all emergency
3094 assessments that the insurer collects and shall treat the
3095 failure of an insured to pay an emergency assessment as a
3096 failure to pay the premium. An insurer is not liable for
3097 uncollectible emergency assessments.
3098 Section 18. Section 631.695, Florida Statutes, is created
3099 to read:
3100 631.695 Revenue bond issuance through counties or
3101 municipalities.--
3102 (1) The Legislature finds:
3103 (a) The potential for widespread and massive damage to
3104 persons and property caused by hurricanes making landfall in
3105 this state can generate insurance claims of such a number as to
3106 render numerous insurers operating within this state insolvent
3107 and therefore unable to satisfy covered claims.
3108 (b) The inability of insureds within this state to receive
3109 payment of covered claims or to timely receive such payment
3110 creates financial and other hardships for such insureds and
3111 places undue burdens on the state, the affected units of local
3112 government, and the community at large.
3113 (c) In addition, the failure of insurers to pay covered
3114 claims or to timely pay such claims due to the insolvency of
3115 such insurers can undermine the public's confidence in insurers
3116 operating within this state, thereby adversely affecting the
3117 stability of the insurance industry in this state.
3118 (d) The state has previously taken action to address these
3119 problems by adopting the Florida Insurance Guaranty Association
3120 Act, which, among other things, provides a mechanism for the

3121 payment of covered claims under certain insurance policies to
3122 avoid excessive delay in payment and to avoid financial loss to
3123 claimants or policyholders because of the insolvency of an
3124 insurer.
3125 (e) In the wake of the unprecedented destruction caused by
3126 various hurricanes that have made landfall in this state, the
3127 resultant covered claims, and the number of insurers rendered
3128 insolvent thereby, make it evident that alternative programs
3129 must be developed to allow the Florida Insurance Guaranty
3130 Association to more expeditiously and effectively provide for
3131 the payment of covered claims.
3132 (f) It is therefore determined to be in the best interests
3133 of, and necessary for, the protection of the public health,
3134 safety, and general welfare of the residents of this state and
3135 for the protection and preservation of the economic stability of
3136 insurers operating in this state and it is declared to be an
3137 essential public purpose to permit certain municipalities and
3138 counties to take such actions as will provide relief to
3139 claimants and policyholders having covered claims against
3140 insolvent insurers operating in this state by expediting the
3141 handling and payment of covered claims.
3142 (g) To achieve the foregoing purposes, it is proper to
3143 authorize municipalities and counties of this state
3144 substantially affected by the landfall of a hurricane to issue
3145 bonds to assist the Florida Insurance Guaranty Association in
3146 expediting the handling and payment of covered claims of
3147 insolvent insurers.
3148 (h) In order to avoid the needless and indiscriminate

3149 proliferation, duplication, and fragmentation of such assistance
3150 programs, it is in the best interests of the residents of this
3151 state to authorize municipalities and counties severely affected
3152 by a hurricane to provide for the payment of covered claims
3153 beyond their territorial limits in the implementation of such
3154 programs.
3155 (i) It is a paramount public purpose for municipalities
3156 and counties substantially affected by the landfall of a
3157 hurricane to be able to issue bonds for the purposes described
3158 in this section. Such issuance shall provide assistance to
3159 residents of those municipalities and counties as well as to
3160 other residents of this state.
3161 (2) The governing body of any municipality or county, the
3162 residents of which have been substantially affected by a
3163 hurricane, may issue bonds to fund an assistance program in
3164 conjunction with, and with the consent of, the Florida Insurance
3165 Guaranty Association for the purpose of paying claimants' or
3166 policyholders' covered claims, as defined in s. 631.54, arising
3167 through the insolvency of an insurer, which insolvency is
3168 determined by the Florida Insurance Guaranty Association to have
3169 been a result of a hurricane, regardless of whether the
3170 claimants or policyholders are residents of such municipality or
3171 county or the property to which the claim relates is located
3172 within or outside the territorial jurisdiction of the
3173 municipality or county. The power of a municipality or county to
3174 issue bonds, as described in this section, is in addition to any
3175 powers granted by law and may not be abrogated or restricted by
3176 any provisions in such municipality's or county's charter. A

3177 municipality or county issuing bonds for this purpose shall
3178 enter into such contracts with the Florida Insurance Guaranty
3179 Association or any entity acting on behalf of the Florida
3180 Insurance Guaranty Association as are necessary to implement the
3181 assistance program. Any bonds issued by a municipality or county
3182 or a combination thereof under this subsection shall be payable
3183 from and secured by moneys received by or on behalf of the
3184 municipality or county from assessments levied under s.
3185 631.57(3)(a) and assigned and pledged to or on behalf of the
3186 municipality or county for the benefit of the holders of the
3187 bonds in connection with the assistance program. The funds,
3188 credit, property, and taxing power of the state or any
3189 municipality or county shall not be pledged for the payment of
3190 such bonds.
3191 (3) Bonds may be validated by the municipality or county
3192 pursuant to chapter 75. The proceeds of the bonds may be used to
3193 pay covered claims of insolvent insurers; to refinance or
3194 replace previously existing borrowings or financial
3195 arrangements; to pay interest on bonds; to fund reserves for the
3196 bonds; to pay expenses incident to the issuance or sale of any
3197 bond issued under this section, including costs of validating,
3198 printing, and delivering the bonds, costs of printing the
3199 official statement, costs of publishing notices of sale of the
3200 bonds, costs of obtaining credit enhancement or liquidity
3201 support, and related administrative expenses; or for such other
3202 purposes related to the financial obligations of the fund as the
3203 association may determine. The term of the bonds may not exceed
3204 30 years.

3205 (4) The state covenants with holders of bonds of the
3206 assistance program that the state will not take any action that
3207 will have a material adverse effect on the holders and will not
3208 repeal or abrogate the power of the board of directors of the
3209 association to direct the Office of Insurance Regulation to levy
3210 the assessments and to collect the proceeds of the revenues
3211 pledged to the payment of the bonds as long as any of the bonds
3212 remain outstanding, unless adequate provision has been made for
3213 the payment of the bonds in the documents authorizing the
3214 issuance of the bonds.
3215 (5) The accomplishment of the authorized purposes of such
3216 municipality or county under this section is in all respects for
3217 the benefit of the people of the state, for the increase of
3218 their commerce and prosperity, and for the improvement of their
3219 health and living conditions. The municipality or county, in
3220 performing essential governmental functions in accomplishing its
3221 purposes, is not required to pay any taxes or assessments of any
3222 kind whatsoever upon any property acquired or used by the county
3223 or municipality for such purposes or upon any revenues at any
3224 time received by the county or municipality. The bonds, notes,
3225 and other obligations of the municipality or county and the
3226 transfer of and income from such bonds, notes, and other
3227 obligations, including any profits made on the sale of such
3228 bonds, notes, and other obligations, are exempt from taxation of
3229 any kind by the state or by any political subdivision or other
3230 agency or instrumentality of the state. The exemption granted in
3231 this subsection is not applicable to any tax imposed by chapter
3232 220 on interest, income, or profits on debt obligations owned by

3233 corporations.
3234 (6) Two or more municipalities or counties, the residents
3235 of which have been substantially affected by a hurricane, may
3236 create a legal entity pursuant to s. 163.01(7)(g) to exercise
3237 the powers described in this section as well as those powers
3238 granted in s. 163.01(7)(g). References in this section to a
3239 municipality or county includes such legal entity.
3240 (7) The association shall issue an annual report on the
3241 status of the use of bond proceeds as related to insolvencies
3242 caused by hurricanes. The report must contain the number and
3243 amount of claims paid. The association shall also include an
3244 analysis of the revenue generated from the assessment levied
3245 under s. 631.57(3)(a) to pay such bonds. The association shall
3246 submit a copy of the report to the President of the Senate, the
3247 Speaker of the House of Representatives, and the Chief Financial
3248 Officer within 90 days after the end of each calendar year in
3249 which bonds were outstanding.
3250 Section 19. No provision of s. 631.57 or s. 631.695,
3251 Florida Statutes, shall be repealed until such time as the
3252 principal, redemption premium, if any, and interest on all bonds
3253 issued under s. 631.695, Florida Statutes, payable and secured
3254 from assessments levied under s. 631.57(3)(a), Florida Statutes,
3255 have been paid in full or adequate provision for such payment
3256 has been made in accordance with the bond resolution or trust
3257 indenture pursuant to which the bonds were issued.
3258 Section 20. Paragraph (a) of subsection (1) of section
3259 817.234, Florida Statutes, is amended to read:
3260 817.234 False and fraudulent insurance claims.--

3261 (1)(a) A person commits insurance fraud punishable as
3262 provided in subsection (11) if that person, with the intent to
3263 injure, defraud, or deceive any insurer:
3264 1. Presents or causes to be presented any written or oral
3265 statement as part of, or in support of, a claim for payment or
3266 other benefit pursuant to an insurance policy or a health
3267 maintenance organization subscriber or provider contract,
3268 knowing that such statement contains any false, incomplete, or
3269 misleading information concerning any fact or thing material to
3270 such claim;
3271 2. Prepares or makes any written or oral statement that is
3272 intended to be presented to any insurer in connection with, or
3273 in support of, any claim for payment or other benefit pursuant
3274 to an insurance policy or a health maintenance organization
3275 subscriber or provider contract, knowing that such statement
3276 contains any false, incomplete, or misleading information
3277 concerning any fact or thing material to such claim; or
3278 3.a. Knowingly presents, causes to be presented, or
3279 prepares or makes with knowledge or belief that it will be
3280 presented to any insurer, purported insurer, servicing
3281 corporation, insurance broker, or insurance agent, or any
3282 employee or agent thereof, any false, incomplete, or misleading
3283 information or written or oral statement as part of, or in
3284 support of, an application for the issuance of, or the rating
3285 of, any insurance policy, or a health maintenance organization
3286 subscriber or provider contract, including any false declaration
3287 of homestead status for the purpose of obtaining coverage in a
3288 homestead account under s. 627.351(6); or

3289 b. Who knowingly conceals information concerning any fact
3290 material to such application.
3291 Section 21. Task Force on Hurricane Mitigation and
3292 Hurricane Insurance for Mobile and Manufactured Homes.--
3293 (1) TASK FORCE CREATED.--There is created the Task Force
3294 on Hurricane Mitigation and Hurricane Insurance for Mobile and
3295 Manufactured Homes.
3296 (2) ADMINISTRATION.--The task force shall be
3297 administratively housed within the Office of Insurance
3298 Regulation but shall operate independently of any state officer
3299 or agency. The office shall provide such administrative support
3300 as the task force deems necessary to accomplish its mission and
3301 shall provide necessary funding for the task force within the
3302 office's existing resources. The Executive Office of the
3303 Governor, the Department of Financial Services, the Office of
3304 Insurance Regulation, the Department of Highway Safety and Motor
3305 Vehicles, and the Department of Community Affairs shall provide
3306 substantive staff support for the task force.
3307 (3) MEMBERSHIP.--The members of the task force shall be
3308 appointed as follows:
3309 (a) The Governor shall appoint two members who have
3310 expertise in financial matters, one of whom is a representative
3311 of the mobile or manufactured home industry and one of whom is a
3312 representative of insurance consumers.
3313 (b) The Chief Financial Officer shall appoint two members
3314 who have expertise in financial matters, one of whom is a
3315 representative of a property insurer writing mobile or
3316 manufactured homeowners insurance in this state and one of whom

3317 is a representative of insurance agents.
3318 (c) The President of the Senate shall appoint one member.
3319 (d) The Speaker of the House of Representatives shall
3320 appoint one member.
3321 (e) The Commissioner of Insurance Regulation or his or her
3322 designee shall serve as an ex officio voting member of the task
3323 force.
3324 (f) The Executive Director of Citizens Property Insurance
3325 or his or her designee shall serve as an ex officio voting
3326 member of the task force.
3327 (g) The Chief Executive Officer of the Federal Alliance
3328 for Safe Homes, Incorporated or his or her designee shall serve
3329 as an ex officio voting member of the task force.
3330
3331 Members of the task force shall serve without compensation but
3332 may receive reimbursement for per diem and travel expenses as
3333 provided in s. 112.061, Florida Statutes.
3334 (4) PURPOSE AND INTENT.--The Legislature recognizes the
3335 continued availability of hurricane insurance coverage for
3336 mobile and manufactured home owners in this state is essential
3337 to the state's economic survival. The Legislature further
3338 recognizes hurricane mitigation measures and building codes may
3339 reduce the likelihood or amount of damage to mobile or
3340 manufactured homes in the event of a hurricane. The Legislature
3341 further recognizes mobile and manufactured homes provide safe
3342 and affordable housing to many residents of this state. The
3343 purpose of the task force is to make recommendations to the
3344 legislative and executive branches of this state's government

3345 relating to the creation and maintenance of insurance capacity
3346 in the private sector and public sector that is sufficient to
3347 ensure that all mobile and manufactured home owners in this
3348 state are able to obtain appropriate insurance coverage for
3349 hurricane losses and relating to the effectiveness of hurricane
3350 mitigation measures for mobile or manufactured homes as further
3351 described in this section.
3352 (5) SPECIFIC TASKS.--The task force shall conduct such
3353 research and hearings as the task force deems necessary to
3354 achieve the purposes specified in subsection (4) and shall
3355 develop information on relevant issues, including, but not
3356 limited to, the following issues:
3357 (a) Whether this state currently has sufficient hurricane
3358 insurance capacity for mobile and manufactured homes to ensure
3359 the continuation of a healthy, competitive marketplace, taking
3360 into consideration private-sector and public-sector resources.
3361 (b) Identifying the future demands on the hurricane
3362 insurance capacity of this state, taking into account population
3363 growth, coastal growth, and anticipated future hurricane
3364 activity.
3365 (c) Identifying how many mobile or manufactured homes are
3366 occupied in this state, how many mobile or manufactured homes
3367 are occupied by owners who also own the land to which the unit
3368 is attached, the age or average age of mobile or manufactured
3369 homes, the location of such homes, and the size of such homes.
3370 (d) The extent to which the growth in insurance on mobile
3371 or manufactured homes in Citizens Property Insurance Corporation
3372 is attributable to insufficient insurance capacity.

3373 (e) The extent to which the growth trends of Citizens
3374 Property Insurance Corporation create long-term problems for
3375 mobile and manufactured home owners in this state and for other
3376 persons and businesses that depend on a viable market.
3377 (f) The extent to which insurance discounts, credits, or
3378 other rate differentials or reductions in the hurricane
3379 insurance deductible for a mobile or manufactured homeowner who
3380 takes mitigative measures would increase hurricane insurance
3381 capacity for mobile or manufactured homeowners.
3382 (g) The extent hurricane mitigation enhancements to mobile
3383 or manufactured homes decreases the likelihood of damage from a
3384 hurricane or decreases the amount of damage from a hurricane.
3385 (h) The extent to which the building codes reduce the
3386 likelihood of damage or amount of damage to mobile or
3387 manufactured homes.
3388 (6) REPORT AND RECOMMENDATIONS.--By January 1, 2007, the
3389 task force shall provide a report containing findings relating
3390 to the tasks identified in subsection (5) and recommendations
3391 consistent with the purposes of this section and also consistent
3392 with such findings. The task force shall submit the report to
3393 the Governor, the Chief Financial Officer, the President of the
3394 Senate, and the Speaker of the House of Representatives. The
3395 task force may also submit such interim reports as the task
3396 force deems appropriate.
3397 (7) EXPIRATION.--The task force shall expire on January 2,
3398 2007.
3399 Section 22. By January 1, 2007, the Office of Insurance
3400 Regulation shall submit a report to the President of the Senate,

3401 the Speaker of the House of Representatives, the minority party
3402 leaders of the Senate and the House of Representatives, and the
3403 chairs of the standing committees of the Senate and the House of
3404 Representatives having jurisdiction over matters relating to
3405 property and casualty insurance. In preparing the report, the
3406 office shall consult with the Department of Highway Safety and
3407 Motor Vehicles, the Department of Community Affairs, the Florida
3408 Building Commission, the Florida Home Builders Association,
3409 representatives of the mobile and manufactured home industry,
3410 representatives of the property and casualty insurance industry,
3411 and any other party the office determines is appropriate. The
3412 report shall include findings and recommendations on the
3413 insurability of attached or free standing structures to
3414 residential homes, mobile, or manufactured homes, such as
3415 carports or pool enclosures; the increase or decrease in
3416 insurance costs associated with insuring such structures; the
3417 feasibility of insuring such structures; the impact on
3418 homeowners of not having insurance coverage for such structures;
3419 the ability of mitigation measures relating to such structures
3420 to reduce risk and loss; and such other related information as
3421 the office determines is appropriate for the Legislature to
3422 consider.
3423 Section 23. (1) By January 15, 2007, the Office of
3424 Insurance Regulation shall submit a report to the President of
3425 the Senate, the Speaker of the House of Representatives, the
3426 minority party leaders of the Senate and the House of
3427 Representatives, and the chairs of the standing committees of
3428 the Senate and the House of Representatives having jurisdiction

3429 over matters relating to property and casualty insurance. The
3430 report shall include findings and recommendations on requiring
3431 residential property insurers to provide an opportunity for
3432 policyholders to decrease the monetary amount of a hurricane
3433 deductible predicated upon the policyholder demonstrating
3434 certifiable and verifiable mitigation measures that reduce
3435 hurricane damage. As a part of the report, the office shall
3436 address the feasibility of such a requirement and the specific
3437 procedures necessary for implementation and include suggested
3438 legislation. The report may also include other related
3439 information as the office determines is appropriate for the
3440 Legislature to consider.
3441 (2) In conducting such research and offering
3442 recommendations for the report, the office shall consult with
3443 consumers, insurers, builders, wind certification inspectors,
3444 organizations dedicated to promoting disaster safety and
3445 property loss mitigation, counties, municipalities, and state
3446 agencies as well as any other entity that the office determines
3447 could provide relevant information.
3448 Section 24. (1) The sum of $100 million is appropriated
3449 from the General Revenue Fund to the Florida Hurricane Damage
3450 Prevention Endowment as a nonrecurring appropriation for the
3451 purposes specified in s. 215.558, Florida Statutes.
3452 (2) The sum of $5.5 million is appropriated from the
3453 General Revenue Fund to the Department of Community Affairs as a
3454 nonrecurring appropriation for the purposes specified in s.
3455 215.5586, Florida Statutes.

3456 Section 25. Except as otherwise expressly provided in this
3457 act, this act shall take effect July 1, 2006.

HB 7227

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7227 PCB IN 06-02 Florida Hurricane Damage Prevention Endowment Trust Fund
SPONSOR(S): Insurance Committee
TIED BILLS: HB 7225 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	15 Y, 1 N	Callaway	Cooper
1) Fiscal Council		Belcher	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Hurricane Damage Prevention Endowment Trust Fund (Trust Fund) within the Department of Community Affairs. It is intended that the Trust Fund will be funded by a nonrecurring appropriation from the General Revenue Fund. The Department of Community Affairs will administer the Trust Fund, but the State Board of Administration will invest the trust fund moneys.

The purpose of the Trust Fund is to provide no-interest loans to homeowners to pay for hurricane mitigation inspections and the installation of hurricane mitigation measures. The Trust Fund will also provide matching grant monies to local governments or nonprofit entities for projects that will reduce hurricane damage to residential properties.

The bill requires an annual carry-forward of unused funds at the end of any fiscal year.

The bill provides for termination of the Trust Fund on or before July 1, 2010. Prior to termination, the Trust Fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S.

The bill takes effect on July 1, 2006, but only if HB 7225 (PCB IN 06-01) or similar legislation is adopted in the same legislative session or extension thereof and becomes law.

Since the bill creates a new trust fund, it must be enacted by a three-fifths vote of the membership of each house of the Legislature.

There is no fiscal impact on state or local governments.

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:

This bill creates the Florida Hurricane Damage Prevention Endowment Trust Fund (Trust Fund) within the Department of Community Affairs. The State Board of Administration will invest the funds in the trust fund, but the trust fund administrator is the Department of Community Affairs.

Monies in the Trust Fund will be used to carry out the purposes of s. 215.558, the Florida Hurricane Damage Prevention Endowment. This endowment is established to provide no interest loans to Florida homeowners for use for inspections to determine what hurricane mitigation measures are needed, and for implementation of hurricane mitigation measures. It also provides matching grant monies to local governments or nonprofit entities for projects that will reduce hurricane damage to residential properties.

The bill requires a legislative review pursuant to s. 215.3206(1) and (2), F.S., prior to its scheduled constitutionally required termination of July 1, 2010. Any trust fund balance at the end of any fiscal year must be carried-forward.

C. SECTION DIRECTORY:

Section 1: Creates s. 215.558, F.S., relating to the Florida Hurricane Damage Prevention Endowment Trust Fund.

Section 2: Makes the effective date of the bill July 1, 2006, but only if HB 7225 or similar legislation is adopted in the same legislative session or an extension thereof and becomes 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:

   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 legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

Pursuant to Article III, Section 19(f)(1), of the State Constitution, no trust fund of the State of Florida or any public body may be created by law without a three-fifths vote of the membership of each House of the Legislature. Additionally, the bill creating the trust fund must be separate from any related substantive bill. Also, Article III, Section 19(f)(2), of the State Constitution, requires the trust fund to terminate not more than four years after its creation. Section 215.3206, F.S., provides the statutory process for legislative review of trust funds prior to their termination so that the Legislature can decide whether to re-create, re-create with amendment, or terminate any trust fund.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Insurance Committee considered the bill, adopted one amendment, and reported the bill favorably. The amendment adopted provided conforming language to the tied bill, PCB IN 06-01. The staff analysis was updated to reflect the adoption of the amendment.

1 A bill to be entitled
2 An act relating to the Florida Hurricane Damage Prevention
3 Endowment Trust Fund; creating s. 215.5585, F.S.; creating
4 the Florida Hurricane Damage Prevention Endowment Trust
5 Fund within the Department of Community Affairs; providing
6 for administration and investment of the fund; providing
7 for the use of moneys in the fund; providing for an
8 initial appropriation to the fund; providing for
9 additional funding; requiring balances in the fund to
10 remain in the fund for certain purposes; providing for
11 future review and termination or re-creation of the fund;
12 providing a contingent effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 215.5585, Florida Statutes, is created
17 to read:
18 215.5585 Florida Hurricane Damage Prevention Endowment
19 Trust Fund.--
20 (1) The Florida Hurricane Damage Prevention Endowment
21 Trust Fund, is created within the Department of Community
22 Affairs. The department shall serve as administrator of the
23 fund, and the State Board of Administration shall invest moneys
24 in the fund as provided in s. 215.558. The fund shall be used by
25 the department as a nonlapsing revolving fund to carry out the
26 purposes of s. 215.558.
27 (2) The fund shall be initially funded by a nonrecurring
28 appropriation in the sum of $100 million from the General

29 Revenue Fund as well as any subsequent grants or donations
30 received for the purpose for which the fund is created.
31 (3) Notwithstanding the provisions of s. 216.301 and
32 pursuant to s. 216.351, any balance in the trust fund at the end
33 of any fiscal year shall remain in the trust fund at the end of
34 that year and shall be available for carrying out the purposes
35 of the trust fund.
36 (4) Pursuant to the provisions of s. 19(f)(2), Art. III of
37 the State Constitution, the fund shall, unless terminated
38 sooner, be terminated July 1, 2010. Prior to its scheduled
39 termination, the fund shall be reviewed as provided in s.
40 215.3206(1) and (2).
41 Section 2. This act shall take effect July 1, 2006, only
42 if HB 7225 or similar legislation is adopted in the same
43 legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7155 PCB GO 06-29 State Financial Matters
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	7 Y, 0 N	Mitchell	Williamson
1) Fiscal Council		Dobbs	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill revises the interest calculation assumption on interest accrued in transfers between the Florida Retirement System Pension Plan and the Public Employee Optional Retirement Program (FRS Investment Plan).

The bill provides that certain military service is credible service under the FRS Investment Plan.

The bill provides procedures for repayment of invalid distributions from the FRS Investment Plan.

The bill revises the standards for investments by the State Board of Administration (SBA).

The bill makes cross-reference changes to the separate investment authority provided to the Florida School for the Deaf and Blind.

This bill may have a positive fiscal impact on the funds managed by the SBA.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Public Employee Optional Retirement Program

In 2000, the Florida Legislature created the Public Employee Optional Retirement Program in part II of chapter 121, Florida Statutes. The State Board of Administration, which is responsible for establishing the program, calls this program the Florida Retirement System (FRS) Investment Plan in order to distinguish it from the FRS defined benefit program, the FRS Pension Plan.[1] The FRS Investment Plan is a defined contribution retirement plan in which employer contributions, based on membership class, are made to an account established for the participant. The participant can then choose, from a number of investment funds which "span the risk-return spectrum," how to invest those contributions.[2]

New employees of FRS employers are automatically enrolled in the FRS Pension Plan on the first day of their employment.[3] Within five months following their month of hire, these new employees may elect to participate in the FRS Investment Plan instead of the FRS Pension Plan.[4] Employees of FRS employers also have a one-time option to change their retirement plan from the FRS Investment Plan to the FRS Pension Plan or from the FRS Pension Plan to the FRS Investment Plan.[5]

Transfers from the FRS Pension Plan to the FRS Investment Plan

Transfers from the FRS Pension Plan to the FRS Investment Plan are governed, in part, by s. 121.4501(3)(c), F.S. If a participant elects to transfer the present value of the employee's accumulated benefit obligation earned under the Pension Plan, the Division of Retirement must transfer the funds within 30 days of the employee beginning participation in the Investment Plan. With these time constraints, the Division must use estimates of the employee's creditable service[6] and average final compensation.[7] Within 60 days of the initial transfer, the Division must "true-up" the transfer - recomputing the amount transferred based on the participant's creditable service and average final compensation as of the date of FRS Investment Plan participation.[8] If the recomputed amount indicates, by $10 or more, that excess funds were transferred from the FRS Pension Plan, the Division of Retirement is required to transfer the excess funds from the participant's FRS Investment Plan to the FRS Pension Plan, based upon six percent effective annual interest, compounded annually, pro rata based on the participant's allocation plan.[9] If the recomputed amount indicates, by $10 or more, that insufficient funds were transferred from the FRS Pension Plan, the Division of Retirement is required to

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[1] Fla. State Board of Admin., Fla. Ret. Sys. Summary Plan Description - FRS Investment Plan (Sept. 1, 2005), available at http://www.rol.frs.state.fl.us/myfrs/forms/pdf/frs_ip_spd.pdf (last visited Mar. 12, 2006).
[2] *Id.*
[3] Fla. Stat. § 121.4501(4)(a) (2005).
[4] *Id.*
[5] Fla. Stat. § 121.4501(4)(e) (2005).
[6] Fla. Stat. § 121.021(17)(a) (2005) ("Creditable service means the sum of his or her past service, prior service, military service, out-of-state or non-FRS in-state service, workers' compensation credit, leave-of-absence credit and future service allowed within the provisions of this chapter if all required contributions have been paid and all other requirements of this chapter have been met.")
[7] Fla. Stat. § 121.021(24) (2005) ("Average final compensation means the average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death.")
[8] Fla. Stat. § 121.4501(3)(c)3. (2005).
[9] *Id.*

transfer the outstanding amount from the FRS Pension Plan to the participant's FRS Investment Plan account based upon eight percent annual interest, compounded annually.[10]

This bill changes the interest rate for transfers required due to insufficient funds from the FRS Pension Plan to the FRS Investment Plan. The bill sets the effective interest rate for the transfers "to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system." Effective July 1, 2005, the actuarial investment return rate was reduced to 7.75% by the Florida Retirement System Actuarial Assumption Conference.

Credit for Military Service and the FRS Investment Plan

Part I of chapter 121, Florida Statutes, sets forth the general provisions for the FRS, including credit for military service in section 121.111, Florida Statutes. This section allows military service to be creditable service[11] for FRS purposes if five criteria are met:[12]

> (1) The employee is actively employed by an FRS employer immediately prior to service and leaves his or her employment for the purpose of induction into the Armed Forces of the United States or entry into active duty in the Armed Forces of the United States;[13]
>
> (2) The employee is entitled to reemployment under the provisions of the Veterans' Reemployment Rights Act;[14]
>
> (3) The employee applies for reemployment with the same FRS employer and is reemployed by that FRS employer within the applicable timeframes;[15]
>
> (4) The employee makes any required employee contributions and the employer makes the required employer contributions for the employee's membership class for each month of service credit during such period of military service;[16] and
>
> (5) The period of service claimed pursuant to this subsection does not exceed the applicable periods.[17]

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

Invalid Distributions and the FRS Investment Plan

Section 121.591, Florida Statutes, governs the payment of benefits under the FRS Investment Plan.

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

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[10] *Id.*
[11] Fla. Stat. § 121.021(17)(a) (2005), *supra* note 7.
[12] These criteria are provided in subsection (1). Subsection (2) applies to employees whose initial date of employment was before January 1, 1987, and it allows those employees to receive four years of creditable service for military service upon payment of certain contributions and subject to certain limitations.
[13] Fla. Stat. § 121.111(1)(a) (2005) (An employee is construed to have left his or her employment for military purposes if he or she reported for active duty within 60 days after leaving such employment).
[14] Fla. Stat. § 121.111(1)(b) (2005) (specifically citing "38 U.S.C. ss. 2021 et seq.")
[15] Fla. Stat. § 121.111(1)(c) (2005) (specifically citing "the time set forth in s. 2021 or s. 2024 of the Veterans' Reemployment Rights Act, whichever is applicable").
[16] Fla. Stat. § 121.111(1)(d) (2005) (based upon the employee's rate of monthly compensation as of the date that the employee left his or her position, plus 6.5 percent interest compounded annually).
[17] Fla. Stat. § 121.111(1)(e) (2005) (specifically citing "the provisions of ss. 2021 and 2024 of the Veterans' Reemployment Rights Act which are applicable in the member's case").

In order for benefits to be paid, an employee must have terminated employment[18] with the FRS employer, or be deceased, and have filed an application to receive benefits. Benefit payments are not made until the employee has been terminated for three calendar months.[19] The State Board of Administration may permit, by rule, distribution of up to 10 percent of the participant's account after being terminated for one calendar month if a participant has reached the normal retirement requirements of the defined benefit plan.[20] Benefits are payable in one of three ways:

1. A lump-sum distribution to the participant;

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

3. Periodic distributions, as authorized by the State Board of Administration.[21]

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

This bill defines an invalid distribution as a distribution from an FRS Investment Account which violates the statute governing investment plan benefits,[22] the statute establishing the FRS Investment Account,[23] or the statute limiting employment after retirement.[24]

This bill provides that if an employee or former employee receives an "invalid distribution" from the Public Employee Optional Retirement Program Trust Fund, that invalid distribution must be repaid to the trust fund within 90 days after receipt of final notification by the State Board of Administration or the third-party administrator that the distribution was invalid. The bill further provides that if the employee or former employee does not repay the full invalid distribution within 90 days after receipt of final notification, the employee or former employee may be deemed to be retired from the FRS Investment Plan by the State Board of Administration and subject to section 121.122, Florida Statutes, which relates to renewed membership in the FRS. If an employee is deemed retired, the State Board of Administration, the Department of Management Services, or the employing agency are not liable for gains on payroll contributions that have not been deposited into the employee's FRS Investment Plan account pending resolution of the invalid distribution. The bill permits a member or former member who has been deemed retired or to have received an invalid distribution to appeal the agency decision.[25]

The changes are needed because of instances of investment plan members receiving distributions in error and failing to repay the amount despite repeated notifications of the error.[26] Many of these distributions involve members who received a distribution and then returned to work before the member was eligible by law.[27]

<u>Authorized Investments: Generally</u>

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[18] Fla. Stat. § 121.021(39) (2005).
[19] Fla. Stat. §§ 121.091(9)(c) and 121.591(1)(a)4. (2005) (created by ch. 2005-253, Laws of Fla.)
[20] Fla. Stat. § 121.591(1)(a)4. (2005).
[21] Fla. Stat. § 121.591(1)(c) (2005).
[22] Fla. Stat. § 121.591 (2005).
[23] Fla. Stat. § 121.4501 (2005).
[24] Fla. Stat. § 121.091(9) (2005).
[25] Fla. Stat. § 121.4501(9)(f)3. (2005) (requires the State Board of Administration to develop procedures to receive and resolve participant complaints against a provider or approved provider personnel, and, when appropriate, refer such complaints to the appropriate agency).
[26] Fla. State Board of Admin., Proposed 2006 Legislation (copy provided Jan. 2006) (on file with the State Board of Admin.) [hereinafter Fla. SBA Legislation 2006].
[27] Fla. SBA Legislation 2006.

The investment of the funds in the Florida Retirement System Trust Fund is governed by the provisions in sections 215.44 through 215.53, Florida Statutes. Section 215.47, Florida Statutes, specifies the permissible investments for the FRS Pension Plan as well as for other funds.

Authorized Investments: Without Limitation

There are currently 14 types of investments that the State Board of Administration is authorized to invest in without limitation.[28] Eight of these investments are bonds (or notes or other obligations) of identified governmental entities (*e.g.* the United States and the state). Of the six other investments, four relate to savings accounts and certificates of deposit, commercial paper, banker's acceptances, and negotiable certificates of deposit. Except for negotiable certificates of deposit, each of these investments must meet certain criteria:

- Investment in commercial paper must be "of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service."[29]

- Investment in "savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association incorporated under the laws of this state or organized under the laws of the United States doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof" is limited to 15 percent of the net worth of the institution or a lesser amount if provided by a rule of the State Board of Administration.[30]

- Investments in time drafts or bills of exchange (banker's acceptances) must be accepted by a member bank of the Federal Reserve System having total deposits not less than $400 million.[31]

There currently are no criteria for negotiable certificates of deposit issued by domestic or foreign financial institutions in United States dollars.[32]

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

Although not defined in the bill, a nationally recognized statistical rating organization ("NRSROs") is an organization that has been identified by the United States Securities and Exchange Commission.[33] There are currently five NRSROs: A.M. Best Company, Inc. ("A.M. Best"), Dominion Bond Rating Service Limited ("DBRS"); Fitch, Inc. ("Fitch"); Moody's Investors Service Inc. ("Moody's"); and the Standard & Poor's Division of the McGraw Hill Companies, Inc. ("S&P").[34]

Each of these NRSROs has its own set of credit ratings. For example, Moody's long-term issue credit ratings[35] range from Aaa[36] to C[37] and Moody's "appends numerical modifiers to each generic rating classification from Aa to Caa."[38] By contrast, S&P long-term issue credit ratings[39] range from AAA[40] to

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[28] Fla. Stat. § 215.47(1) (2005).
[29] Fla. Stat. § 215.47(1)(j) (2005).
[30] Fla. Stat. § 215.47(1)(h) (2005).
[31] Fla. Stat. § 215.47(1)(k) (2005).
[32] Fla. Stat. § 215.47(1)(l) (2005).
[33] The Securities and Exchange Commission has never defined the term NRSRO. Instead, NRSROs are identified through the no-action letter process. Securities and Exchange Commission, Release No. 33-8570, Definition of Nationally Recognized Statistical Rating Organization (Apr. 19, 2005), available at http://www.sec.gov/rules/proposed/33-8570.pdf (last visited Mar. 11, 2006).
[34] *Id.*
[35] Moody's, Long-Term Obligation Ratings, available at http://www.moodys.com/moodys/cust/AboutMoodys/AboutMoodys.aspx?topic=rdef&subtopic=moodys%20credit%20ratings&title=Long+Term+Obligation+Ratings.htm (last visited Mar. 11, 2006; free login required).
[36] *Id.* ("Obligations rated Aaa are judged to be of the highest quality, with minimal credit risk.")
[37] *Id.* ("Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest.")
[38] *Id.*

D[41] and "may be modified by the addition of a plus or minus sign to show relative standing within the major categories."[42]

The State Board of Administration supports[43] changing the criteria for savings accounts,[44] certificates of deposit,[45] banker's acceptances,[46] and negotiable certificates of deposit.

Authorized Investments: No More than 25 Percent

There are currently 11 types of investments that the State Board of Administration is authorized to invest in "with no more than 25 percent of any fund."[47] Most of these "25-percent-authorized investments" also must meet certain criteria. The bill changes some of these criteria and eliminates specific authority related to one of the authorized investments.

Municipal/Political Subdivision Bonds, Notes, or Obligations. Currently, the State Board of Administration may invest in bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of the state as long as those obligations are rated in any one of the three highest ratings by two nationally recognized rating services.[48] If only one nationally recognized rating service has rated the obligation, the rating must be in one of the two highest classifications.[49] This bill lowers the required rating to "investment grade" by at least one nationally recognized statistical rating organization. The following table illustrates the permissible investment range under current law and under the bill:

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

The State Board of Administration characterizes this change as a matter of consistency with the investment grade criteria for investing in fixed-income obligations[50] issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities.[51]

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[39] S&P, Long-term issue credit ratings, available at http://www2.standardandpoors.com/servlet/Satellite?pagename=sp%2FPage%2FSiteSearchResultsPg&l=EN&r=1&b=10&search=site&vqt=%22long-term+issue+credit+ratings%22#FixedIncome (click on "Long-term Issue Credit Ratings" in results, last visited Mar. 11, 2006).
[40] *Id.* ("An obligation rated 'AAA' has the highest rating assigned by S&P and the obligor's capacity to meet its financial commitment on the obligation is extremely strong.")
[41] *Id.* (" An obligation rated 'D' is in payment default. The 'D' rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired, unless Standard & Poor's believes that such payments will be made during such grace period. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action if payments on an obligation are jeopardized.")
[42] *Id.*
[43] The State Board of Administration approved this general legislative proposal at its meeting on December 13, 2005. Fla. State Board of Admin., Transcript, Fla. Cabinet Meeting, Dec. 13, 2005, pp. 52-53, Item 4. (Dec. 21, 2005).
[44] The State Board of Administration indicates the current credit exposure limitation is redundant under current portfolio guidelines and is rarely used in their portfolios. The State Board of Administration also indicates that "automated compliance testing is not possible...due to net worth information not being available." Fla. SBA Legislation 2006.
[45] *Id.*
[46] According to the State Board of Administration, "these types of securities have diminished in importance and are also rarely used in their portfolios." It also is another area where automated compliance testing with the deposit size requirement is difficult because this information is not available. The State Board of Administration believes these changes better reflect credit quality and are more effective and efficient. Fla. SBA Legislation 2006.
[47] Fla. Stat. § 215.47(2) (2005).
[48] Fla. Stat. § 215.47(2)(a) (2005).
[49] *Id.*
[50] Fla. Stat. § 215.47(2)(g) (2005).
[51] Fla. SBA Legislation 2006.

Certain Notes Secured by First Mortgages. The State Board of Administration is authorized to invest in notes secured by first mortgages on Florida real property that are insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs.[52] The bill removes the limitation to Florida real property. According to the State Board of Administration, first mortgages pooled in Federal Housing Administration and Department of Veterans Affairs certificates are not pooled by the state.[53] As such, the State Board of Administration cannot utilize this provision unless it is expanded.

Investments Collateralized by Certain First Mortgages. The State Board of Administration is authorized to invest in investments that are collateralized by first mortgages covering single-family Florida residences which meet certain criteria: do not exceed $60,000, do not exceed 80 percent of value, are not delinquent, and are originated by a lender regulated by the state or Federal Government.[54] The aggregate collateral furnished by the mortgage must be at least 150 percent of the aggregate investment and the mortgages must be segregated by the lending institution.[55] If one of these mortgages becomes more than three months delinquent, the lender is required to substitute a mortgage of equal or greater value.[56] Because the State Board of Administration considers these provisions "dated, limited in scope, and redundant,"[57] the bill removes this specific authority. The State Board of Administration will, however, continue to have the authority to invest in these mortgages under another provision of this section[58] which authorizes investment in other asset backed securities.[59]

Certain Group Annuity Contracts. The State Board of Administration is authorized to invest in group annuity contracts of the pension investment type with insurers licensed to do business in this state provided that the amount invested with any one insurer does not exceed three percent of its assets.[60] This bill removes the asset-percentage limitation and replaces it with the following requirement: rated investment grade by at least one nationally recognized rating service. The State Board of Administration views the "asset limitation as an attempt to impose credit limits, which are better effectuated by using rating requirements."[61] The State Board of Administration cites consistency with the other changes in the bill and the investment grade standard for investing in fixed-income obligations[62] issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities as support the investment grade level for these investments.[63]

Authorized Investments: Certain Foreign Corporations or Foreign Commercial Entities

The State Board of Administration is authorized to invest no more than 20 percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity which has its principal office located in any country other than the United States of America or its possessions or territories.[64] This authority does not include United States dollar-denominated securities listed and traded on a United States exchange which are a part of the ordinary investment strategy of the board.[65] The bill increases the authorized percentage from 20 percent to 25 percent.

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

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[52] Fla. Stat. § 215.47(2)(b) (2005).
[53] Fla. SBA Legislation 2006.
[54] Fla. Stat. § 215.47(2)(c) (2005).
[55] *Id.*
[56] *Id.*
[57] Fla. SBA Legislation 2006.
[58] Fla. Stat. § 215.47(2)(k) (2005).
[59] *Id.*
[60] Fla. Stat. § 215.47(2)(e) (2005).
[61] Fla. SBA Legislation 2006.
[62] Fla. Stat. § 215.47(2)(g) (2005).
[63] Fla. SBA Legislation 2006.
[64] Fla. Stat. §215.47(5) (2005).
[65] *Id.*

"This will help avoid cross-over investments topping the current 20 percent limit. The majority of the world's investment opportunities lie outside the United States, with many of the leading multinational companies now being based outside the United States. International investing expands opportunities to invest in different types of industries that might not be prevalent in the United States. Asset classes that typically have not invested outside the United States are beginning to expand their strategies to include Foreign Markets. As the Real Estate and Alternative Asset Classes explore and begin to invest globally, we will easily reach our 20 percent ceiling on international investing and possibly miss opportunities for future asset growth."[66]

Authorized Investments: Selling Short

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

"A short sale is generally the sale of a stock you do not own. Investors who sell short believe the price of the stock will fall. If the price drops, you can buy the stock at the lower price and make a profit. If the price of the stock rises and you buy it back later at the higher price, you will incur a loss. When you sell short, your brokerage firm loans you the stock. The stock you borrow comes from either the firm's own inventory, the margin account of another of the firm's clients, or another brokerage firm. As with buying stock on margin, your brokerage firm will charge you interest on the loan, and you are subject to the margin rules. If the stock you borrow pays a dividend, you must pay the dividend to the person or firm making the loan."[67]

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

"Current law allows the State Board of Administration to buy and sell futures contracts,[68] options,[69] and notional principal contracts.[70] Under current law, the smallest position a long-only portfolio can hold is zero, limiting the portfolio manager's ability to express negative views on stocks with small index weights. Conversely, the ability to profit from positive views by overweighting stocks is allowed within the parameters of the manager's investment guidelines. The inability of long-only portfolio managers to capture the added value associated with correctly identifying poorly performing stocks suggest that value added opportunities are not being fully explored. Large institutional investors are beginning to implement programs that combine a group of market-neutral equity managers to overlay equity index futures. The objective is to outperform the passive equity index. This approach allows institutional investors to take advantage of both long and short positions in their effort to add value over the passive equity index. This approach has a number of benefits relative to other programs that utilize alternative types of investments. These benefits include complete transparency, daily valuation, higher levels of diversification and risk control, lower fees, and a simple institutional investment structure."[71]

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[66] Fla. SBA Legislation 2006.
[67] United States Sec. and Exch. Comm., *Short Sales*, available at http://www.sec.gov/answers/shortsale.htm (last visited Mar. 12, 2006).
[68] "A futures contract is an agreement to buy or sell a specific quantity of a commodity or financial instrument at a specified price on a particular date in the future. Commodities include bulk goods, such as grains, metals, and foods, and financial instruments include U.S. and foreign currencies." United States Sec. and Exch. Comm., *Commodity Futures Trading Commission*, available at http://www.sec.gov/answers/cftc.htm (last visited Mar. 12, 2006).
[69] "Options are contracts giving the purchaser the right to buy or sell a security, such as stocks, at a fixed price within a specific period of time." United States Sec. and Exch. Comm., *Options Trading*, available at http://www.sec.gov/answers/options.htm (last visited Mar. 12, 2006).
[70] "A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts." Notional Principal Contracts, 26 C.F.R. § 1.446-3 (2006), available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=8ddaf18a7b848e2e65251a98c9274c05;rgn=div8;view=text;node=26%3A6.0.1.1.1.0.4.16;idno=26;cc=ecfr (last visited Mar. 12, 2006).
[71] Fla. SBA Legislation 2006.

Conforming a Cross Reference

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

C. SECTION DIRECTORY:

Section 1: Amends section 121.4501, Florida Statutes, to revise the interest rate calculation for transfers between retirement plans and to provide credit for military service for members of the FRS Investment Plan.

Section 2: Amends section 121.591, Florida Statutes, to create procedures pertaining to invalid distributions from the FRS Investment Plan.

Section 3: Amends section 215.47, Florida Statutes, to revise the standards for investments by the State Board of Administration.

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

This bill may have a positive fiscal impact on the funds managed by the State Board of Administration.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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

29 present value of the employee's accumulated benefit obligation
30 under the defined benefit retirement program of the Florida
31 Retirement System. Upon such transfer, all service credit
32 previously earned under the defined benefit program of the
33 Florida Retirement System shall be nullified for purposes of
34 entitlement to a future benefit under the defined benefit
35 program of the Florida Retirement System. A participant is
36 precluded from transferring the accumulated benefit obligation
37 balance from the defined benefit program upon the expiration of
38 the period afforded to enroll in the optional program.
39 2. For purposes of this subsection, the present value of
40 the member's accumulated benefit obligation is based upon the
41 member's estimated creditable service and estimated average
42 final compensation under the defined benefit program, subject to
43 recomputation under subparagraph 3. For state employees
44 enrolling under subparagraph (4)(a)1., initial estimates will be
45 based upon creditable service and average final compensation as
46 of midnight on June 30, 2002; for district school board
47 employees enrolling under subparagraph (4)(b)1., initial
48 estimates will be based upon creditable service and average
49 final compensation as of midnight on September 30, 2002; and for
50 local government employees enrolling under subparagraph
51 (4)(c)1., initial estimates will be based upon creditable
52 service and average final compensation as of midnight on
53 December 31, 2002. The dates respectively specified above shall
54 be construed as the "estimate date" for these employees. The
55 actuarial present value of the employee's accumulated benefit
56 obligation shall be based on the following:

57 a. The discount rate and other relevant actuarial
58 assumptions used to value the Florida Retirement System Trust
59 Fund at the time the amount to be transferred is determined,
60 consistent with the factors provided in sub-subparagraphs b. and
61 c.
62 b. A benefit commencement age, based on the member's
63 estimated creditable service as of the estimate date. The
64 benefit commencement age shall be the younger of the following,
65 but shall not be younger than the member's age as of the
66 estimate date:
67 (I) Age 62; or
68 (II) The age the member would attain if the member
69 completed 30 years of service with an employer, assuming the
70 member worked continuously from the estimate date, and
71 disregarding any vesting requirement that would otherwise apply
72 under the defined benefit program of the Florida Retirement
73 System.
74 c. For members of the Special Risk Class and for members
75 of the Special Risk Administrative Support Class entitled to
76 retain special risk normal retirement date, the benefit
77 commencement age shall be the younger of the following, but
78 shall not be younger than the member's age as of the estimate
79 date:
80 (I) Age 55; or
81 (II) The age the member would attain if the member
82 completed 25 years of service with an employer, assuming the
83 member worked continuously from the estimate date, and
84 disregarding any vesting requirement that would otherwise apply

85 under the defined benefit program of the Florida Retirement
86 System.
87 d. The calculation shall disregard vesting requirements
88 and early retirement reduction factors that would otherwise
89 apply under the defined benefit retirement program.
90 3. For each participant who elects to transfer moneys from
91 the defined benefit program to his or her account in the
92 optional program, the division shall recompute the amount
93 transferred under subparagraph 2. not later than 60 days after
94 the actual transfer of funds based upon the participant's actual
95 creditable service and actual final average compensation as of
96 the initial date of participation in the optional program. If
97 the recomputed amount differs from the amount transferred under
98 subparagraph 2. by $10 or more, the division shall:
99 a. Transfer, or cause to be transferred, from the Florida
100 Retirement System Trust Fund to the participant's account in the
101 optional program the excess, if any, of the recomputed amount
102 over the previously transferred amount together with interest
103 from the initial date of transfer to the date of transfer under
104 this subparagraph, based upon ~~8 percent~~ effective annual
105 interest <u>equal to the assumed return on the actuarial investment</u>
106 <u>which was used in the most recent actuarial valuation of the</u>
107 <u>system</u>, compounded annually.
108 b. Transfer, or cause to be transferred, from the
109 participant's account to the Florida Retirement System Trust
110 Fund the excess, if any, of the previously transferred amount
111 over the recomputed amount, together with interest from the
112 initial date of transfer to the date of transfer under this

113 subparagraph, based upon 6 percent effective annual interest,
114 compounded annually, pro rata based on the participant's
115 allocation plan.
116 4. As directed by the participant, the board shall
117 transfer or cause to be transferred the appropriate amounts to
118 the designated accounts. The board shall establish transfer
119 procedures by rule, but the actual transfer shall not be later
120 than 30 days after the effective date of the member's
121 participation in the optional program unless the major financial
122 markets for securities available for a transfer are seriously
123 disrupted by an unforeseen event which also causes the
124 suspension of trading on any national securities exchange in the
125 country where the securities were issued. In that event, such
126 30-day period of time may be extended by a resolution of the
127 trustees. Transfers are not commissionable or subject to other
128 fees and may be in the form of securities or cash as determined
129 by the state board. Such securities shall be valued as of the
130 date of receipt in the participant's account.
131 5. If the board or the division receives notification from
132 the United States Internal Revenue Service that this paragraph
133 or any portion of this paragraph will cause the retirement
134 system, or a portion thereof, to be disqualified for tax
135 purposes under the Internal Revenue Code, then the portion that
136 will cause the disqualification does not apply. Upon such
137 notice, the state board and the division shall notify the
138 presiding officers of the Legislature.
139 (22) CREDIT FOR MILITARY SERVICE.--Creditable service of
140 any member of the Public Employee Optional Retirement Program

141 shall include military service in the Armed Forces of the United
142 States as provided in the conditions outlined in s. 121.111(1).
143 Section 2. Paragraph (a) of subsection (1) of section
144 121.591, Florida Statutes, is amended to read:
145 121.591 Benefits payable under the Public Employee
146 Optional Retirement Program of the Florida Retirement
147 System.--Benefits may not be paid under this section unless the
148 member has terminated employment as provided in s.
149 121.021(39)(a) or is deceased and a proper application has been
150 filed in the manner prescribed by the state board or the
151 department. The state board or department, as appropriate, may
152 cancel an application for retirement benefits when the member or
153 beneficiary fails to timely provide the information and
154 documents required by this chapter and the rules of the state
155 board and department. In accordance with their respective
156 responsibilities as provided herein, the State Board of
157 Administration and the Department of Management Services shall
158 adopt rules establishing procedures for application for
159 retirement benefits and for the cancellation of such application
160 when the required information or documents are not received. The
161 State Board of Administration and the Department of Management
162 Services, as appropriate, are authorized to cash out a de
163 minimis account of a participant who has been terminated from
164 Florida Retirement System covered employment for a minimum of 6
165 calendar months. A de minimis account is an account containing
166 employer contributions and accumulated earnings of not more than
167 $5,000 made under the provisions of this chapter. Such cash-out
168 must either be a complete lump-sum liquidation of the account

169 balance, subject to the provisions of the Internal Revenue Code,
170 or a lump-sum direct rollover distribution paid directly to the
171 custodian of an eligible retirement plan, as defined by the
172 Internal Revenue Code, on behalf of the participant. If any
173 financial instrument issued for the payment of retirement
174 benefits under this section is not presented for payment within
175 180 days after the last day of the month in which it was
176 originally issued, the third-party administrator or other duly
177 authorized agent of the State Board of Administration shall
178 cancel the instrument and credit the amount of the instrument to
179 the suspense account of the Public Employee Optional Retirement
180 Program Trust Fund authorized under s. 121.4501(6). Any such
181 amounts transferred to the suspense account are payable upon a
182 proper application, not to include earnings thereon, as provided
183 in this section, within 10 years after the last day of the month
184 in which the instrument was originally issued, after which time
185 such amounts and any earnings thereon shall be forfeited. Any
186 such forfeited amounts are assets of the Public Employee
187 Optional Retirement Program Trust Fund and are not subject to
188 the provisions of chapter 717.
189 (1) NORMAL BENEFITS.--Under the Public Employee Optional
190 Retirement Program:
191 (a) Benefits in the form of vested accumulations as
192 described in s. 121.4501(6) shall be payable under this
193 subsection in accordance with the following terms and
194 conditions:
195 1. To the extent vested, benefits shall be payable only to
196 a participant.

197 2. Benefits shall be paid by the third-party administrator
198 or designated approved providers in accordance with the law, the
199 contracts, and any applicable board rule or policy.
200 3. To receive benefits under this subsection, the
201 participant must be terminated from all employment with all
202 Florida Retirement System employers, as provided in s.
203 121.021(39).
204 4. Benefit payments may not be made until the participant
205 has been terminated for 3 calendar months, except that the board
206 may authorize by rule for the distribution of up to 10 percent
207 of the participant's account after being terminated for 1
208 calendar month if a participant has reached the normal
209 retirement requirements of the defined benefit plan, as provided
210 in s. 121.021(29).
211 5. If a member or former member of the Florida Retirement
212 System receives an invalid distribution from the Public Employee
213 Optional Retirement Program Trust Fund, such person shall repay
214 the full invalid distribution to the trust fund within 90 days
215 after receipt of final notification by the State Board of
216 Administration or the third-party administrator that the
217 distribution was invalid. If such person fails to repay the full
218 invalid distribution within 90 days after receipt of final
219 notification, the person may be deemed retired from the Public
220 Employee Optional Retirement Program by the state board, as
221 provided pursuant to s. 121.4501(2)(j), and shall be subject to
222 s. 121.122. If such person is deemed retired by the state board,
223 any joint and several liability set out in s. 121.091(9)(c)2.
224 becomes null and void, and the state board, the Department of

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

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

281 ~~the institution, or a lesser amount as determined by rule by the~~
282 ~~State Board of Administration,~~ provided such savings accounts
283 and certificates of deposit are secured in the manner prescribed
284 in chapter 280.
285 (i) Notes, bonds, and other obligations of agencies of the
286 United States.
287 (j) Commercial paper of prime quality of the highest
288 letter and numerical rating as provided for by at least one
289 nationally recognized rating service.
290 (k) Time drafts or bills of exchange drawn on and accepted
291 by a commercial bank, otherwise known as banker's acceptances,
292 which are accepted by a member bank of the Federal Reserve
293 System and are of prime quality of the highest letter and
294 numerical ratings as provided for by at least one nationally
295 recognized statistical rating organization ~~having total deposits~~
296 ~~of not less than $400 million~~.
297 (l) Negotiable certificates of deposit issued by domestic
298 or foreign financial institutions in United States dollars of
299 prime quality of the highest letter and numerical ratings as
300 provided for by at least one nationally recognized statistical
301 rating organization.
302 (m) Short-term obligations not authorized elsewhere in
303 this section to be purchased individually or in pooled accounts
304 or other collective investment funds, for the purpose of
305 providing liquidity to any fund or portfolio.
306 (n) Securities of, or other interests in, any open-end or
307 closed-end management type investment company or investment
308 trust registered under the Investment Company Act of 1940, 15

309 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided
310 that the portfolio of such investment company or investment
311 trust is limited to obligations of the United States Government
312 or any agency or instrumentality thereof and to repurchase
313 agreements fully collateralized by such United States Government
314 obligations and provided that such investment company or
315 investment trust takes delivery of such collateral either
316 directly or through an authorized custodian.
317 (2) With no more than 25 percent of any fund in:
318 (a) Bonds, notes, or obligations of any municipality or
319 political subdivision or any agency or authority of this state,
320 if the obligations are rated investment grade by at least one
321 nationally recognized statistical rating organization ~~such~~
322 ~~obligations are rated in any one of the three highest ratings by~~
323 ~~two nationally recognized rating services. However, if only one~~
324 ~~nationally recognized rating service shall rate such~~
325 ~~obligations, then such rating service must have rated such~~
326 ~~obligations in any one of the two highest classifications~~
327 ~~heretofore mentioned~~.
328 (b) Notes secured by first mortgages ~~on Florida real~~
329 ~~property,~~ insured or guaranteed by the Federal Housing
330 Administration or the United States Department of Veterans
331 Affairs.
332 ~~(c) Investments collateralized by first mortgages covering~~
333 ~~single-family Florida residences, provided such mortgages do not~~
334 ~~exceed $60,000, do not exceed 80 percent of value, are not~~
335 ~~delinquent, and are originated by a lender regulated by the~~
336 ~~state or Federal Government and the aggregate of the collateral~~

337 ~~furnished is at least 150 percent of the aggregate investment~~
338 ~~under this subsection. The mortgages used for collateral shall~~
339 ~~be segregated by the lending institution so that such~~
340 ~~segregation may be confirmed by independent audit. In the event~~
341 ~~any such mortgage used as collateral becomes more than 3 months~~
342 ~~delinquent, the lender shall immediately substitute therefor a~~
343 ~~mortgage of equal or greater value.~~
344 (c) ~~(d)~~ Mortgage securities which represent participation
345 in or are collateralized by mortgage loans secured by real
346 property. Such securities must be issued by an agency of or
347 enterprise sponsored by the United States Government, including,
348 but not limited to, the Government National Mortgage
349 Association, the Federal National Mortgage Association, and the
350 Federal Home Loan Mortgage Corporation.
351 (d) ~~(e)~~ Group annuity contracts of the pension investment
352 type with insurers licensed to do business in this state which
353 are rated investment grade by at least one nationally recognized
354 rating service~~, except that amounts invested by the board with~~
355 ~~any one insurer shall not exceed 3 percent of its assets~~.
356 (e) ~~(f)~~ Certain interests in real property and related
357 personal property, including mortgages and related instruments
358 on commercial or industrial real property, with provisions for
359 equity or income participation or with provisions for
360 convertibility to equity ownership; and interests in collective
361 investment funds. Associated expenditures for acquisition and
362 operation of assets purchased under this provision or of
363 investments in private equity or other private investment
364 partnerships or limited liability companies shall be included as

365 a part of the cost of the investment.
366 1. The title to real property acquired under this
367 paragraph shall be vested in the name of the respective fund.
368 2. For purposes of taxation of property owned by any fund,
369 the provisions of s. 196.199(2)(b) do not apply.
370 3. Real property acquired under the provisions of this
371 paragraph shall not be considered state lands or public lands
372 and property as defined in chapter 253, and the provisions of
373 that chapter do not apply to such real property.
374 (f) ~~(g)~~ Fixed-income obligations not otherwise authorized
375 by this section issued by foreign governments or political
376 subdivisions or agencies thereof, supranational agencies,
377 foreign corporations, or foreign commercial entities, if the
378 obligations are rated investment grade by at least one
379 nationally recognized rating service.
380 (g) ~~(h)~~ A portion of the funds available for investment
381 pursuant to this subsection may be invested in rated or unrated
382 bonds, notes, or instruments backed by the full faith and credit
383 of the government of Israel.
384 (h) ~~(i)~~ Obligations of agencies of the government of the
385 United States, provided such obligations have been included in
386 and authorized by the Florida Retirement System Defined Benefit
387 Plan Investment Policy Statement established in s. 215.475.
388 (i) ~~(j)~~ United States dollar-denominated obligations issued
389 by foreign governments, or political subdivisions or agencies
390 thereof, supranational agencies, foreign corporations, or
391 foreign commercial entities.
392 (j) ~~(k)~~ Asset-backed securities not otherwise authorized by

393 this section.
394 (5) With no more than 25 ~~20~~ percent of any fund in
395 corporate obligations and securities of any kind of a foreign
396 corporation or a foreign commercial entity having its principal
397 office located in any country other than the United States of
398 America or its possessions or territories, not including United
399 States dollar-denominated securities listed and traded on a
400 United States exchange which are a part of the ordinary
401 investment strategy of the board.
402 (17) The State Board of Administration may sell short any
403 of the securities and investments authorized under this section.
404 Section 4. Paragraph (e) of subsection (4) of section
405 1002.36, Florida Statutes, is amended to read:
406 1002.36 Florida School for the Deaf and the Blind.--
407 (4) BOARD OF TRUSTEES.--
408 (e) The board of trustees is invested with full power and
409 authority to:
410 1. Appoint a president, faculty, teachers, and other
411 employees and remove the same as in its judgment may be best and
412 fix their compensation.
413 2. Procure professional services, such as medical, mental
414 health, architectural, and engineering.
415 3. Procure legal services without the prior written
416 approval of the Attorney General.
417 4. Determine eligibility of students and procedure for
418 admission.
419 5. Provide for the students of the school necessary
420 bedding, clothing, food, and medical attendance and such other

421 things as may be proper for the health and comfort of the
422 students without cost to their parents, except that the board of
423 trustees may set tuition and other fees for nonresidents.
424 6. Provide for the proper keeping of accounts and records
425 and for budgeting of funds.
426 7. Enter into contracts.
427 8. Sue and be sued.
428 9. Secure public liability insurance.
429 10. Do and perform every other matter or thing requisite
430 to the proper management, maintenance, support, and control of
431 the school at the highest efficiency economically possible, the
432 board of trustees taking into consideration the purposes of the
433 establishment.
434 11. Receive gifts, donations, and bequests of money or
435 property, real or personal, tangible or intangible, from any
436 person, firm, corporation, or other legal entity. However, the
437 board of trustees may not obligate the state to any expenditure
438 or policy that is not specifically authorized by law. If the
439 bill of sale, will, trust indenture, deed, or other legal
440 conveyance specifies terms and conditions concerning the use of
441 such money or property, the board of trustees shall observe such
442 terms and conditions.
443 12. Deposit outside the State Treasury such moneys as are
444 received as gifts, donations, or bequests and may disburse and
445 expend such moneys, upon its own warrant, for the use and
446 benefit of the Florida School for the Deaf and the Blind and its
447 students, as the board of trustees deems to be in the best
448 interest of the school and its students. Such money or property

449 shall not constitute or be considered a part of any legislative
450 appropriation, and such money shall not be used to compensate
451 any person for engaging in lobbying activities before the House
452 of Representatives or Senate or any committee thereof.
453 13. Sell or convey by bill of sale, deed, or other legal
454 instrument any property, real or personal, received as a gift,
455 donation, or bequest, upon such terms and conditions as the
456 board of trustees deems to be in the best interest of the school
457 and its students.
458 14. Invest such moneys in securities enumerated under s.
459 215.47(1), (2)(c) ~~(2)(d)~~, (3), (4), and (9), and in The Common
460 Fund, an Investment Management Fund exclusively for nonprofit
461 educational institutions.
462 Section 5. This act shall take effect July 1, 2006.