



Policy and Budget Council

**April 1, 2008
1:15 p.m.
212 Knott Building**

Meeting Packet

**Marco Rubio
Speaker**

**Ray Sansom
Chair**



The Florida House of Representatives

Policy & Budget Council

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Meeting Agenda
Tuesday, April 1, 2008
212 Knott Building
1:15 p.m.

- I. Call to Order**
- II. Roll Call**
- III. Consideration of the following bills:**
 - CS/HB 153 – Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Educational Requirements by Healthcare Council and Representative Cusack
 - CS/HB 247 – Nursing Facilities by Healthcare Council and Representative Murzin
 - CS/HB 1203 – Interstate Compact on Educational Opportunity for Military Children by Schools & Learning Council and Representative Proctor
 - HB 1283 – Ad Valorem Tax Assessment Value Challenges by Representative Cannon
 - CS/HB 1395 – Council on the Social Status of Black Men and Boys by Safety & Security Council and Representative Llorente
 - HJR 7005 – Taxpayers' Bill of Rights by Government Efficiency & Accountability Council and Representative Attkisson
 - HB 7061 – Biomedical Research by Healthcare Council and Representative Bean
- IV. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 153 Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Educational Requirements
SPONSOR(S): Healthcare Council; Cusack and others
TIED BILLS: IDEN./SIM. BILLS: SB 646

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Committee on Health Quality, 12 Y, 0 N, Owen, Lowell. Row 2: Healthcare Council, 17 Y, 0 N, As CS, Owen/Massengale, Gormley. Row 3: Policy & Budget Council, Leznoff, Hansen.

SUMMARY ANALYSIS

This bill modifies the current requirement for completion of a continuing educational course on HIV and AIDS from biennial to one-time for employees and clients of developmental disability facilities, mental health facilities, or substance abuse facilities, and employees of hospitals, nursing homes, home health agencies, hospices, or assisted living facilities.

The bill specifies that an employee who has completed an HIV and AIDS educational course is not required to repeat the course upon changing employment to a different facility. The educational course requirement does not apply to acupuncturists, physicians, osteopathic physicians, chiropractors, podiatrists, optometrists, nurses, pharmacists, dentists, dental hygienists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, nutritionists, or physical therapists, who must follow the requirements for instruction on HIV and AIDS found in s. 456.033, F.S.

The bill also requires each nurse registry to obtain proof of completion of a continuing educational course on HIV and AIDS in the application form of every applicant for contract.

The bill does not appear to have a fiscal impact on state or local governments and takes effect July 1, 2008..

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Continuing Educational Course on HIV and AIDS

All employees and clients of facilities licensed under chapters 393 (developmental disability facilities), 394 (mental health facilities), or 397 (substance abuse facilities), F.S., and employees of facilities licensed under chapter 395 (hospitals), F.S., part II (nursing homes), part III (home health agencies), or part IV (hospices) of chapter 400, F.S., or part I (assisted living facilities) of chapter 429, F.S., are required by the Department of Health (department) to biennially complete a continuing educational course on the transmission, infection control procedures, clinical management, and prevention of HIV and AIDS. New employees are also required to complete a similar educational course on HIV and AIDS.

In 2006,¹ the Legislature repealed the biennial educational course on HIV/AIDS as a requirement of licensure for certain health care practitioners licensed under chapter 456, F.S.,² and, instead, required a one-time educational course on HIV/AIDS. However, the requirement for facility employees to complete the biennial educational course on HIV/AIDS remained in statute. Consequently, those health care practitioners who are employed in certain facilities are still required to complete the biennial HIV and AIDS course, despite the fact that the requirement was repealed for most professions in 2006.

Licensure of Nurse Registries

Nurse registries provide skilled and personal care. Nurse registries are set-up differently than home health agencies in that they hire independent contractors who are registered nurses, certified nurse assistants (CNA), home health aides, licensed practical nurses, homemakers, or companions to provide services to patients in their homes. These individuals are not direct employees of the nurse registry, but are independent contractors. A patient contracts with a nurse registry and the independent contractors for services. The patient makes a direct contract with the individual contractor sent from the nurse registry.

¹ House Bill 699; Chapter 2006-251, L.O.F.

² Health care professionals who are required in s. 456.033, F.S. to complete a one-time HIV/AIDS educational course include: acupuncturists (chapter 457, F.S.), physicians (chapter 458, F.S.), osteopathic physicians (chapter 459, F.S.), chiropractors (chapter 460, F.S.), podiatrists (chapter 461, F.S.), optometrists (chapter 463, F.S.), nurses (part I of chapter 464, F.S.), pharmacists (chapter 465, F.S.), dentists and dental hygienists (chapter 466, F.S.), nursing home administrators (part II of chapter 468, F.S.), occupational therapists (part III of chapter 468, F.S.), respiratory therapists (part V of chapter 468, F.S.), dieticians and nutritionists (part X of chapter 468, F.S.), and physical therapists (chapter 486, F.S.). However, s. 456.034, F.S., maintains the biennial HIV/AIDS educational course requirement for athletic trainers and massage therapists.

A nurse registry is required to obtain the following information from the independent contractors they refer: name, address, date of birth, and social security number; educational background and employment history; number and date of the applicable license or certification and renewal information.

On April 10, 2006, the Joint Administrative Procedures Committee (JAPC) sent a letter to the Agency for Health Care Administration (agency) providing comments on the agency's proposed amendment to Rule 59A-18.0081(11). This proposed amendment required CNA's and home health aides referred by nurse registries to have completed a continuing education course biennially on HIV/AIDS pursuant to s. 381.0035, F.S. The JAPC advised the agency that s. 381.0035, F.S., states "The department [of health] may adopt rules to carry out the provisions of this section." Accordingly, the JAPC requested the agency to "provide the specific rulemaking authority to adopt rules to implement this statute." Following the JAPC inquiry, the agency changed its proposed rule to strike this course requirement.

Effect of Proposed Changes:

This bill amends s. 381.0035, F.S., to require all employees and clients of facilities licensed under chapters 393, 394, or 397, F.S., and employees of facilities licensed under chapter 395, F.S., part II, part III, or part IV of chapter 400, F.S., or part I of chapter 429, F.S., to complete a one-time educational course on the transmission, infection control procedures, clinical management, and prevention of HIV and AIDS. The proposed changes in this bill will standardize the HIV and AIDS course requirement for most health care practitioners and employees of health care facilities.

The bill exempts an employee from repeating the HIV and AIDS educational course upon changing employment to a different facility. The bill also exempts an employee who is subject to the HIV and AIDS course requirements found in s. 456.033, F.S., from the course requirements in the bill.

The bill also amends s. 400.506, F.S., to direct each nurse registry to require every applicant for contract to include proof of completion of a continuing educational course on HIV and AIDS in their application form.

C. SECTION DIRECTORY:

Section 1. Amends s. 381.0035, F.S., relating to educational courses on HIV and AIDS for employees and clients of specified licensed health care facilities.

Section 2. Amends s. 400.506, F.S., relating to licensure of nurse registries.

Section 3. Provides an effective date of July 1, 2008.

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:

There is a potential revenue loss to entities that provide an HIV and AIDS course for a fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The agency and department have sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

I am proud to sponsor this good bill. It provides consistency in training for healthcare professionals regardless of where they work. It makes it easier for individuals who work in the various types of facilities and healthcare settings to follow the same rules and guidelines for HIV/AIDS education.

Based on the recommendation of committee staff, I will be offering a technical amendment to HB 153 which clarifies that an employee, whether new or an existing staff member, will have the same HIV/AIDS training requirement. However, employers if they prefer will have the flexibility to offer more training to employees than is mandated by my bill.

I appreciate the opportunity to present this important legislation.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On December 11, 2007, the Health Quality Committee adopted one amendment to the bill. The amendment removes the reference to "new employees" and clarifies that the one-time HIV/AIDS course requirement applies to all employees of the facilities listed. It also removes the reference to a certificate received by those who complete the course. Finally, the amendment clarifies that the bill does not apply to an employee subject to the educational requirements of s. 456.033, F.S.

The bill was reported favorably with recommended Council Substitute.

On March 25, 2008, the Healthcare Council adopted one technical amendment to the bill. The amendment added the word "virus" to "human immunodeficiency virus counseling".

The bill was reported favorably as a Council Substitute. The analysis reflects the Council Substitute.

1 A bill to be entitled
 2 An act relating to human immunodeficiency virus and
 3 acquired immune deficiency syndrome educational
 4 requirements; amending s. 381.0035, F.S.; revising
 5 requirements relating to educational courses on HIV and
 6 AIDS for certain employees and clients of specified
 7 licensed health care facilities; specifying applicability;
 8 amending s. 400.506, F.S.; revising requirements with
 9 respect to educational courses on HIV and AIDS for nurse
 10 registries; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 381.0035, Florida Statutes, is amended
 15 to read:

16 381.0035 Educational course on HIV and AIDS; employees and
 17 clients of certain health care facilities.--

18 (1) The Department of Health shall require all employees
 19 and clients of facilities licensed under chapter ~~chapters~~ 393,
 20 chapter 394, or chapter ~~and~~ 397 and employees of facilities
 21 licensed under chapter 395, part ~~parts~~ II, part III, or part ~~and~~
 22 IV of chapter 400, or ~~and~~ part I of chapter 429 to complete,
 23 ~~biennially,~~ a one-time ~~continuing~~ educational course on the
 24 modes of transmission, infection control procedures, clinical
 25 management, and prevention of human immunodeficiency virus and
 26 acquired immune deficiency syndrome with an emphasis on
 27 appropriate behavior and attitude change. Such instruction shall
 28 include information on current Florida law and its impact on

29 testing, confidentiality of test results, and treatment of
 30 patients and any protocols and procedures applicable to human
 31 immunodeficiency counseling and testing, reporting, the offering
 32 of HIV testing to pregnant women, and partner notification
 33 issues pursuant to ss. 381.004 and 384.25. An employee who has
 34 completed the educational course required in this subsection is
 35 not required to repeat the course upon changing employment to a
 36 different facility licensed under chapter 393, chapter 394,
 37 chapter 395, or chapter 397, part II, part III, or part IV of
 38 chapter 400, or part I of chapter 429.

39 ~~(2) New employees shall be required to complete a course~~
 40 ~~on human immunodeficiency virus and acquired immune deficiency~~
 41 ~~syndrome, with instruction to include information on current~~
 42 ~~Florida law and its impact on testing, confidentiality of test~~
 43 ~~results, and treatment of patients.~~

44 (2)(3) Facilities licensed under chapter chapters 393,
 45 chapter 394, chapter 395, or chapter and 397, part parts II,
 46 part III, or part and IV of chapter 400, or and part I of
 47 chapter 429 shall maintain a record of employees and dates of
 48 attendance at human immunodeficiency virus and acquired immune
 49 deficiency syndrome educational courses.

50 (3)(4) The department shall have the authority to review
 51 the records of each facility to determine compliance with the
 52 requirements of this section. The department may adopt rules to
 53 carry out the provisions of this section.

54 (4) This section does not apply to an employee who is
 55 subject to the requirements of s. 456.033.

56 Section 2. Paragraph (e) is added to subsection (8) of
 57 section 400.506, Florida Statutes, to read:

58 400.506 Licensure of nurse registries; requirements;
 59 penalties.--

60 (8) Each nurse registry must require every applicant for
 61 contract to complete an application form providing the following
 62 information:

63 (e) Proof of completion of a continuing educational course
 64 on modes of transmission, infection control procedures, clinical
 65 management, and prevention of human immunodeficiency virus and
 66 acquired immune deficiency syndrome with an emphasis on
 67 appropriate behavior and attitude change. Such instruction shall
 68 include information on current Florida law and its impact on
 69 testing, confidentiality of test results, and treatment of
 70 patients and any protocols and procedures applicable to human
 71 immunodeficiency virus counseling and testing, reporting,
 72 offering HIV testing to pregnant women, and partner notification
 73 issues pursuant to ss. 381.004 and 384.25.

74 Section 3. This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill clarifies that the last survey conducted within a six-month survey cycle may be counted as a “licensure survey” under certain circumstances where a facility’s original deficiencies are administratively overturned.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

CNA Training

Presently, nursing homes designated as Gold Seal facilities are permitted to develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules. A facility wishing to provide CNA training must not have been either cited for substandard quality-of-care, terminated from the Medicare/Medicaid program, or had an enforcement action instituted against the facility to satisfy certain federal requirements. The state is required to withdraw its approval of a training program if any of these and/or other specified conditions occur.¹

In Florida, CNA training is subject to approval by the Board of Nursing within the Department of Health, following certification by the Department of Education. Currently, there are approximately five state nursing homes that are certified by the Department of Education to offer CNA training.²

Incident Reporting

Each nursing home facility must notify the agency in writing within one business day of any adverse incident, as they are presently defined by statute.³ Subsequently, the facility must initiate an investigation and provide a complete report to the agency within 15 calendar days of the event giving rise to the investigation. If, following a complete investigation, the facility’s risk manager determines that the event in question does not constitute an “adverse incident”, the facility must include this information in the report submitted to the agency.

Licensure Evaluation and Facility Licensure Status

At least every 15 months, the agency is required to evaluate each nursing home facility to determine the degree of compliance with state licensure requirements. Following this evaluation, a nursing home is assigned either a standard or conditional licensure status. A “standard” licensure indicates that a facility has no class I or II deficiencies, and has successfully corrected all class III deficiencies within the time established by the agency. A “conditional” license is provided to a nursing facility that is not in substantial compliance with licensure standards at the time of the survey, due to the presence of one or

¹ 42 C.F.R. 483.151

² Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

³ S. 400.147(7), F.S.

more class I or II deficiencies, or to class III deficiencies left uncorrected within the time prescribed by the agency.⁴

The various classes of deficiencies are defined as follows:⁵

- Class I – a deficiency that the agency determines requires immediate corrective action because the nursing home’s noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the nursing home.
- Class II – a deficiency that the agency determines has compromised a resident’s ability to maintain or reach his or her highest practicable physical, mental, and psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class III – a deficiency that the agency determines will result in no more than minimal physical, mental, or psychological discomfort to the resident, or one that has the potential to compromise a resident’s ability to maintain or reach his or her highest practicable physical, mental, or psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- Class IV – a deficiency that the agency determines has the potential for causing no more than a minor negative impact on a resident.

Additionally, a facility may be placed on a six-month survey cycle for a period of two years if it has been cited for a class I deficiency, two or more class II deficiencies from separate surveys/investigations within a 60-day period, or has received three substantiated complaints within a six-month period, each resulting in at least one class I or II deficiency.

Effect of Proposed Changes

The CS for HB 247 permits nursing homes operating under a standard license to develop a plan to provide CNA training, and provides for agency approval of such training programs. The effect of this provision might be an increase in the number of CNAs operating in the state.

Moreover, the bill specifies when an event reported to law enforcement constitutes an “adverse incident” by providing that only events reported to a law enforcement agency for further investigation are adverse incidents within the meaning of s. 400.147(5)(a)7, F.S. The bill also removes the requirement that facilities notify the agency within one business day of a risk manager’s receipt of a report detailing an adverse incident. The facility would continue to submit a 15-day final report to the agency.⁶ Additionally, the bill clarifies that federal adverse incident reporting requirements are unchanged by the legislation.

⁴ S. 400.23(7), F.S.

⁵ S. 400.23(8), F.S.

⁶ AHCA notes that, “based on adverse incidents submitted during 2006, 77.1% of the one-day adverse incident [reports] were determined not to meet the definition of an adverse incident by the facility upon completing the final 15-day report.” Noting that there is a similar federal five-day adverse incident report requirement, the agency continues, “[f]ederal nursing home regulations include the requirement to immediately report to the agency all [instances] of abuse, neglect, and exploitation. Based upon the continued requirement to submit the 15-day report and the federal reporting requirement, the elimination of the one-day report would not create significant gaps in monitoring regulatory compliance.” Agency for Health Care Administration Agency Analysis, January 2008, record maintained by committee staff.

The bill clarifies that the last survey conducted within a six-month survey cycle may be counted as a "licensure survey" under certain circumstances where a facility's original deficiencies are administratively overturned.

Finally, the bill also eliminates the ability of the agency to approve a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties for purposes of calculating minimum staffing requirements for licensed nurses.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.141, F.S., permitting nursing facilities maintaining a standard license to develop a plan to provide certified nursing assistant training, and to apply to the agency for program approval; granting rulemaking authority to the agency.

Section 2. Amends s. 400.147, F.S., clarifying that the term "adverse incident" applies to events reported to law enforcement only where such event is reported to a law enforcement agency for investigation; and eliminating the facility requirement to notify the agency within one business day of a risk manager's receipt of a report detailing an adverse incident.

Section 3. Amends s. 400.19(3), F.S., permitting the last survey conducted within a six-month survey cycle to be counted as a "licensure survey" in the event that the administrative action giving rise to the six-month survey cycle results in the original deficiencies being overturned.

Section 4. Amends s. 400.195(1)(d), F.S., correcting a statutory cross-reference.

Section 5. Amends s. 400.23, F.S., eliminating AHCA's ability to approve a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties for purposes of evaluating minimum staffing requirements for licensed nurses.

Section 6. Provides an effective date of July 1, 2008.

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:

In its agency analysis, AHCA notes that, while there is no direct fiscal impact on the agency, "original staffing for adverse incident reporting was based upon an estimate of 3,600 nursing home and assisted living facility adverse incidents per year; however, this estimate fell significantly short of actual adverse incidents received each year. During Fiscal Year 2006-07, 4,728 adverse incidents were processed by the agency, approximately 30% higher than [the number originally] estimated. The agency has previously allocated necessary resources to handle this higher-than-anticipated workload from adverse incident reports, and will require all existing resources to continue to manage the remaining activities."⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 5, 2008, the Committee on Healthy Seniors adopted two amendments by the bill sponsor. These amendments:

⁷ *Id.*

- Removed section 1 of the original bill, thereby making no changes to existing law regarding quality-of-care monitoring visits.
- Clarified that federal adverse incident reporting requirements remain unchanged by the legislation.

The committee reported the bill favorably with two amendments.

At its March 25, 2008 meeting, the Healthcare Council adopted two amendments to the bill adopted by the Healthy Seniors Committee on February 5, 2008. These amendments:

- Deleted language indicating that compliance with certain federal posting requirements relating to staffing standards satisfies the state posting requirements contained in s. 400.23(3)(a)3, F.S., and
- Restored current statutory language providing that licensed nurses counted toward the minimum staffing requirements for CNAs must exclusively perform the duties of a CNA for the duration of their shift.

The bill was reported favorably as a Council Substitute. The analysis reflects the Council Substitute.

1 A bill to be entitled
 2 An act relating to nursing facilities; amending s.
 3 400.141, F.S.; authorizing certain licensed nursing
 4 facilities to develop a plan to provide certain training
 5 for nursing assistants; providing for rules relating to
 6 approval of training programs by the Agency for Health
 7 Care Administration; amending s. 400.147, F.S.; redefining
 8 the term "adverse incident"; deleting the requirement that
 9 a nursing facility notify the agency of an adverse
 10 incident; deleting notification requirements; requiring
 11 that a risk manager determine if an incident was an
 12 adverse incident; providing applicability of federal
 13 reporting requirements to investigations of adverse
 14 incidents; amending s. 400.19, F.S.; providing that the
 15 most recent survey is a licensure survey under certain
 16 conditions for purposes of future survey scheduling;
 17 amending s. 400.195, F.S.; conforming a cross-reference;
 18 amending s. 400.23, F.S.; revising provisions relating to
 19 a facility's use of licensed nurses to meet certain
 20 minimum staffing requirements; providing an effective
 21 date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 400.141, Florida Statutes, is amended
 26 to read:

27 400.141 Administration and management of nursing home
 28 facilities.--Every licensed facility shall comply with all

29 applicable standards and rules of the agency and shall:

30 (1) Be under the administrative direction and charge of a
 31 licensed administrator.

32 (2) Appoint a medical director licensed pursuant to
 33 chapter 458 or chapter 459. The agency may establish by rule
 34 more specific criteria for the appointment of a medical
 35 director.

36 (3) Have available the regular, consultative, and
 37 emergency services of physicians licensed by the state.

38 (4) Provide for resident use of a community pharmacy as
 39 specified in s. 400.022(1)(g). Any other law to the contrary
 40 notwithstanding, a registered pharmacist licensed in Florida,
 41 that is under contract with a facility licensed under this
 42 chapter or chapter 429, shall repackage a nursing facility
 43 resident's bulk prescription medication which has been packaged
 44 by another pharmacist licensed in any state in the United States
 45 into a unit dose system compatible with the system used by the
 46 nursing facility, if the pharmacist is requested to offer such
 47 service. In order to be eligible for the repackaging, a resident
 48 or the resident's spouse must receive prescription medication
 49 benefits provided through a former employer as part of his or
 50 her retirement benefits, a qualified pension plan as specified
 51 in s. 4972 of the Internal Revenue Code, a federal retirement
 52 program as specified under 5 C.F.R. s. 831, or a long-term care
 53 policy as defined in s. 627.9404(1). A pharmacist who correctly
 54 repackages and relabels the medication and the nursing facility
 55 which correctly administers such repackaged medication under the
 56 provisions of this subsection shall not be held liable in any

57 civil or administrative action arising from the repackaging. In
 58 order to be eligible for the repackaging, a nursing facility
 59 resident for whom the medication is to be repackaged shall sign
 60 an informed consent form provided by the facility which includes
 61 an explanation of the repackaging process and which notifies the
 62 resident of the immunities from liability provided herein. A
 63 pharmacist who repackages and relabels prescription medications,
 64 as authorized under this subsection, may charge a reasonable fee
 65 for costs resulting from the implementation of this provision.

66 (5) Provide for the access of the facility residents to
 67 dental and other health-related services, recreational services,
 68 rehabilitative services, and social work services appropriate to
 69 their needs and conditions and not directly furnished by the
 70 licensee. When a geriatric outpatient nurse clinic is conducted
 71 in accordance with rules adopted by the agency, outpatients
 72 attending such clinic shall not be counted as part of the
 73 general resident population of the nursing home facility, nor
 74 shall the nursing staff of the geriatric outpatient clinic be
 75 counted as part of the nursing staff of the facility, until the
 76 outpatient clinic load exceeds 15 a day.

77 (6) Be allowed and encouraged by the agency to provide
 78 other needed services under certain conditions. If the facility
 79 has a standard licensure status, and has had no class I or class
 80 II deficiencies during the past 2 years or has been awarded a
 81 Gold Seal under the program established in s. 400.235, it may be
 82 encouraged by the agency to provide services, including, but not
 83 limited to, respite and adult day services, which enable
 84 individuals to move in and out of the facility. A facility is

85 | not subject to any additional licensure requirements for
 86 | providing these services. Respite care may be offered to persons
 87 | in need of short-term or temporary nursing home services.
 88 | Respite care must be provided in accordance with this part and
 89 | rules adopted by the agency. However, the agency shall, by rule,
 90 | adopt modified requirements for resident assessment, resident
 91 | care plans, resident contracts, physician orders, and other
 92 | provisions, as appropriate, for short-term or temporary nursing
 93 | home services. The agency shall allow for shared programming and
 94 | staff in a facility which meets minimum standards and offers
 95 | services pursuant to this subsection, but, if the facility is
 96 | cited for deficiencies in patient care, may require additional
 97 | staff and programs appropriate to the needs of service
 98 | recipients. A person who receives respite care may not be
 99 | counted as a resident of the facility for purposes of the
 100 | facility's licensed capacity unless that person receives 24-hour
 101 | respite care. A person receiving either respite care for 24
 102 | hours or longer or adult day services must be included when
 103 | calculating minimum staffing for the facility. Any costs and
 104 | revenues generated by a nursing home facility from
 105 | nonresidential programs or services shall be excluded from the
 106 | calculations of Medicaid per diems for nursing home
 107 | institutional care reimbursement.

108 | (7) If the facility has a standard license or is a Gold
 109 | Seal facility, exceeds the minimum required hours of licensed
 110 | nursing and certified nursing assistant direct care per resident
 111 | per day, and is part of a continuing care facility licensed
 112 | under chapter 651 or a retirement community that offers other

113 services pursuant to part III of this chapter or part I or part
 114 III of chapter 429 on a single campus, be allowed to share
 115 programming and staff. At the time of inspection and in the
 116 semiannual report required pursuant to subsection (15), a
 117 continuing care facility or retirement community that uses this
 118 option must demonstrate through staffing records that minimum
 119 staffing requirements for the facility were met. Licensed nurses
 120 and certified nursing assistants who work in the nursing home
 121 facility may be used to provide services elsewhere on campus if
 122 the facility exceeds the minimum number of direct care hours
 123 required per resident per day and the total number of residents
 124 receiving direct care services from a licensed nurse or a
 125 certified nursing assistant does not cause the facility to
 126 violate the staffing ratios required under s. 400.23(3)(a).
 127 Compliance with the minimum staffing ratios shall be based on
 128 total number of residents receiving direct care services,
 129 regardless of where they reside on campus. If the facility
 130 receives a conditional license, it may not share staff until the
 131 conditional license status ends. This subsection does not
 132 restrict the agency's authority under federal or state law to
 133 require additional staff if a facility is cited for deficiencies
 134 in care which are caused by an insufficient number of certified
 135 nursing assistants or licensed nurses. The agency may adopt
 136 rules for the documentation necessary to determine compliance
 137 with this provision.

138 (8) Maintain the facility premises and equipment and
 139 conduct its operations in a safe and sanitary manner.

140 (9) If the licensee furnishes food service, provide a

141 wholesome and nourishing diet sufficient to meet generally
 142 accepted standards of proper nutrition for its residents and
 143 provide such therapeutic diets as may be prescribed by attending
 144 physicians. In making rules to implement this subsection, the
 145 agency shall be guided by standards recommended by nationally
 146 recognized professional groups and associations with knowledge
 147 of dietetics.

148 (10) Keep full records of resident admissions and
 149 discharges; medical and general health status, including medical
 150 records, personal and social history, and identity and address
 151 of next of kin or other persons who may have responsibility for
 152 the affairs of the residents; and individual resident care plans
 153 including, but not limited to, prescribed services, service
 154 frequency and duration, and service goals. The records shall be
 155 open to inspection by the agency.

156 (11) Keep such fiscal records of its operations and
 157 conditions as may be necessary to provide information pursuant
 158 to this part.

159 (12) Furnish copies of personnel records for employees
 160 affiliated with such facility, to any other facility licensed by
 161 this state requesting this information pursuant to this part.
 162 Such information contained in the records may include, but is
 163 not limited to, disciplinary matters and any reason for
 164 termination. Any facility releasing such records pursuant to
 165 this part shall be considered to be acting in good faith and may
 166 not be held liable for information contained in such records,
 167 absent a showing that the facility maliciously falsified such
 168 records.

169 (13) Publicly display a poster provided by the agency
 170 containing the names, addresses, and telephone numbers for the
 171 state's abuse hotline, the State Long-Term Care Ombudsman, the
 172 Agency for Health Care Administration consumer hotline, the
 173 Advocacy Center for Persons with Disabilities, the Florida
 174 Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
 175 with a clear description of the assistance to be expected from
 176 each.

177 (14) Submit to the agency the information specified in s.
 178 400.071(1)(b) for a management company within 30 days after the
 179 effective date of the management agreement.

180 (15) Submit semiannually to the agency, or more frequently
 181 if requested by the agency, information regarding facility
 182 staff-to-resident ratios, staff turnover, and staff stability,
 183 including information regarding certified nursing assistants,
 184 licensed nurses, the director of nursing, and the facility
 185 administrator. For purposes of this reporting:

186 (a) Staff-to-resident ratios must be reported in the
 187 categories specified in s. 400.23(3)(a) and applicable rules.
 188 The ratio must be reported as an average for the most recent
 189 calendar quarter.

190 (b) Staff turnover must be reported for the most recent
 191 12-month period ending on the last workday of the most recent
 192 calendar quarter prior to the date the information is submitted.
 193 The turnover rate must be computed quarterly, with the annual
 194 rate being the cumulative sum of the quarterly rates. The
 195 turnover rate is the total number of terminations or separations
 196 experienced during the quarter, excluding any employee

197 terminated during a probationary period of 3 months or less,
 198 divided by the total number of staff employed at the end of the
 199 period for which the rate is computed, and expressed as a
 200 percentage.

201 (c) The formula for determining staff stability is the
 202 total number of employees that have been employed for more than
 203 12 months, divided by the total number of employees employed at
 204 the end of the most recent calendar quarter, and expressed as a
 205 percentage.

206 (d) A nursing facility that has failed to comply with
 207 state minimum-staffing requirements for 2 consecutive days is
 208 prohibited from accepting new admissions until the facility has
 209 achieved the minimum-staffing requirements for a period of 6
 210 consecutive days. For the purposes of this paragraph, any person
 211 who was a resident of the facility and was absent from the
 212 facility for the purpose of receiving medical care at a separate
 213 location or was on a leave of absence is not considered a new
 214 admission. Failure to impose such an admissions moratorium
 215 constitutes a class II deficiency.

216 (e) A nursing facility which does not have a conditional
 217 license may be cited for failure to comply with the standards in
 218 s. 400.23(3)(a)1.a. only if it has failed to meet those
 219 standards on 2 consecutive days or if it has failed to meet at
 220 least 97 percent of those standards on any one day.

221 (f) A facility which has a conditional license must be in
 222 compliance with the standards in s. 400.23(3)(a) at all times.

223

224 Nothing in this section shall limit the agency's ability to

225 impose a deficiency or take other actions if a facility does not
 226 have enough staff to meet the residents' needs.

227 (16) Report monthly the number of vacant beds in the
 228 facility which are available for resident occupancy on the day
 229 the information is reported.

230 (17) Notify a licensed physician when a resident exhibits
 231 signs of dementia or cognitive impairment or has a change of
 232 condition in order to rule out the presence of an underlying
 233 physiological condition that may be contributing to such
 234 dementia or impairment. The notification must occur within 30
 235 days after the acknowledgment of such signs by facility staff.
 236 If an underlying condition is determined to exist, the facility
 237 shall arrange, with the appropriate health care provider, the
 238 necessary care and services to treat the condition.

239 (18) If the facility implements a dining and hospitality
 240 attendant program, ensure that the program is developed and
 241 implemented under the supervision of the facility director of
 242 nursing. A licensed nurse, licensed speech or occupational
 243 therapist, or a registered dietitian must conduct training of
 244 dining and hospitality attendants. A person employed by a
 245 facility as a dining and hospitality attendant must perform
 246 tasks under the direct supervision of a licensed nurse.

247 (19) Report to the agency any filing for bankruptcy
 248 protection by the facility or its parent corporation,
 249 divestiture or spin-off of its assets, or corporate
 250 reorganization within 30 days after the completion of such
 251 activity.

252 (20) Maintain general and professional liability insurance

253 coverage that is in force at all times. In lieu of general and
 254 professional liability insurance coverage, a state-designated
 255 teaching nursing home and its affiliated assisted living
 256 facilities created under s. 430.80 may demonstrate proof of
 257 financial responsibility as provided in s. 430.80(3)(h).

258 (21) Maintain in the medical record for each resident a
 259 daily chart of certified nursing assistant services provided to
 260 the resident. The certified nursing assistant who is caring for
 261 the resident must complete this record by the end of his or her
 262 shift. This record must indicate assistance with activities of
 263 daily living, assistance with eating, and assistance with
 264 drinking, and must record each offering of nutrition and
 265 hydration for those residents whose plan of care or assessment
 266 indicates a risk for malnutrition or dehydration.

267 (22) Before November 30 of each year, subject to the
 268 availability of an adequate supply of the necessary vaccine,
 269 provide for immunizations against influenza viruses to all its
 270 consenting residents in accordance with the recommendations of
 271 the United States Centers for Disease Control and Prevention,
 272 subject to exemptions for medical contraindications and
 273 religious or personal beliefs. Subject to these exemptions, any
 274 consenting person who becomes a resident of the facility after
 275 November 30 but before March 31 of the following year must be
 276 immunized within 5 working days after becoming a resident.
 277 Immunization shall not be provided to any resident who provides
 278 documentation that he or she has been immunized as required by
 279 this subsection. This subsection does not prohibit a resident
 280 from receiving the immunization from his or her personal

CS/HB 247

2008

281 physician if he or she so chooses. A resident who chooses to
282 receive the immunization from his or her personal physician
283 shall provide proof of immunization to the facility. The agency
284 may adopt and enforce any rules necessary to comply with or
285 implement this subsection.

286 (23) Assess all residents for eligibility for pneumococcal
287 polysaccharide vaccination (PPV) and vaccinate residents when
288 indicated within 60 days after the effective date of this act in
289 accordance with the recommendations of the United States Centers
290 for Disease Control and Prevention, subject to exemptions for
291 medical contraindications and religious or personal beliefs.
292 Residents admitted after the effective date of this act shall be
293 assessed within 5 working days of admission and, when indicated,
294 vaccinated within 60 days in accordance with the recommendations
295 of the United States Centers for Disease Control and Prevention,
296 subject to exemptions for medical contraindications and
297 religious or personal beliefs. Immunization shall not be
298 provided to any resident who provides documentation that he or
299 she has been immunized as required by this subsection. This
300 subsection does not prohibit a resident from receiving the
301 immunization from his or her personal physician if he or she so
302 chooses. A resident who chooses to receive the immunization from
303 his or her personal physician shall provide proof of
304 immunization to the facility. The agency may adopt and enforce
305 any rules necessary to comply with or implement this subsection.

306 (24) Annually encourage and promote to its employees the
307 benefits associated with immunizations against influenza viruses
308 in accordance with the recommendations of the United States

309 Centers for Disease Control and Prevention. The agency may adopt
 310 and enforce any rules necessary to comply with or implement this
 311 subsection.

312

313 Facilities having a standard license ~~that have been awarded a~~
 314 ~~Gold Seal under the program established in s. 400.235~~ may
 315 develop a plan to provide certified nursing assistant training
 316 as prescribed by federal regulations and state rules and may
 317 apply to the agency for approval of their program. The agency
 318 may adopt rules relating to the approval, suspension, or
 319 termination of a certified nursing assistant training program.

320 Section 2. Subsections (5) through (15) of section
 321 400.147, Florida Statutes, are amended to read:

322 400.147 Internal risk management and quality assurance
 323 program.--

324 (5) For purposes of reporting to the agency under this
 325 section, the term "adverse incident" means:

326 (a) An event over which facility personnel could exercise
 327 control and which is associated in whole or in part with the
 328 facility's intervention, rather than the condition for which
 329 such intervention occurred, and which results in one of the
 330 following:

- 331 1. Death;
- 332 2. Brain or spinal damage;
- 333 3. Permanent disfigurement;
- 334 4. Fracture or dislocation of bones or joints;
- 335 5. A limitation of neurological, physical, or sensory
- 336 function;

337 6. Any condition that required medical attention to which
 338 the resident has not given his or her informed consent,
 339 including failure to honor advanced directives; or

340 7. Any condition that required the transfer of the
 341 resident, within or outside the facility, to a unit providing a
 342 more acute level of care due to the adverse incident, rather
 343 than the resident's condition prior to the adverse incident;

344 (b) Abuse, neglect, or exploitation as defined in s.
 345 415.102;

346 (c) Abuse, neglect and harm as defined in s. 39.01;

347 (d) Resident elopement; or

348 (e) An event that is reported to a law enforcement agency
 349 for investigation.

350 (6) The internal risk manager of each licensed facility
 351 shall:

352 (a) Investigate every allegation of sexual misconduct
 353 which is made against a member of the facility's personnel who
 354 has direct patient contact when the allegation is that the
 355 sexual misconduct occurred at the facility or at the grounds of
 356 the facility;

357 (b) Report every allegation of sexual misconduct to the
 358 administrator of the licensed facility; and

359 (c) Notify the resident representative or guardian of the
 360 victim that an allegation of sexual misconduct has been made and
 361 that an investigation is being conducted.

362 (7) (a) The facility shall initiate an investigation ~~and~~
 363 ~~shall notify the agency~~ within 1 business day after the risk
 364 manager or his or her designee has received a report pursuant to

365 paragraph (1)(d). ~~The notification must be made in writing and~~
 366 ~~be provided electronically, by facsimile device or overnight~~
 367 ~~mail delivery. The notification must include information~~
 368 ~~regarding the identity of the affected resident, the type of~~
 369 ~~adverse incident, the initiation of an investigation by the~~
 370 ~~facility, and whether the events causing or resulting in the~~
 371 ~~adverse incident represent a potential risk to any other~~
 372 ~~resident. The notification is confidential as provided by law~~
 373 ~~and is not discoverable or admissible in any civil or~~
 374 ~~administrative action, except in disciplinary proceedings by the~~
 375 ~~agency or the appropriate regulatory board. The agency may~~
 376 ~~investigate, as it deems appropriate, any such incident and~~
 377 ~~prescribe measures that must or may be taken in response to the~~
 378 ~~incident. The agency shall review each incident and determine~~
 379 ~~whether it potentially involved conduct by the health care~~
 380 ~~professional who is subject to disciplinary action, in which~~
 381 ~~case the provisions of s. 456.073 shall apply.~~

382 (b) ~~(8)~~ ~~(a)~~ Each facility shall complete the investigation
 383 and submit an adverse incident report to the agency for each
 384 adverse incident within 15 calendar days after its occurrence.
 385 If, after a complete investigation, the risk manager determines
 386 that the incident was ~~not~~ an adverse incident as defined in
 387 subsection (5), the facility shall include this information in
 388 the report. The agency shall develop a form for reporting this
 389 information.

390 (c) ~~(b)~~ The information reported to the agency pursuant to
 391 paragraph (b) ~~(a)~~ which relates to persons licensed under
 392 chapter 458, chapter 459, chapter 461, or chapter 466 shall be

393 reviewed by the agency. The agency shall determine whether any
 394 of the incidents potentially involved conduct by a health care
 395 professional who is subject to disciplinary action, in which
 396 case the provisions of s. 456.073 shall apply.

397 (d)~~(e)~~ The report submitted to the agency must also
 398 contain the name of the risk manager of the facility.

399 (e)~~(d)~~ The adverse incident report is confidential as
 400 provided by law and is not discoverable or admissible in any
 401 civil or administrative action, except in disciplinary
 402 proceedings by the agency or the appropriate regulatory board.

403 (f) Nothing in this subsection shall affect any federal
 404 reporting requirements.

405 (8)~~(9)~~ By the 10th of each month, each facility subject to
 406 this section shall report any notice received pursuant to s.
 407 400.0233(2) and each initial complaint that was filed with the
 408 clerk of the court and served on the facility during the
 409 previous month by a resident or a resident's family member,
 410 guardian, conservator, or personal legal representative. The
 411 report must include the name of the resident, the resident's
 412 date of birth and social security number, the Medicaid
 413 identification number for Medicaid-eligible persons, the date or
 414 dates of the incident leading to the claim or dates of
 415 residency, if applicable, and the type of injury or violation of
 416 rights alleged to have occurred. Each facility shall also submit
 417 a copy of the notices received pursuant to s. 400.0233(2) and
 418 complaints filed with the clerk of the court. This report is
 419 confidential as provided by law and is not discoverable or
 420 admissible in any civil or administrative action, except in such

421 actions brought by the agency to enforce the provisions of this
 422 part.

423 (9)~~(10)~~ The agency shall review, as part of its licensure
 424 inspection process, the internal risk management and quality
 425 assurance program at each facility regulated by this section to
 426 determine whether the program meets standards established in
 427 statutory laws and rules, is being conducted in a manner
 428 designed to reduce adverse incidents, and is appropriately
 429 reporting incidents as required by this section.

430 (10)~~(11)~~ There is no monetary liability on the part of,
 431 and a cause of action for damages may not arise against, any
 432 risk manager for the implementation and oversight of the
 433 internal risk management and quality assurance program in a
 434 facility licensed under this part as required by this section,
 435 or for any act or proceeding undertaken or performed within the
 436 scope of the functions of such internal risk management and
 437 quality assurance program if the risk manager acts without
 438 intentional fraud.

439 (11)~~(12)~~ If the agency, through its receipt of the adverse
 440 incident reports prescribed in subsection (7), or through any
 441 investigation, has a reasonable belief that conduct by a staff
 442 member or employee of a facility is grounds for disciplinary
 443 action by the appropriate regulatory board, the agency shall
 444 report this fact to the regulatory board.

445 (12)~~(13)~~ The agency may adopt rules to administer this
 446 section.

447 (13)~~(14)~~ The agency shall annually submit to the
 448 Legislature a report on nursing home adverse incidents. The

CS/HB 247

2008

449 report must include the following information arranged by
450 county:

451 (a) The total number of adverse incidents.

452 (b) A listing, by category, of the types of adverse
453 incidents, the number of incidents occurring within each
454 category, and the type of staff involved.

455 (c) A listing, by category, of the types of injury caused
456 and the number of injuries occurring within each category.

457 (d) Types of liability claims filed based on an adverse
458 incident or reportable injury.

459 (e) Disciplinary action taken against staff, categorized
460 by type of staff involved.

461 (14)~~(15)~~ Information gathered by a credentialing
462 organization under a quality assurance program is not
463 discoverable from the credentialing organization. This
464 subsection does not limit discovery of, access to, or use of
465 facility records, including those records from which the
466 credentialing organization gathered its information.

467 Section 3. Subsection (3) of section 400.19, Florida
468 Statutes, is amended to read:

469 400.19 Right of entry and inspection.--

470 (3) The agency shall every 15 months conduct at least one
471 unannounced inspection to determine compliance by the licensee
472 with statutes, and with rules adopted ~~promulgated~~ under the
473 provisions of those statutes, governing minimum standards of
474 construction, quality and adequacy of care, and rights of
475 residents. The survey shall be conducted every 6 months for the
476 next 2-year period if the facility has been cited for a class I

477 deficiency, has been cited for two or more class II deficiencies
 478 arising from separate surveys or investigations within a 60-day
 479 period, or has had three or more substantiated complaints within
 480 a 6-month period, each resulting in at least one class I or
 481 class II deficiency. In addition to any other fees or fines in
 482 this part, the agency shall assess a fine for each facility that
 483 is subject to the 6-month survey cycle. The fine for the 2-year
 484 period shall be \$6,000, one-half to be paid at the completion of
 485 each survey. The agency may adjust this fine by the change in
 486 the Consumer Price Index, based on the 12 months immediately
 487 preceding the increase, to cover the cost of the additional
 488 surveys. If such deficiencies are overturned as the result of
 489 administrative action but additional surveys have already been
 490 conducted pursuant to this section, the most recent survey shall
 491 be considered a licensure survey for purposes of scheduling
 492 future surveys. The agency shall verify through subsequent
 493 inspection that any deficiency identified during inspection is
 494 corrected. However, the agency may verify the correction of a
 495 class III or class IV deficiency unrelated to resident rights or
 496 resident care without reinspecting the facility if adequate
 497 written documentation has been received from the facility, which
 498 provides assurance that the deficiency has been corrected. The
 499 giving or causing to be given of advance notice of such
 500 unannounced inspections by an employee of the agency to any
 501 unauthorized person shall constitute cause for suspension of not
 502 fewer than 5 working days according to the provisions of chapter
 503 110.

504 Section 4. Paragraph (d) of subsection (1) of section

CS/HB 247

2008

505 400.195, Florida Statutes, is amended to read:

506 400.195 Agency reporting requirements.--

507 (1) For the period beginning June 30, 2001, and ending
 508 June 30, 2005, the Agency for Health Care Administration shall
 509 provide a report to the Governor, the President of the Senate,
 510 and the Speaker of the House of Representatives with respect to
 511 nursing homes. The first report shall be submitted no later than
 512 December 30, 2002, and subsequent reports shall be submitted
 513 every 6 months thereafter. The report shall identify facilities
 514 based on their ownership characteristics, size, business
 515 structure, for-profit or not-for-profit status, and any other
 516 characteristics the agency determines useful in analyzing the
 517 varied segments of the nursing home industry and shall report:

518 (d) Information regarding deficiencies cited, including
 519 information used to develop the Nursing Home Guide WATCH LIST
 520 pursuant to s. 400.191, and applicable rules, a summary of data
 521 generated on nursing homes by Centers for Medicare and Medicaid
 522 Services Nursing Home Quality Information Project, and
 523 information collected pursuant to s. 400.147(8) ~~s. 400.147(9)~~,
 524 relating to litigation.

525 Section 5. Paragraph (a) of subsection (3) of section
 526 400.23, Florida Statutes, is amended to read:

527 400.23 Rules; evaluation and deficiencies; licensure
 528 status.--

529 (3)(a)1. The agency shall adopt rules providing minimum
 530 staffing requirements for nursing homes. These requirements
 531 shall include, for each nursing home facility:

532 a. A minimum certified nursing assistant staffing of 2.6

533 hours of direct care per resident per day beginning January 1,
 534 2003, and increasing to 2.7 hours of direct care per resident
 535 per day beginning January 1, 2007. Beginning January 1, 2002, a
 536 ~~ne~~ facility may not shall staff below one certified nursing
 537 assistant per 20 residents, and must provide a minimum licensed
 538 nursing staffing of 1.0 hour of direct care per resident per day
 539 but never below one licensed nurse per 40 residents.

540 b. Beginning January 1, 2007, a minimum weekly average
 541 certified nursing assistant staffing of 2.9 hours of direct care
 542 per resident per day. For the purpose of this sub-subparagraph,
 543 a week is defined as Sunday through Saturday.

544 2. Nursing assistants employed under s. 400.211(2) may be
 545 included in computing the staffing ratio for certified nursing
 546 assistants only if their job responsibilities include only
 547 nursing-assistant-related duties.

548 3. Each nursing home must document compliance with
 549 staffing standards as required under this paragraph and post
 550 daily the names of staff on duty for the benefit of facility
 551 residents and the public.

552 4. The agency shall recognize the use of licensed nurses
 553 for compliance with minimum staffing requirements for certified
 554 nursing assistants, provided that the facility otherwise meets
 555 the minimum staffing requirements for licensed nurses and that
 556 the licensed nurses are performing the duties of a certified
 557 nursing assistant. ~~Unless otherwise approved by the agency,~~
 558 Licensed nurses counted toward the minimum staffing requirements
 559 for certified nursing assistants must exclusively perform the
 560 duties of a certified nursing assistant for the entire shift and

CS/HB 247


2008

561 | not also be counted toward the minimum staffing requirements for
562 | licensed nurses. ~~If the agency approved a facility's request to~~
563 | ~~use a licensed nurse to perform both licensed nursing and~~
564 | ~~certified nursing assistant duties,~~ The facility must allocate
565 | the amount of staff time specifically spent on certified nursing
566 | assistant duties for the purpose of documenting compliance with
567 | minimum staffing requirements for certified and licensed nursing
568 | staff. In no event may the hours of a licensed nurse with dual
569 | job responsibilities be counted twice.

570 | Section 6. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1203 Interstate Compact on Educational Opportunity for Military Children
SPONSOR(S): Schools & Learning Council; Proctor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Education Innovation & Career Preparation	6 Y, 0 N	Beagle	White
2) Schools & Learning Council	14 Y, 0 N, As CS	Beagle/Eggers	Cobb
3) Policy & Budget Council		Martin 	Hansen <i>MH</i>
4) _____			
5) _____			

SUMMARY ANALYSIS

Council Substitute for House Bill 1203 adopts the Interstate Compact on Educational Opportunity for Military Children. This compact was developed by the Council of State Governments (CSG) in cooperation with the U.S. Department of Defense (DOD) to enable member states to uniformly address educational transition issues faced by military families. It will govern member states in areas that include school eligibility and placement, enrollment, school record transfers, and graduation for the children of relocated military families.

The compact takes effect when it is adopted by ten states. As of the date of this analysis, 19 states have introduced, but not yet enacted, legislation to adopt it.

As specified in the bill, when the compact takes effect:

- An Interstate Commission on Military Children, consisting of one voting representative from each member state, will be established. The Commission will oversee the compact's administration and operation and will adopt rules to achieve the compact's purposes.
- The Governor will be required to designate: (1) a Compact Commissioner to represent the state on the Interstate Commission; and (2) a Military Family Education Liaison to assist military families and the state in implementing the compact.
- A state council will be established to provide advice and recommendations regarding the state's participation in and compliance with the compact. The council's membership will include five voting members: the Commissioner of Education, the superintendent for the district with the highest percentage per capita of military children, two appointees by the Commissioner of Education, and one legislative appointee. It will also include the Compact Commissioner and the Military Family Education Liaison, who will serve as ex officio, nonvoting members.

The bill will have a negative, but currently indeterminate, fiscal impact on state government, including: possible costs of the Governor-designated Compact Commissioner and Military Family Education Liaison; approximately \$60,000 for annual dues to the Interstate Commission; travel and per diem costs for the state council members; potential data system costs; and potential costs for compliance with national rules (not yet promulgated) and/or fines for non-compliance. It may also have a negative, but currently indeterminate, fiscal impact on school districts as they comply with the compact's provisions.

The bill provides that its effective date shall be July 1, 2008, or upon the enactment of the compact into law by nine other states, whichever date occurs later. Additionally, the bill specifies that its provisions are repealed two years after its effective date unless reviewed and saved from repeal by the Legislature. The purpose of the repeal is to allow the Legislature to review the compact after adoption of rules by the Interstate Commission. **(See CONSTITUTIONAL ISSUES).**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/27/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a state council to oversee Florida's participation in the compact. The bill also provides for an Interstate Commission to oversee the operation of the compact among member states. The commission is empowered to adopt and enforce rules governing the operation of the compact.

Empower Families: The bill sets forth provisions to aid children of military families transitioning into Florida public schools.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Children in military families face unique educational challenges. The average military child transfers to a different school district six to nine times during grades kindergarten through twelve.¹ When a parent is reassigned, military children may be impacted by: (a) record transfer issues; (b) varied course sequencing and academic placement policies; (c) varied graduation requirements; (d) exclusion from extracurricular activities; (e) redundant or missed entrance or exit testing; (f) varied kindergarten and first grade entrance ages; and (g) the need to appoint temporary guardians while the child's parent is deployed.² Over 58,000 active duty armed forces personnel are stationed at 20 Florida military bases.³ U.S. DOD statistics place the number of school-aged dependent children of armed forces personnel living in Florida at 56,185. Of this amount, 36,574 are children of active duty personnel and 19,611 are children of reservists.⁴

State Law: Current law contains several provisions intended to assist transitioning military children entering Florida's public schools. Statute requires the DOE to facilitate the development and implementation of memoranda of agreement between school districts and military installations to assist transitioning students whose parents are active duty military personnel. Transitioning military students who meet the eligibility criteria for special public school academic programs receive an enrollment preference for admission into such programs. The enrollment preference applies even if the program is being offered in a public school other than the student's assigned school.⁵

A transitioning military child with a disability who meets all other eligibility requirements for the John M. McKay Scholarship Program is not required to have been enrolled in a Florida public school, the Florida School for the Deaf and the Blind, or an early intervention program in the previous year to receive a scholarship.⁶ Dependent children of active duty armed services personnel who reside or are stationed in Florida are considered residents for the purpose of awarding student financial aid. Military children who attend a public postsecondary institution within 50 miles of the base where their parent or guardian is stationed are eligible for in-state tuition.⁷ Generally, applicants for a Florida Bright Futures

¹ Council of State Governments, *Interstate Compact on Educational Opportunity for Military Children: Legislative Resource Kit* (January 2008) available at <http://www.csg.org/programs/ncic/documents/RESOURCEKIT-January2008final.pdf>.

² *Id.*

³ Haas Center, University of West Florida, *Florida Defense Industry Economic Impact Analysis: Volume One: State and Regional Analyses* (January 2008) available at http://www.cbred.uwf.edu/pdfs/impactStudies/FLdefense_Volume_1_2008.pdf.

⁴ Council of State Governments, *Legislative Resource Kit* (January 2008).

⁵ Section 1003.05, F.S. (Statute defines "special academic program" to include magnet schools, advanced studies programs, advanced placement, dual enrollment, Advanced International Certificate of Education, and International Baccalaureate).

⁶ Section 1002.39(2), F.S.

⁷ Section 1009.21(10)(a) and (b), F.S.

Scholarship Program award must have earned a standard Florida high school diploma, or its equivalent, to be eligible for a scholarship. A military child who earned a non-Florida high school diploma while living with a parent or guardian on military assignment away from Florida is exempt from this requirement.⁸ In addition, the DOE maintains a webpage for military families on its website with links to information regarding schools and school districts, academic programs, national resources, armed forces websites, and student financial aid.⁹

Effect of Proposed Changes

Interstate Compact on Educational Opportunity for Military Children: The bill creates s. 1000.36, F.S., to authorize and direct the Governor to execute and legally join the Interstate Compact on Educational Opportunity for Military Children on behalf of the state of Florida. The compact was developed by the CSG in cooperation with the U.S. DOD to address the educational transition issues faced by military families. It addresses issues such as program eligibility and placement, enrollment, school record transfers, and graduation. The compact becomes effective once ten states pass legislation to adopt it.¹⁰ As of the date of this analysis, 19 states have introduced, but not yet enacted, legislation to adopt the compact.¹¹ The requirements of the compact are laid out in a series of articles that address each of the topics discussed below.

Purpose: The compact specifies that its purpose is to aid transitioning military students by removing barriers to: (a) school enrollment caused by delayed transfer of education records or variations in entrance or age requirements; (b) program placement caused by variations in attendance requirements, scheduling, course sequencing, grading, course content, or assessment; (c) program enrollment and participation in extracurricular activities; and (d) timely graduation. In addition, the bill states that the purpose of the compact is to: (a) provide for the adoption and enforcement of administrative rules; (b) facilitate collection and sharing of information; and (c) promote cooperation between the educational system, parents, and the student.

Applicability: The compact applies to active duty armed forces personnel, personnel or veterans who are medically discharged or retired for a period of one year, and personnel who die on active duty or as a result of injuries sustained on active duty for a period of one year after death. Local education agencies (LEA) must abide by compact terms. The terms of the compact are binding only on member states.

Records, Enrollment, and Eligibility: The compact requires a student's former school to issue temporary transcripts in the event that it cannot timely furnish official transcripts. Pending receipt of official transcripts, the student's receiving school must accept the temporary transcripts for enrollment and placement purposes. Compact states must give the student 30 days to obtain required immunizations. Students must be allowed to continue their enrollment at the grade level they were enrolled in at the former school. Likewise, a student who has completed a grade-level in the former state must be allowed to enroll in the next highest grade level in the receiving state, regardless of age.

The compact requires a LEA to honor temporary guardianships executed to enroll the child in school due to a student's parent being deployed out of state or country. Further, it prohibits a LEA from charging tuition to a student who is placed in the care of a person who lives outside of the LEA's jurisdiction. Such students must be allowed to remain at the original school. LEAs must also allow a

⁸ Section 1009.531(1)(b)2., F.S.

⁹ See Florida Department of Education, *Military Family Assistance available at <http://www.fldoe.org/military/>.*

¹⁰ Council of State Governments, *Legislative Resource Kit* (January 2008).

¹¹ Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Hampshire, Oklahoma, South Dakota, Virginia, and Washington. See Council of State Governments, *Interstate Compact on Educational Opportunity for Military Children: State-by-State Status* (Updated March 12, 2008) available at <http://www.csg.org/programs/ncic/documents/State-by-statechart3-12-08.pdf>.

transitioning military child to participate in extracurricular activities, regardless of when the child enrolled in the school.

Placement and Attendance: The compact provides that a transferring student must be allowed to continue in the academic program in which the student was enrolled in at his or her former school, including English as a second language, exceptional student education, gifted, honors, International Baccalaureate, Advanced Placement, and career and technical courses. Program placement must occur based upon prior participation or educational assessments conducted at the student's former school. When a parent, who has been deployed out of the state or country, is home on leave, an LEA must allow the student additional excused absences to visit with the parent.

Graduation: To enable transitioning military students to graduate from high school on time, the compact requires states and LEAs to waive courses required for graduation if similar course work was previously completed or provide alternative means for such students to satisfy coursework requirements. States must also accept exit exam, end-of-course exam, or other testing required for graduation in the student's former state. For military students who transfer before or during their senior year and who are not eligible to graduate from the receiving state, the current and former LEAs must arrange for the student to receive a diploma from the student's former LEA.

State Governance: The compact requires each state to establish a state council to coordinate state and local government implementation of, and compliance with, compact requirements. Each state may independently determine council membership. However, it must include at least the state superintendent of education, the superintendent of a school district with a high concentration of military students, a representative from a military base, and one representative each from the legislative and executive branches of government. Each state must also appoint a Military Family Education Liaison to assist military families and the state with compact compliance.

National Governance: The compact establishes an Interstate Commission to provide general oversight of the compact. It provides start-up procedures for the commission, including the appointment of an executive committee and election of officers. It authorizes the executive committee to retain an executive director. The executive director and commission employees are immune from lawsuits arising within the scope of the commission's purpose. It also authorizes the commission to defend the executive director and commission employees in the event of a lawsuit.

The commission may perform various administrative functions consistent with its operation. It must also compile data, facilitate sharing of information, and conduct training and public awareness activities. The commission must annually report to the legislatures, governors, judiciary, and state councils of the member states. The commission is to be comprised of a voting representative from each member state and ex officio members representing stakeholders. Each state is entitled to one vote on rule adoption and other matters brought before the commission. The commission must meet at least once a year. Commission meetings must be noticed and open to the public.

Rulemaking and Enforcement: The compact authorizes the Interstate Commission to adopt and enforce rules governing the compact's operation and provides that the commission is responsible for enforcing its rules on states and LEAs. Rules that exceed the scope of the commission's authority shall be invalid. A majority of member state legislatures may invalidate a rule by legislative action. Individuals may request judicial review of any rule within 30 days of its adoption.

The compact requires member state executive, legislative, and judicial branches to enforce it. Compact provisions and rules adopted have the force and effect of statutory law, and supersede conflicting state laws. Courts in member states must take judicial notice of the compact and its rules in any judicial or administrative proceeding concerning the compact. A member state may withdraw from the compact by repealing its compact statute. If a compact provision is determined to be unenforceable, the compact provides severability for its remaining provisions.

The compact provides that the commission is entitled to receive all service of process and that the failure to serve process renders a judgment or order void as to the compact, the commission, or its rules. It also provides that the commission has standing to intervene in any proceeding involving the compact.

The commission must develop a grievance procedure that enables stakeholders to seek redress for violations of the compact. It must also develop an informal dispute resolution procedure for resolving disputes between member states. If the commission determines that a member state has defaulted in its responsibilities under the compact, or the bylaws or rules of the commission, it is authorized to:

- Provide written notice to the defaulting state and other member states regarding the violation and specify conditions for curing the violation;
- Provide remedial training or technical assistance regarding the default; and
- Suspend or terminate the defaulting state from the compact if it fails to cure the violation.

The compact specifies that a defaulting state may appeal the commission's action in the federal district court for the District of Columbia or in the district where the commission has its principal offices. Likewise, the commission, by majority vote, may sue in federal court to enforce compliance with the compact. The prevailing party in such actions is entitled to reasonable attorney's fees.

Finance: The compact provides that the commission may collect dues from each member state to cover its costs in administering the compact. The commission may not incur any financial obligation without first securing adequate funding. Further, it is prohibited from pledging the credit of any of the member states without the state's consent. It must also keep accurate financial records and is subject to annual audit and reporting requirements.

State-Specific Compact Implementation Provisions: In addition to creating s. 1000.36, F.S., to adopt the model text of the Interstate Compact, as described above, the bill also establishes several new sections of law for implementation of the compact in this state. These sections are as follows:

- Section 1000.37, F.S., is created to require the Secretary of State to furnish an enrolled copy of the act to each state that approves the compact.
- Section 1000.38, F.S., is created to require the Governor to designate: (1) a Compact Commissioner to represent the state on the Interstate Compact Commission; and (2) a Military Family Education Liaison to assist military families and the state in implementing the compact.
- Section 1000.39, F.S., is created to establish the State Council on Interstate Educational Opportunity for Military Children. The council's membership will include five voting members: the Commissioner of Education, the superintendent for the district with the highest percentage per capita of military children, two appointees by the Commissioner of Education, and one appointee by the President of the Senate and Speaker of the House of Representatives. It will also include two ex officio, nonvoting members: the Compact Commissioner and the Military Family Education Liaison. The council will be required to provide advice and recommendations regarding state participation in and compliance with the compact, and to recommend candidates for the Governor's selection of a Military Family Education Liaison. Council members will serve without compensation, but will be entitled to reimbursement of per diem and travel expenses. The council will be required to comply with constitutional and statutory provisions governing public meetings and records and the DOE will be required to provide administrative support.

Effective Date: The bill provides that its effective date shall be July 1, 2008, or upon the enactment of the compact into law by nine other states, whichever date occurs later. Additionally, the bill specifies that its provisions, ss. 1000.36, 1000.37, 1000.38, and 1000.39, are repealed two years after its effective date unless reviewed and saved from repeal by the Legislature.

C. SECTION DIRECTORY:

Section 1. Creating s. 1000.36, F.S.; directing the Governor to execute the compact with other compact states; providing definitions; providing that the compact applies to certain persons and entities; providing for education records transfers; requiring military children to be enrolled in appropriate programs and grade levels; providing for eligibility for graduation; establishing a state council; providing for council membership and duties; creating an Interstate Commission; providing for membership, organization, meetings, operations, powers, and duties; creating an executive committee; requiring the commission to adopt rules; providing for legal challenge of rules; providing for oversight, enforcement, and dispute resolution; providing suspension and termination procedures; authorizing the collection of dues; providing the conditions in which the compact becomes effective and binding; providing withdrawal procedures; providing severability; and providing for the effect of the compact on member states' laws.

Section 2. Creating s.1000.37, F.S.; requiring the Secretary of State to furnish a copy of the enrolled act enacting the compact to each other compact state.

Section 3. Creating s. 1000.38, F.S.; requiring the Governor to designate a Compact Commissioner and a Military Family Education Liaison.

Section 4. Creating s. 1000.39, F.S.; establishing a state council; providing council purpose and duties; specifying membership; providing for per diem and travel reimbursement; requiring the DOE to provide administrative support; and providing for the cessation of council activities.

Section 5. Providing that ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S, are repealed two years after enactment unless reviewed and saved from repeal by the Legislature.

Section 6. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Compact Commissioner and Military Family Education Liaison: The bill requires the Governor to designate a Compact Commissioner and a Military Family Education Liaison. Whether the Governor will designate existing or new state employees to fill these positions is unknown. In either case, however, it appears that the fiscal impact may be absorbed by existing state agency resources; i.e., either existing full-time employees could be designated by the Governor or existing, vacant agency positions could be utilized for new positions.

State Council: The compact requires each state to establish a council to coordinate state and local government implementation of, and compliance with, the compact's requirements. To this end, the bill creates the seven-member State Council on Interstate Educational Opportunity for Military Children. Council members are not entitled to compensation, but are to receive reimbursement for per diem and travel expenses. The fiscal impact of this requirement is indeterminate as the number and location of council meetings is unknown.

Administrative Support: The DOE is required by the bill to provide administrative support to the council. This administrative workload is expected to have an insignificant fiscal impact that may be absorbed by existing agency resources.

Annual Dues: The CSG estimates the total budget for the Interstate Commission at \$630,389. This amount includes: (a) \$263,250 for staff salaries and benefits; (b) \$105,425 for transportation, lodging, meals, and staff support for commission meetings; (c) \$45,175 for office space and overhead; (d) \$74,000 for office equipment and furnishings; (e) \$30,000 to develop and maintain an information system; (f) \$40,000 for a reserve fund; and (g) \$72,539 for bookkeeping, human resources, and other indirect costs. This estimate is based on CSG's past experience administering other compacts.¹²

There are 56,185 school-aged dependent children of armed forces personnel living in Florida. The CSG estimates that each state's financial obligation will be approximately one dollar per affected student. According to the CSG, dues will be levied from member states based on the number of affected students. Based on this estimate, Florida would be required to pay dues amounting to \$56,185 annually. However, until the compact becomes effective, the Interstate Commission is formed, and rules setting each state's membership dues are adopted, Florida's financial obligation under the compact is indeterminate.¹³

Other Expenditures: Several other provisions of the bill may have indeterminate fiscal impacts on state expenditures:

- The bill will require the state to comply with rules adopted by the Interstate Commission. Until the content of the rules is known, the fiscal impact for compliance is indeterminate.
- The bill subjects the state to potential fines and other enforcement actions at the discretion of the commission. The amount of the fines is not yet known. Additionally, as the rules are not yet known, it is impossible to determine whether compliance will prove to be difficult and fines will be likely.
- One of the compact's stated purposes is to establish a uniform system for collecting data pertaining to transitioning military students and for the sharing of this data among member states. This may require a state agency to be equipped with a new data and information system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures. Please see "Fiscal Comments" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

¹² Council of State Governments, *Legislative Resource Kit* (January 2008).

¹³ *Id.*

D. FISCAL COMMENTS:

District school boards, as LEAs, may incur indeterminate expenditures under the bill due to its requirement that LEAs comply with the compact's provisions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

As discussed below in the section entitled, "RULE-MAKING AUTHORITY," the bill delegates authority to the Interstate Commission to adopt rules that effectively and efficiently achieve the purposes of the Interstate Compact on Educational Opportunity for Military Children.

If the bill is enacted into law, the state will have effectively bound itself to rules not yet promulgated by the Interstate Commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power for the Legislature to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.^{14 15} Under this holding, the constitutionality of the bill's adoption of prospective rules might be questioned, and there does not appear to be any binding Florida case law that squarely addresses this issue in the context of interstate compacts.

The most relevant Florida court discussion of this issue appears to have occurred in *Department of Children and Family Services*, wherein the First District Court of Appeals considered an argument that the substance of regulations adopted by the Association of Administrators for the Interstate Compact on Placement of Children (ICPC) required a finding on appeal that a circuit court's order permitting a mother and child to move was in violation of the ICPC.¹⁶ The court denied this appeal and held that: (1) the Association's regulations were invalid to the extent that they conflicted with the ICPC itself; and (2) the regulations did not apply to facts of the case.¹⁷

The court also noted that the ICPC confers to its compact administrators the power to promulgate rules and regulations to more effectively carry out the compact, and stated that, "The precise legal effect of the ICPC compact administrators' regulations in Florida is unclear, but we need not reach the problematic general question in order to decide the present case."¹⁸ Continuing on in a footnote, the court stated:

¹⁴ *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945).

¹⁵ This prohibition is based upon the Separation of Powers Doctrine, set forth in Article II, section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish minimal standards and guidelines ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

¹⁶ *Department of Children and Family Services v. L.G.*, 801 So.2d 1047 (Fla. 1st DCA 2001).

¹⁷ *Department of Children and Family Services*, 801 So.2d at 1052-1053.

¹⁸ *Id.* at 1052.

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. See *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757-58 (Fla. 1st DCA 1977), disapproved on other grounds by *LaPointe Outdoor Adver. v. Fla. Dep't of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.¹⁹

Under the court's footnote discussion, it might be argued that the bill's delegation of rule-making authority to the Interstate Commission is like the delegation to the ICPC compact administrators, and, thus, it constitutes an unlawful delegation. This case, however, does not appear to be binding precedent as the court's footnote was dicta,²⁰ e.g., the court itself stated that the, "... effect of the ICPC compact administrators' regulations in Florida is unclear . . ." ²¹ Moreover, the bill provides that its provisions are repealed two years after its effective date unless reviewed and saved from repeal by the Legislature; thereby, requiring the Legislature to consider reenactment of the compact after the Interstate Commission has adopted rules and potentially eliminating any argument that an unlawful delegation has been made.

B. RULE-MAKING AUTHORITY:

The compact created by the bill authorizes the Interstate Commission to adopt rules to effectuate the purposes of the compact. The compact specifies that these rules have the full force and effect of statutory law upon each compacting state, and further provides that a compacting state's failure to follow the rules may result in remedial training, alternative dispute resolution, suspension or termination, or legal action.

The compact states that the "rulemaking shall substantially conform to the principles of the 'Model State Administrative Procedures Act,' 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court." All rules and amendments are to become binding as of the date specified.

The compact provides that rules exceeding the scope of the commission's authority shall be invalid. A majority of member state legislatures may invalidate a rule by adopting a statute or resolution. Individuals may request judicial review of any rule within 30 days of its adoption.

¹⁹ *Id.*

²⁰ Statements of a court that are not essential to determination of the case before it are not part of the law of the case, and, therefore, are not precedentially binding in future cases. See *Myers v. Atlantic Coast Line R. Co.*, 112 So.2d 263 (Fla. 1959).

²¹ *Department of Children and Family Services*, 801 So.2d at 1052.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Committee on Education Innovation and Career Preparation reported the bill favorably with one amendment. The amendment:

- Creates s. 1000.38, F.S., requiring the Governor to designate a: (1) Compact Commissioner to represent the state on the Interstate Compact Commission; and (2) Military Family Education Liaison to assist military families and the state in implementing the compact.
- Creates s. 1000.39, F.S., to establish the State Council on Interstate Educational Opportunity for Military Children and:
 - Specifies that the council's purpose is to provide advice and recommendations regarding state compliance and participation in the compact.
 - Requires the council to recommend at least three, but no more than five persons to the Governor to serve as the Military Family Education Liaison.
 - Designates individuals for membership on the council.
 - Provides that council members will serve without compensation, but are entitled to reimbursement of per diem and travel expenses.
 - Subjects the council to constitutional and statutory provisions governing public meetings and records.
 - Requires the DOE to provide administrative support to the council.
 - Provides for the cessation of council activities and requires DOE to store council records and reclaim council property in the event that the council is abolished.
- Provides that ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S, are repealed two years after enactment unless reviewed and saved from repeal by the Legislature.
- Provides that the effective date of the act shall be July 1, 2008, or upon enactment of the compact into law by nine other states, whichever date occurs later.

On March 25, 2008, the Schools and Learning Council adopted the amendment recommended by the Committee on Education Innovation and Career Preparation and reported the bill favorably as a council substitute.

This analysis is drafted to the council substitute.

29 the compact on member states' laws; creating s.
 30 1000.37, F.S.; requiring the Secretary of State to
 31 furnish a copy of the enrolled act enacting the
 32 Interstate Compact on Educational Opportunity for
 33 Military Children to each of the states approving the
 34 compact; creating s. 1000.38, F.S.; authorizing the
 35 designation of a Compact Commissioner and a Military
 36 Family Education Liaison by the Governor; creating s.
 37 1000.39, F.S.; creating the State Council on
 38 Interstate Educational Opportunity for Military
 39 Children; providing purpose and membership;
 40 prohibiting compensation; authorizing reimbursement
 41 for per diem and travel expenses; providing for public
 42 records and open meetings; requiring the Department of
 43 Education to provide administrative support;
 44 prescribing procedures if the council is abolished;
 45 providing for future legislative review and repeal of
 46 the act; providing an effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Section 1000.36, Florida Statutes, is created
 51 to read:

52 1000.36 Interstate Compact on Educational
 53 Opportunity for Military Children.--The Governor is authorized
 54 and directed to execute the Interstate Compact on Educational
 55 Opportunity for Military Children on behalf of this state with

56 any other state or states legally joining therein in the form
 57 substantially as follows:

58 Interstate Compact on Educational
 59 Opportunity for Military Children

60 ARTICLE I

61 PURPOSE.--It is the purpose of this compact to remove
 62 barriers to educational success imposed on children of military
 63 families because of frequent moves and deployment of their
 64 parents by:

65 A. Facilitating the timely enrollment of children of
 66 military families and ensuring that they are not placed at a
 67 disadvantage due to difficulty in the transfer of education
 68 records from the previous school district or variations in
 69 entrance or age requirements.

70 B. Facilitating the student placement process through
 71 which children of military families are not disadvantaged by
 72 variations in attendance requirements, scheduling, sequencing,
 73 grading, course content, or assessment.

74 C. Facilitating the qualification and eligibility for
 75 enrollment, educational programs, and participation in
 76 extracurricular academic, athletic, and social activities.

77 D. Facilitating the on-time graduation of children of
 78 military families.

79 E. Providing for the adoption and enforcement of
 80 administrative rules implementing this compact.

81 F. Providing for the uniform collection and sharing of
 82 information between and among member states, schools, and
 83 military families under this compact.

84 G. Promoting coordination between this compact and other
 85 compacts affecting military children.

86 H. Promoting flexibility and cooperation between the
 87 educational system, parents, and the student in order to achieve
 88 educational success for the student.

89 ARTICLE II

90 DEFINITIONS.--As used in this compact, unless the context
 91 clearly requires a different construction, the term:

92 A. "Active duty" means the full-time duty status in the
 93 active uniformed service of the United States, including members
 94 of the National Guard and Reserve on active duty orders pursuant
 95 to 10 U.S.C. ss. 1209 and 1211.

96 B. "Children of military families" means school-aged
 97 children, enrolled in kindergarten through 12th grade, in the
 98 household of an active-duty member.

99 C. "Compact commissioner" means the voting representative
 100 of each compacting state appointed under Article VIII of this
 101 compact.

102 D. "Deployment" means the period 1 month before the
 103 service members' departure from their home station on military
 104 orders though 6 months after return to their home station.

105 E. "Educational records" or "education records" means
 106 those official records, files, and data directly related to a
 107 student and maintained by the school or local education agency,
 108 including, but not limited to, records encompassing all the
 109 material kept in the student's cumulative folder such as general
 110 identifying data, records of attendance and of academic work
 111 completed, records of achievement and results of evaluative

112 tests, health data, disciplinary status, test protocols, and
 113 individualized education programs.

114 F. "Extracurricular activities" means a voluntary activity
 115 sponsored by the school or local education agency or an
 116 organization sanctioned by the local education agency.

117 Extracurricular activities include, but are not limited to,
 118 preparation for and involvement in public performances,
 119 contests, athletic competitions, demonstrations, displays, and
 120 club activities.

121 G. "Interstate Commission on Educational Opportunity for
 122 Military Children" means the commission that is created under
 123 Article IX of this compact, which is generally referred to as
 124 the Interstate Commission.

125 H. "Local education agency" means a public authority
 126 legally constituted by the state as an administrative agency to
 127 provide control of, and direction for, kindergarten through 12th
 128 grade public educational institutions.

129 I. "Member state" means a state that has enacted this
 130 compact.

131 J. "Military installation" means a base, camp, post,
 132 station, yard, center, homeport facility for any ship, or other
 133 activity under the jurisdiction of the Department of Defense,
 134 including any leased facility, which is located within any of
 135 the several states, the District of Columbia, the Commonwealth
 136 of Puerto Rico, the United States Virgin Islands, Guam, American
 137 Samoa, the Northern Marianas Islands, and any other United
 138 States Territory. The term does not include any facility used

139 primarily for civil works, rivers and harbors projects, or flood
 140 control projects.

141 K. "Nonmember state" means a state that has not enacted
 142 this compact.

143 L. "Receiving state" means the state to which a child of a
 144 military family is sent, brought, or caused to be sent or
 145 brought.

146 M. "Rule" means a written statement by the Interstate
 147 Commission adopted under Article XII of this compact which is of
 148 general applicability, implements, interprets, or prescribes a
 149 policy or provision of the compact, or an organizational,
 150 procedural, or practice requirement of the Interstate
 151 Commission, and has the force and effect of statutory law in a
 152 member state, and includes the amendment, repeal, or suspension
 153 of an existing rule.

154 N. "Sending state" means the state from which a child of a
 155 military family is sent, brought, or caused to be sent or
 156 brought.

157 O. "State" means a state of the United States, the
 158 District of Columbia, the Commonwealth of Puerto Rico, the
 159 United States Virgin Islands, Guam, American Samoa, the Northern
 160 Marianas Islands, and any other United States Territory.

161 P. "Student" means the child of a military family for whom
 162 the local education agency receives public funding and who is
 163 formally enrolled in kindergarten through 12th grade.

164 Q. "Transition" means:

165 1. The formal and physical process of transferring from
 166 school to school; or

222 C. Compact states must give 30 days from the date of
 223 enrollment or within such time as is reasonably determined under
 224 the rules adopted by the Interstate Commission for students to
 225 obtain any immunization required by the receiving state. For a
 226 series of immunizations, initial vaccinations must be obtained
 227 within 30 days or within such time as is reasonably determined
 228 under the rules promulgated by the Interstate Commission.

229 D. Students shall be allowed to continue their enrollment
 230 at grade level in the receiving state commensurate with their
 231 grade level, including kindergarten, from a local education
 232 agency in the sending state at the time of transition,
 233 regardless of age. A student who has satisfactorily completed
 234 the prerequisite grade level in the local education agency in
 235 the sending state is eligible for enrollment in the next highest
 236 grade level in the receiving state, regardless of age. A student
 237 transferring after the start of the school year in the receiving
 238 state shall enter the school in the receiving state on their
 239 validated level from an accredited school in the sending state.

240 ARTICLE V

241 PLACEMENT AND ATTENDANCE.--

242 A. If a student transfers before or during the school
 243 year, the receiving state school shall initially honor placement
 244 of the student in educational courses based on the student's
 245 enrollment in the sending state school or educational
 246 assessments conducted at the school in the sending state if the
 247 courses are offered. Course placement includes, but is not
 248 limited to, Honors, International Baccalaureate, Advanced
 249 Placement, vocational, technical, and career pathways courses.

250 Continuing the student's academic program from the previous
 251 school and promoting placement in academically and career
 252 challenging courses should be paramount when considering
 253 placement. A school in the receiving state is not precluded from
 254 performing subsequent evaluations to ensure appropriate
 255 placement and continued enrollment of the student in the
 256 courses.

257 B. The receiving state school must initially honor
 258 placement of the student in educational programs based on
 259 current educational assessments conducted at the school in the
 260 sending state or participation or placement in like programs in
 261 the sending state. Such programs include, but are not limited
 262 to:

- 263 1. Gifted and talented programs; and
- 264 2. English as a second language (ESL).

265

266 A school in the receiving state is not precluded from performing
 267 subsequent evaluations to ensure appropriate placement and
 268 continued enrollment of the student in the courses.

269 C. A receiving state must initially provide comparable
 270 services to a student with disabilities based on his or her
 271 current individualized education program (IEP) in compliance
 272 with the requirements of the Individuals with Disabilities
 273 Education Act (IDEA), 20 U.S.C. s. 1400, et seq. A receiving
 274 state must make reasonable accommodations and modifications to
 275 address the needs of incoming students with disabilities,
 276 subject to an existing section 504 or title II plan, to provide
 277 the student with equal access to education, in compliance with

278 the provisions of Section 504 of the Rehabilitation Act, 29
 279 U.S.C.A. s. 794, and with title II of the Americans with
 280 Disabilities Act, 42 U.S.C. ss. 12131-12165. A school in the
 281 receiving state is not precluded from performing subsequent
 282 evaluations to ensure appropriate placement and continued
 283 enrollment of the student in the courses.

284 D. Local education agency administrative officials may
 285 waive course or program prerequisites, or other preconditions
 286 for placement in courses or programs offered under the
 287 jurisdiction of the local education agency.

288 E. A student whose parent or legal guardian is an active-
 289 duty member of the uniformed services and has been called to
 290 duty for, is on leave from, or immediately returned from
 291 deployment to, a combat zone or combat support posting shall be
 292 granted additional excused absences at the discretion of the
 293 local education agency superintendent to visit with his or her
 294 parent or legal guardian relative to such leave or deployment of
 295 the parent or guardian.

296 ARTICLE VI

297 ELIGIBILITY.--

298 A. When considering the eligibility of a child for
 299 enrolling in a school:

300 1. A special power of attorney relative to the
 301 guardianship of a child of a military family and executed under
 302 applicable law is sufficient for the purposes of enrolling the
 303 child in school and for all other actions requiring parental
 304 participation and consent.

333 referenced achievement tests; or alternative testing, in lieu of
 334 testing requirements for graduation in the receiving state. If
 335 these alternatives cannot be accommodated by the receiving state
 336 for a student transferring in his or her senior year, then the
 337 provisions of Article VII, Section C shall apply.

338 C. If a military student transfers at the beginning or
 339 during his or her senior year and is not eligible to graduate
 340 from the receiving local education agency after all alternatives
 341 have been considered, the sending and receiving local education
 342 agencies must ensure the receipt of a diploma from the sending
 343 local education agency, if the student meets the graduation
 344 requirements of the sending local education agency. If one of
 345 the states in question is not a member of this compact, the
 346 member state shall use its best efforts to facilitate the on-
 347 time graduation of the student in accordance with Sections A and
 348 B of this Article.

349 ARTICLE VIII

350 STATE COORDINATION.--Each member state shall, through the
 351 creation of a state council or use of an existing body or board,
 352 provide for the coordination among its agencies of government,
 353 local education agencies, and military installations concerning
 354 the state's participation in, and compliance with, this compact
 355 and Interstate Commission activities.

356 A. Each member state may determine the membership of its
 357 own state council but the membership must include at least: the
 358 state superintendent of education, the superintendent of a
 359 school district that has a high concentration of military
 360 children, a representative from a military installation, one

361 representative each from the legislative and executive branches
 362 of government, and other offices and stakeholder groups the
 363 state council deems appropriate. A member state that does not
 364 have a school district deemed to contain a high concentration of
 365 military children may appoint a superintendent from another
 366 school district to represent local education agencies on the
 367 state council.

368 B. The state council of each member state shall appoint or
 369 designate a military family education liaison to assist military
 370 families and the state in facilitating the implementation of
 371 this compact.

372 C. The compact commissioner responsible for the
 373 administration and management of the state's participation in
 374 the compact shall be appointed by the Governor or as otherwise
 375 determined by each member state.

376 D. The compact commissioner and the military family
 377 education liaison shall be ex officio members of the state
 378 council, unless either is already a full voting member of the
 379 state council.

380 ARTICLE IX

381 INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR
 382 MILITARY CHILDREN.--The member states hereby create the
 383 "Interstate Commission on Educational Opportunity for Military
 384 Children." The activities of the Interstate Commission are the
 385 formation of public policy and are a discretionary state
 386 function. The Interstate Commission shall:

387 A. Be a body corporate and joint agency of the member
 388 states and shall have all the responsibilities, powers, and

389 duties set forth herein, and such additional powers as may be
 390 conferred upon it by a subsequent concurrent action of the
 391 respective legislatures of the member states in accordance with
 392 the terms of this compact.

393 B. Consist of one Interstate Commission voting
 394 representative from each member state who shall be that state's
 395 compact commissioner.

396 1. Each member state represented at a meeting of the
 397 Interstate Commission is entitled to one vote.

398 2. A majority of the total member states shall constitute
 399 a quorum for the transaction of business, unless a larger quorum
 400 is required by the bylaws of the Interstate Commission.

401 3. A representative shall not delegate a vote to another
 402 member state. In the event the compact commissioner is unable to
 403 attend a meeting of the Interstate Commission, the Governor or
 404 state council may delegate voting authority to another person
 405 from their state for a specified meeting.

406 4. The bylaws may provide for meetings of the Interstate
 407 Commission to be conducted by telecommunication or electronic
 408 communication.

409 C. Consist of ex officio, nonvoting representatives who
 410 are members of interested organizations. The ex officio members,
 411 as defined in the bylaws, may include, but not be limited to,
 412 members of the representative organizations of military family
 413 advocates, local education agency officials, parent and teacher
 414 groups, the United States Department of Defense, the Education
 415 Commission of the States, the Interstate Agreement on the
 416 Qualification of Educational Personnel, and other interstate

417 compacts affecting the education of children of military
 418 members.

419 D. Meet at least once each calendar year. The chairperson
 420 may call additional meetings and, upon the request of a simple
 421 majority of the member states, shall call additional meetings.

422 E. Establish an executive committee, whose members shall
 423 include the officers of the Interstate Commission and such other
 424 members of the Interstate Commission as determined by the
 425 bylaws. Members of the executive committee shall serve a 1-year
 426 term. Members of the executive committee are entitled to one
 427 vote each. The executive committee shall have the power to act
 428 on behalf of the Interstate Commission, with the exception of
 429 rulemaking, during periods when the Interstate Commission is not
 430 in session. The executive committee shall oversee the day-to-day
 431 activities of the administration of the compact including
 432 enforcement and compliance with the compact, its bylaws and
 433 rules, and other such duties as deemed necessary. The United
 434 States Department of Defense shall serve as an ex officio,
 435 nonvoting member of the executive committee.

436 F. Establish bylaws and rules that provide for conditions
 437 and procedures under which the Interstate Commission shall make
 438 its information and official records available to the public for
 439 inspection or copying. The Interstate Commission may exempt from
 440 disclosure information or official records to the extent they
 441 would adversely affect personal privacy rights or proprietary
 442 interests.

443 G. Give public notice of all meetings and all meetings
 444 shall be open to the public, except as set forth in the rules or

445 as otherwise provided in the compact. The Interstate Commission
 446 and its committees may close a meeting, or portion thereof,
 447 where it determines by two-thirds vote that an open meeting
 448 would be likely to:

449 1. Relate solely to the Interstate Commission's internal
 450 personnel practices and procedures;

451 2. Disclose matters specifically exempted from disclosure
 452 by federal and state statute;

453 3. Disclose trade secrets or commercial or financial
 454 information which is privileged or confidential;

455 4. Involve accusing a person of a crime, or formally
 456 censuring a person;

457 5. Disclose information of a personal nature where
 458 disclosure would constitute a clearly unwarranted invasion of
 459 personal privacy;

460 6. Disclose investigative records compiled for law
 461 enforcement purposes; or

462 7. Specifically relate to the Interstate Commission's
 463 participation in a civil action or other legal proceeding.

464 H. For a meeting, or portion of a meeting, closed pursuant
 465 to this provision, the Interstate Commission's legal counsel or
 466 designee shall certify that the meeting may be closed and shall
 467 reference each relevant exemptible provision. The Interstate
 468 Commission shall keep minutes which shall fully and clearly
 469 describe all matters discussed in a meeting and shall provide a
 470 full and accurate summary of actions taken, and the reasons
 471 therefore, including a description of the views expressed and
 472 the record of a roll call vote. All documents considered in

473 connection with an action shall be identified in such minutes.
 474 All minutes and documents of a closed meeting shall remain under
 475 seal, subject to release by a majority vote of the Interstate
 476 Commission.

477 I. The Interstate Commission shall collect standardized
 478 data concerning the educational transition of the children of
 479 military families under this compact as directed through its
 480 rules which shall specify the data to be collected, the means of
 481 collection and data exchange, and reporting requirements. The
 482 methods of data collection, exchange, and reporting shall, in so
 483 far as is reasonably possible, conform to current technology and
 484 coordinate its information functions with the appropriate
 485 custodian of records as identified in the bylaws and rules.

486 J. The Interstate Commission shall create a procedure that
 487 permits military officials, education officials, and parents to
 488 inform the Interstate Commission if and when there are alleged
 489 violations of the compact or its rules or when issues subject to
 490 the jurisdiction of the compact or its rules are not addressed
 491 by the state or local education agency. This section does not
 492 create a private right of action against the Interstate
 493 Commission or any member state.

494 ARTICLE X

495 POWERS AND DUTIES OF THE INTERSTATE COMMISSION.--The
 496 Interstate Commission has the power to:

497 A. Provide for dispute resolution among member states.

498 B. Adopt rules and take all necessary actions to effect
 499 the goals, purposes, and obligations as enumerated in this
 500 compact. The rules have the force and effect of statutory law

501 and are binding in the compact states to the extent and in the
 502 manner provided in this compact.

503 C. Issue, upon request of a member state, advisory
 504 opinions concerning the meaning or interpretation of the
 505 interstate compact, its bylaws, rules, and actions.

506 D. Enforce compliance with the compact provisions, the
 507 rules adopted by the Interstate Commission, and the bylaws,
 508 using all necessary and proper means, including, but not limited
 509 to, the use of judicial process.

510 E. Establish and maintain offices that shall be located
 511 within one or more of the member states.

512 F. Purchase and maintain insurance and bonds.

513 G. Borrow, accept, hire, or contract for services of
 514 personnel.

515 H. Establish and appoint committees, including, but not
 516 limited to, an executive committee as required by Article IX,
 517 Section E, which shall have the power to act on behalf of the
 518 Interstate Commission in carrying out its powers and duties
 519 hereunder.

520 I. Elect or appoint such officers, attorneys, employees,
 521 agents, or consultants, and to fix their compensation, define
 522 their duties, and determine their qualifications; and to
 523 establish the Interstate Commission's personnel policies and
 524 programs relating to conflicts of interest, rates of
 525 compensation, and qualifications of personnel.

526 J. Accept any and all donations and grants of money,
 527 equipment, supplies, materials, and services, and to receive,
 528 utilize, and dispose of it.

529 K. Lease, purchase, accept contributions or donations of,
 530 or otherwise to own, hold, improve, or use any property, real,
 531 personal, or mixed.

532 L. Sell, convey, mortgage, pledge, lease, exchange,
 533 abandon, or otherwise dispose of any property, real, personal,
 534 or mixed.

535 M. Establish a budget and make expenditures.

536 N. Adopt a seal and bylaws governing the management and
 537 operation of the Interstate Commission.

538 O. Report annually to the legislatures, governors,
 539 judiciary, and state councils of the member states concerning
 540 the activities of the Interstate Commission during the preceding
 541 year. Such reports shall also include any recommendations that
 542 may have been adopted by the Interstate Commission.

543 P. Coordinate education, training, and public awareness
 544 regarding the compact, its implementation, and operation for
 545 officials and parents involved in such activity.

546 Q. Establish uniform standards for the reporting,
 547 collecting, and exchanging of data.

548 R. Maintain corporate books and records in accordance with
 549 the bylaws.

550 S. Perform such functions as may be necessary or
 551 appropriate to achieve the purposes of this compact.

552 T. Provide for the uniform collection and sharing of
 553 information between and among member states, schools, and
 554 military families under this compact.

555 ARTICLE XI

556 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.--

557 A. The Interstate Commission shall, by a majority of the
 558 members present and voting, within 12 months after the first
 559 Interstate Commission meeting, adopt bylaws to govern its
 560 conduct as may be necessary or appropriate to carry out the
 561 purposes of the compact, including, but not limited to:

562 1. Establishing the fiscal year of the Interstate
 563 Commission;

564 2. Establishing an executive committee and such other
 565 committees as may be necessary;

566 3. Providing for the establishment of committees and for
 567 governing any general or specific delegation of authority or
 568 function of the Interstate Commission;

569 4. Providing reasonable procedures for calling and
 570 conducting meetings of the Interstate Commission and ensuring
 571 reasonable notice of each such meeting;

572 5. Establishing the titles and responsibilities of the
 573 officers and staff of the Interstate Commission;

574 6. Providing a mechanism for concluding the operations of
 575 the Interstate Commission and the return of surplus funds that
 576 may exist upon the termination of the compact after the payment
 577 and reserving of all of its debts and obligations.

578 7. Providing "start up" rules for initial administration
 579 of the compact.

580 B. The Interstate Commission shall, by a majority of the
 581 members, elect annually from among its members a chairperson, a
 582 vice chairperson, and a treasurer, each of whom shall have such
 583 authority and duties as may be specified in the bylaws. The
 584 chairperson or, in the chairperson's absence or disability, the

585 vice chairperson shall preside at all meetings of the Interstate
 586 Commission. The officers so elected shall serve without
 587 compensation or remuneration from the Interstate Commission;
 588 provided that, subject to the availability of budgeted funds,
 589 the officers shall be reimbursed for ordinary and necessary
 590 costs and expenses incurred by them in the performance of their
 591 responsibilities as officers of the Interstate Commission.

592 C. The executive committee has the authority and duties as
 593 may be set forth in the bylaws, including, but not limited to:

594 1. Managing the affairs of the Interstate Commission in a
 595 manner consistent with the bylaws and purposes of the Interstate
 596 Commission;

597 2. Overseeing an organizational structure within, and
 598 appropriate procedures for, the Interstate Commission to provide
 599 for the adoption of rules, operating procedures, and
 600 administrative and technical support functions; and

601 3. Planning, implementing, and coordinating communications
 602 and activities with other state, federal, and local government
 603 organizations in order to advance the goals of the Interstate
 604 Commission.

605 D. The executive committee may, subject to the approval of
 606 the Interstate Commission, appoint or retain an executive
 607 director for such period, upon such terms and conditions and for
 608 such compensation, as the Interstate Commission may deem
 609 appropriate. The executive director shall serve as secretary to
 610 the Interstate Commission, but is not a member of the Interstate
 611 Commission. The executive director shall hire and supervise such
 612 other persons as may be authorized by the Interstate Commission.

613 E. The Interstate Commission's executive director and its
 614 employees are immune from suit and liability, either personally
 615 or in their official capacity, for a claim for damage to or loss
 616 of property or personal injury or other civil liability caused
 617 or arising out of, or relating to, an actual or alleged act,
 618 error, or omission that occurred, or that such person had a
 619 reasonable basis for believing occurred, within the scope of
 620 Interstate Commission employment, duties, or responsibilities,
 621 provided that the person is not protected from suit or liability
 622 for damage, loss, injury, or liability caused by the intentional
 623 or willful and wanton misconduct of the person.

624 1. The liability of the Interstate Commission's executive
 625 director and employees or Interstate Commission representatives,
 626 acting within the scope of the person's employment or duties,
 627 for acts, errors, or omissions occurring within the person's
 628 state may not exceed the limits of liability set forth under the
 629 constitution and laws of that state for state officials,
 630 employees, and agents. The Interstate Commission is considered
 631 to be an instrumentality of the states for the purposes of any
 632 such action. This subsection does not protect the person from
 633 suit or liability for damage, loss, injury, or liability caused
 634 by the intentional or willful and wanton misconduct of the
 635 person.

636 2. The Interstate Commission shall defend the executive
 637 director and its employees and, subject to the approval of the
 638 Attorney General or other appropriate legal counsel of the
 639 member state represented by an Interstate Commission
 640 representative, shall defend an Interstate Commission

641 representative in any civil action seeking to impose liability
 642 arising out of an actual or alleged act, error, or omission that
 643 occurred within the scope of Interstate Commission employment,
 644 duties, or responsibilities, or that the defendant had a
 645 reasonable basis for believing occurred within the scope of
 646 Interstate Commission employment, duties, or responsibilities,
 647 provided that the actual or alleged act, error, or omission did
 648 not result from intentional or willful and wanton misconduct on
 649 the part of the person.

650 3. To the extent not covered by the state involved, a
 651 member state, the Interstate Commission, and the representatives
 652 or employees of the Interstate Commission shall be held harmless
 653 in the amount of a settlement or judgment, including attorney's
 654 fees and costs, obtained against a person arising out of an
 655 actual or alleged act, error, or omission that occurred within
 656 the scope of Interstate Commission employment, duties, or
 657 responsibilities, or that the person had a reasonable basis for
 658 believing occurred within the scope of Interstate Commission
 659 employment, duties, or responsibilities, provided that the
 660 actual or alleged act, error, or omission did not result from
 661 intentional or willful and wanton misconduct on the part of the
 662 person.

663 ARTICLE XII

664 RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.--The
 665 Interstate Commission shall adopt rules to effectively and
 666 efficiently implement this act to achieve the purposes of this
 667 compact.

668 A. If the Interstate Commission exercises its rulemaking
 669 authority in a manner that is beyond the scope of the purposes
 670 of this act, or the powers granted hereunder, the action
 671 undertaken by the Interstate Commission is invalid and has no
 672 force or effect.

673 B. Rules must be adopted pursuant to a rulemaking process
 674 that substantially conforms to the "Model State Administrative
 675 Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.
 676 1 (2000) as amended, as may be appropriate to the operations of
 677 the Interstate Commission.

678 C. No later than 30 days after a rule is adopted, a person
 679 may file a petition for judicial review of the rule. The filing
 680 of the petition does not stay, or otherwise prevent the rule
 681 from becoming effective, unless a court finds that the
 682 petitioner has a substantial likelihood of success on the merits
 683 of the petition. The court shall give deference to the actions
 684 of the Interstate Commission consistent with applicable law and
 685 shall not find the rule to be unlawful if the rule represents a
 686 reasonable exercise of the Interstate Commission's authority.

687 D. If a majority of the legislatures of the compacting
 688 states rejects a rule by enactment of a statute or resolution in
 689 the same manner used to adopt the compact, then the rule is
 690 invalid and has no further force and effect in any compacting
 691 state.

692 ARTICLE XIII

693 OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION.--

694 A. The executive, legislative, and judicial branches of
 695 state government in each member state shall enforce this compact

696 and shall take all actions necessary and appropriate to
 697 effectuate the compact's purposes and intent. The provisions of
 698 this compact and the rules adopted under it have the force and
 699 effect of statutory law.

700 B. All courts shall take judicial notice of the compact
 701 and its adopted rules in any judicial or administrative
 702 proceeding in a member state pertaining to the subject matter of
 703 this compact which may affect the powers, responsibilities, or
 704 actions of the Interstate Commission.

705 C. The Interstate Commission is entitled to receive all
 706 service of process in any such proceeding, and has standing to
 707 intervene in the proceeding for all purposes. Failure to provide
 708 service of process to the Interstate Commission renders a
 709 judgment or order void as to the Interstate Commission, this
 710 compact, or its adopted rules.

711 D. If the Interstate Commission determines that a member
 712 state has defaulted in the performance of its obligations or
 713 responsibilities under this compact, or the bylaws or the
 714 adopted rules, the Interstate Commission shall:

715 1. Provide written notice to the defaulting state and
 716 other member states of the nature of the default, the means of
 717 curing the default, and any action taken by the Interstate
 718 Commission. The Interstate Commission must specify the
 719 conditions by which the defaulting state must cure its default.

720 2. Provide remedial training and specific technical
 721 assistance regarding the default.

722 3. If the defaulting state fails to cure the default,
 723 terminate the defaulting state from the compact upon an

724 affirmative vote of a majority of the member states and all
 725 rights, privileges, and benefits conferred by this compact shall
 726 be terminated from the effective date of termination. A cure of
 727 the default does not relieve the offending state of obligations
 728 or liabilities incurred during the period of the default.

729 E. Suspension or termination of membership in the compact
 730 may not be imposed on a member until all other means of securing
 731 compliance have been exhausted. Notice of the intent to suspend
 732 or terminate membership must be given by the Interstate
 733 Commission to the Governor, the majority and minority leaders of
 734 the defaulting state's legislature, and each of the member
 735 states.

736 F. A state that has been suspended or terminated is
 737 responsible for all assessments, obligations, and liabilities
 738 incurred through the effective date of suspension or termination
 739 including obligations, the performance of which extends beyond
 740 the effective date of suspension or termination.

741 G. The remaining member states of the Interstate
 742 Commission do not bear any costs arising from a state that has
 743 been found to be in default or that has been suspended or
 744 terminated from the compact, unless otherwise mutually agreed
 745 upon in writing between the Interstate Commission and the
 746 defaulting state.

747 H. A defaulting state may appeal the action of the
 748 Interstate Commission by petitioning the United States District
 749 Court for the District of Columbia or the federal district where
 750 the Interstate Commission has its principal offices. The

751 prevailing party shall be awarded all costs of such litigation
 752 including reasonable attorney's fees.

753 I. The Interstate Commission shall attempt, upon the
 754 request of a member state, to resolve disputes that are subject
 755 to the compact and that may arise among member states and
 756 between member and nonmember states. The Interstate Commission
 757 shall promulgate a rule providing for both mediation and binding
 758 dispute resolution for disputes as appropriate.

759 1. The Interstate Commission, in the reasonable exercise
 760 of its discretion, shall enforce the provisions and rules of
 761 this compact.

762 2. The Interstate Commission may, by majority vote of the
 763 members, initiate legal action in the United States District
 764 Court for the District of Columbia or, at the discretion of the
 765 Interstate Commission, in the federal district where the
 766 Interstate Commission has its principal offices to enforce
 767 compliance with the provisions of the compact, or its
 768 promulgated rules and bylaws, against a member state in default.
 769 The relief sought may include both injunctive relief and
 770 damages. In the event judicial enforcement is necessary, the
 771 prevailing party shall be awarded all costs of such litigation,
 772 including reasonable attorney's fees.

773 3. The remedies herein are not the exclusive remedies of
 774 the Interstate Commission. The Interstate Commission may avail
 775 itself of any other remedies available under state law or the
 776 regulation of a profession.

777 ARTICLE XIV

778 FINANCING OF THE INTERSTATE COMMISSION.--

779 A. The Interstate Commission shall pay, or provide for the
 780 payment of, the reasonable expenses of its establishment,
 781 organization, and ongoing activities.

782 B. The Interstate Commission may levy on and collect an
 783 annual assessment from each member state to cover the cost of
 784 the operations and activities of the Interstate Commission and
 785 its staff which must be in a total amount sufficient to cover
 786 the Interstate Commission's annual budget as approved each year.
 787 The aggregate annual assessment amount shall be allocated based
 788 upon a formula to be determined by the Interstate Commission,
 789 which shall adopt a rule binding upon all member states.

790 C. The Interstate Commission may not incur any obligation
 791 of any kind before securing the funds adequate to meet the
 792 obligation and the Interstate Commission may not pledge the
 793 credit of any of the member states, except by and with the
 794 permission of the member state.

795 D. The Interstate Commission shall keep accurate accounts
 796 of all receipts and disbursements. The receipts and
 797 disbursements of the Interstate Commission are subject to audit
 798 and accounting procedures established under its bylaws. However,
 799 all receipts and disbursements of funds handled by the
 800 Interstate Commission shall be audited yearly by a certified or
 801 licensed public accountant and the report of the audit shall be
 802 included in and become part of the annual report of the
 803 Interstate Commission.

804 ARTICLE XV

805 MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT.--

806 A. Any state is eligible to become a member state.

807 B. The compact shall take effect and be binding upon
 808 legislative enactment of the compact into law by not less than
 809 10 of the states. The effective date shall be no earlier than
 810 December 1, 2007. Thereafter, it shall become effective and
 811 binding as to any other member state upon enactment of the
 812 compact into law by that state. The governors of nonmember
 813 states or their designees shall be invited to participate in the
 814 activities of the Interstate Commission on a nonvoting basis
 815 before adoption of the compact by all states.

816 C. The Interstate Commission may propose amendments to the
 817 compact for enactment by the member states. An amendment does
 818 not become effective and binding upon the Interstate Commission
 819 and the member states until the amendment is enacted into law by
 820 unanimous consent of the member states.

821 ARTICLE XVI

822 WITHDRAWAL AND DISSOLUTION.--

823 A. Once in effect, the compact continues in force and
 824 remains binding upon each and every member state, provided that
 825 a member state may withdraw from the compact, specifically
 826 repealing the statute that enacted the compact into law.

827 1. Withdrawal from the compact occurs when a statute
 828 repealing its membership is enacted by the state, but does not
 829 take effect until 1 year after the effective date of the statute
 830 and until written notice of the withdrawal has been given by the
 831 withdrawing state to the Governor of each other member state.

832 2. The withdrawing state must immediately notify the
 833 chairperson of the Interstate Commission in writing upon the
 834 introduction of legislation repealing this compact in the

835 withdrawing state. The Interstate Commission shall notify the
 836 other member states of the withdrawing state's intent to
 837 withdraw within 60 days after its receipt thereof.

838 3. A withdrawing state is responsible for all assessments,
 839 obligations, and liabilities incurred through the effective date
 840 of withdrawal, including obligations, the performance of which
 841 extend beyond the effective date of withdrawal.

842 4. Reinstatement following withdrawal of a member state
 843 shall occur upon the withdrawing state reenacting the compact or
 844 upon such later date as determined by the Interstate Commission.

845 B. This compact shall dissolve effective upon the date of
 846 the withdrawal or default of the member state which reduces the
 847 membership in the compact to one member state.

848 C. Upon the dissolution of this compact, the compact
 849 becomes void and has no further force or effect, and the
 850 business and affairs of the Interstate Commission shall be
 851 concluded and surplus funds shall be distributed in accordance
 852 with the bylaws.

853 ARTICLE XVII

854 SEVERABILITY AND CONSTRUCTION.--

855 A. The provisions of this compact shall be severable, and
 856 if any phrase, clause, sentence, or provision is deemed
 857 unenforceable, the remaining provisions of the compact shall be
 858 enforceable.

859 B. The provisions of this compact shall be liberally
 860 construed to effectuate its purposes.

861 C. This compact does not prohibit the applicability of
 862 other interstate compacts to which the states are members.

863 ARTICLE XVIII

864 BINDING EFFECT OF COMPACT AND OTHER LAWS.--

865 A. This compact does not prevent the enforcement of any
 866 other law of a member state that is not inconsistent with this
 867 compact.

868 B. All member states' laws conflicting with this compact
 869 are superseded to the extent of the conflict.

870 C. All lawful actions of the Interstate Commission,
 871 including all rules and bylaws promulgated by the Interstate
 872 Commission, are binding upon the member states.

873 D. All agreements between the Interstate Commission and
 874 the member states are binding in accordance with their terms.

875 E. If any part of this compact exceeds the constitutional
 876 limits imposed on the Legislature of any member state, the
 877 provision shall be ineffective to the extent of the conflict
 878 with the constitutional provision in question in that member
 879 state.

880 Section 2. Section 1000.37, Florida Statutes, is created
 881 to read:

882 1000.37 Copies to other states approving.--After the
 883 effective date of this act, the Secretary of State shall furnish
 884 to each of the states approving the Interstate Compact on
 885 Educational Opportunity for Military Children an enrolled copy
 886 of this act.

887 Section 3. Section 1000.38, Florida Statutes, is created
 888 to read:

889 1000.38 Compact Commissioner and Military Family Education
 890 Liaison; Interstate Compact on Educational Opportunity for
 891 Military Children.--

892 (1) In furtherance of Articles VIII and IX of the
 893 Interstate Compact on Educational Opportunity for Military
 894 Children, the Governor shall designate a:

895 (a) Compact Commissioner, who shall be responsible for the
 896 administration and management of this state's participation in
 897 the compact and who shall serve as this state's voting
 898 representative on the Interstate Commission on Educational
 899 Opportunity for Military Children.

900 (b) Military Family Education Liaison from the list of
 901 recommendations provided under s. 1000.39(2), who shall be
 902 responsible for assisting military families and the state in
 903 facilitating the implementation of this compact.

904 (2) The Compact Commissioner and the Military Family
 905 Education Liaison shall serve at the pleasure of the Governor.

906 Section 4. Section 1000.39, Florida Statutes, is created
 907 to read:

908 1000.39 State council; Interstate Compact on Educational
 909 Opportunity for Military Children.--

910 (1) Pursuant to Article VIII of the Interstate Compact on
 911 Educational Opportunity for Military Children, the State Council
 912 on Interstate Educational Opportunity for Military Children is
 913 created.

914 (2) (a) The purpose of the council is to provide advice and
 915 recommendations regarding this state's participation in and
 916 compliance with the compact and Interstate Commission on

917 Educational Opportunity for Military Children activities.
 918 (b) No later than 3 months after its formation, and
 919 whenever requested by the Governor thereafter, the council shall
 920 provide the Governor with names of at least three, but no more
 921 than five, persons who are recommended by the council to serve
 922 as the Military Family Education Liaison.
 923 (3) The council shall consist of the following seven
 924 members:
 925 (a) The Commissioner of Education or his or her designee.
 926 (b) The superintendent, or his or her designee, for the
 927 school district with the highest percentage per capita of
 928 military children during the previous school year.
 929 (c) Two members appointed by the Commissioner of
 930 Education, one of whom shall represent a military installation
 931 located within this state and one of whom shall represent the
 932 executive branch and possess experience in assisting military
 933 families in obtaining educational services for their children.
 934 The term of each member appointed under this paragraph shall be
 935 for 4 years, except that, in order to provide for staggered
 936 terms, the Commissioner of Education shall initially appoint one
 937 member to a term of 2 years and one member to a term of 3 years.
 938 (d) One member appointed by, and who shall serve at the
 939 pleasure of, the President of the Senate and the Speaker of the
 940 House of Representatives.
 941 (e) The Compact Commissioner and the Military Family
 942 Education Liaison designated by the Governor under s. 1000.38,
 943 who shall serve as nonvoting, ex officio members of the council.
 944 (4) Council members shall serve without compensation but

945 are entitled to reimbursement for per diem and travel expenses
 946 as provided in s. 112.061.

947 (5) The provisions of s. 24, Art. I of the State
 948 Constitution and of chapter 119 and s. 286.011 apply to
 949 proceedings and records of the council. Minutes, including a
 950 record of all votes cast, must be maintained for all meetings.

951 (6) The Department of Education shall provide
 952 administrative support to the council.

953 (7) If the council is abolished, its records must be
 954 appropriately stored, within 30 days after the effective date of
 955 its abolition, by the department or its successor agency. Any
 956 property assigned to the council must be reclaimed by the
 957 department or its successor agency. The council may not perform
 958 any activities after the effective date of its abolition.

959 Section 5. Sections 1000.36, 1000.37, 1000.38, and
 960 1000.39, Florida Statutes, shall stand repealed 2 years after
 961 the effective date of this act unless reviewed and saved from
 962 repeal through reenactment by the Legislature.


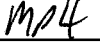
963 Section 6. This act shall take effect July 1, 2008, or
 964 upon enactment of the compact into law by nine other states,
 965 whichever date occurs later.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283
SPONSOR(S): Cannon
TIED BILLS:

Ad Valorem Tax Assessment Value Challenges

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Policy & Budget Council		Diez-Arguelles 	Hansen 
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Section 194.301, F.S., provides that in challenges to the assessment of property determined by the property appraiser, the assessment is presumed correct unless the taxpayer can overcome the presumption.

This bill amends s. 194.301, F.S., by placing on the property appraiser the burden of proving that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices in order for the assessment to be presumed correct.

Also, the bill provides that the taxpayer has the burden of proving by a preponderance of the evidence that the assessment exceeds just value or that the assessment is based on appraisal practices that are different from the appraisal practices generally applied to comparable property within the same class. Finally, the bill provides that in an appeal of the VAB's decision by the property appraiser, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the VAB is less than just value.

In VAB or court proceedings challenging the denial of an exemption or assessment classification, the bill provides that the property appraiser will have the burden of proving that the denial complies with applicable law governing such exemption or assessment classification.

The bill also provides legislative intent that the legislature rejects any court decisions that have relied on a standard which required the taxpayer to prove that the property appraiser's assessment was not supported by any reasonable hypothesis of a legal assessment.

The Revenue Estimating Conference has estimated that the provisions of this bill will result in lower assessments of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on local government tax revenues is estimated to exceed \$135.9 million in FY 2008-09, increasing to at least \$724.8 million in FY 2012-13.

The bill takes effect upon becoming law.

This bill may be a mandate requiring a two-thirds vote of the membership to be enacted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes -- The bill will provide a lower threshold for taxpayers to successfully challenge the assessment of property subject to property taxation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 193.011, F.S., sets forth eight factors that the property appraiser must consider in arriving at the just value (fair market value) of property for ad valorem tax purposes. These factors are:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Chapter 194, F.S., sets forth procedures for a taxpayer to challenge the assessment of property by the property appraiser. The taxpayer may either petition the Value Adjustment Board (VAB) or file a petition in circuit court. If the taxpayer is not successful before the VAB, he or she may file a petition in

circuit court. The property appraiser may appeal the decision of the VAB, if certain criteria set forth in s. 194.036(1), F.S. are met.

Section 194.301, F.S., provides that in both the VAB and the courts, the assessment determined by the property appraiser is presumed correct unless the taxpayer can overcome the presumption in one of two ways:

(1) The taxpayer can show by a preponderance of the evidence that the property appraiser has failed to consider properly the criteria in s. 193.011 or that the assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. If the taxpayer shows either of these facts, the presumption of correctness is lost, and the taxpayer must prove by a preponderance of the evidence that the assessment is in excess of just value.

(2) If the taxpayer cannot make the showing described in (1), the property appraiser's assessment retains the presumption of correctness and the taxpayer must prove by clear and convincing evidence that the assessment is in excess of just value (fair market value).

Black's Law Dictionary defines clear and convincing evidence and preponderance of the evidence as follows:

Preponderance of the evidence -- The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

Clear and convincing evidence -- Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

Proposed Changes

The bill amends s. 194.301, F.S., by placing on the property appraiser the burden of proving that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices in order for the assessment to be presumed correct.

Also, the bill provides that the taxpayer has the burden of proving by a preponderance of the evidence that the assessment exceeds just value or that the assessment is based on appraisal practices that are different from the appraisal practices generally applied to comparable property within the same class. Finally, the bill provides that in an appeal of the VAB's decision by the property appraiser, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the VAB is less than just value.

In VAB or court proceedings challenging the denial of an exemption or assessment classification, the bill provides that the property appraiser will have the burden of proving that the denial complies with applicable law governing such exemption or assessment classification.

The bill also provides legislative intent that the legislature rejects any court decisions that have relied on a standard which required the taxpayer to prove that the property appraiser's assessment was not supported by any reasonable hypothesis of a legal assessment.

C. SECTION DIRECTORY:

Section 1. Amends s. 194.301, F.S.

Section 2. Provides legislative intent

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Revenue may incur additional expenditures to amend existing rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill will result in lower assessments of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on tax revenues is estimated to exceed \$135.9 million in FY 2008-09, increasing to at least \$724.8 million in FY 2012-13.

2. Expenditures:

The bill's provisions placing on the property appraiser the burden of going forward in assessment challenges and the burden of proving that the denial of an exemption or classification complies with applicable laws will likely require additional expenditures by the property appraiser.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers are likely to prevail more often in challenges to valuation assessments and thereby reduce the assessed value of their property.

D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE) – the amount of property taxes that a school district must levy in order to participate in the Florida Education Finance Program (FEFP). The provisions of this bill will reduce the property tax base that is available for RLE. If the legislature were to set a RLE amount designed to maintain the current RLE millage rate, the RLE amount would be less than under current law by \$36.4 million in FY 2008-09, increasing to \$194.2 million in 2012-13.

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 municipalities and counties have to raise revenue as that authority existed on February 1, 1989. The reduction in authority comes from the decline in the tax base caused by taxpayers being more successful in challenging assessments. The bill does not appear to qualify for an exception or exemption.

If the mandates provision applies, and in the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989."

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Revenue may have to amend some existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

29 comparable property within the same class. In any judicial
 30 action in which the property appraiser challenges the value
 31 adjustment board's determination of value, the property
 32 appraiser shall have the burden of proving by a preponderance of
 33 the evidence that the assessment established by the value
 34 adjustment board is less than just value ~~appraiser's assessment~~
 35 ~~shall be presumed correct. This presumption of correctness is~~
 36 ~~lost if the taxpayer shows by a preponderance of the evidence~~
 37 ~~that either the property appraiser has failed to consider~~
 38 ~~properly the criteria in s. 193.011 or if the property~~
 39 ~~appraiser's assessment is arbitrarily based on appraisal~~
 40 ~~practices which are different from the appraisal practices~~
 41 ~~generally applied by the property appraiser to comparable~~
 42 ~~property within the same class and within the same county. If~~
 43 ~~the presumption of correctness is lost, the taxpayer shall have~~
 44 ~~the burden of proving by a preponderance of the evidence that~~
 45 ~~the appraiser's assessment is in excess of just value. If the~~
 46 ~~presumption of correctness is retained, the taxpayer shall have~~
 47 ~~the burden of proving by clear and convincing evidence that the~~
 48 ~~appraiser's assessment is in excess of just value. In no case~~
 49 ~~shall the taxpayer have the burden of proving that the property~~
 50 ~~appraiser's assessment is not supported by any reasonable~~
 51 ~~hypothesis of a legal assessment. If the property appraiser's~~
 52 ~~assessment is determined to be erroneous, the~~ value adjustment
 53 board ~~Value Adjustment Board~~ or the court can establish the
 54 ~~assessment if there exists competent, substantial evidence~~
 55 exists in the record, which cumulatively meets the requirements
 56 of s. 193.011 by applying professionally accepted appraisal

57 practices. If the record lacks such competent, substantial
 58 evidence ~~meeting the just value criteria of s. 193.011~~, the
 59 matter shall be remanded to the property appraiser with
 60 appropriate directions from the value adjustment board ~~Value~~
 61 ~~Adjustment Board~~ or the court.

62 (2) In any administrative or judicial action in which a
 63 denial of an exemption or assessment classification is
 64 challenged, the property appraiser shall have the burden of
 65 proving that his or her denial complies with the applicable laws
 66 governing such exemption or assessment classification.

67 Section 2. It is the express intent of the Legislature
 68 that a taxpayer shall never have the burden of proving that the
 69 property appraiser's assessment is not supported by any
 70 reasonable hypothesis of a legal assessment and all cases
 71 setting out such a standard were expressly rejected
 72 legislatively on the adoption of chapter 97-85, Laws of Florida.
 73 It is the further intent of the Legislature that any cases of
 74 law published since 1997 citing the every-reasonable-hypothesis
 75 standard are expressly rejected to the extent that they are
 76 interpretative of legislative intent.

77 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No. **HB 1283**

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy & Budget Council
2 Representative Cannon offered the following:

3
4 **Amendment**

5 Remove line 23 and insert:

6
7 with s. 193.011 and professionally accepted appraisal practices,
8 including mass appraisal standards where appropriate,
9

10
11
12
13
14

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (02)

Bill No. **HB 1283**

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy & Budget Council
2 Representative Cannon offered the following:

3
4 **Amendment**

5 Remove lines 64 - 66 and insert:

6
7 challenged, the property appraiser shall have no presumption of
8 correctness.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1395 Council on the Social Status of Black Men and Boys

SPONSOR(S): Safety & Security Council; Llorente

TIED BILLS: IDEN./SIM. BILLS: SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	<u>6 Y, 0 N</u>	<u>Davis</u>	<u>Birtman</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Birtman/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u>Leznoff</u> <i>JV</i>	<u>Hansen</u> <i>mjh</i>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Florida Council on the Social Status of Black Men and Boys was established by the Florida Legislature in 2006. The Council was charged with studying the adverse conditions affecting black men and boys. Its goal was to propose measures to alleviate and correct the underlying causes of these conditions.

CS/HB 1395 makes several changes regarding the Council on the Social Status of Black Men and Boys. Specifically the bill gives the Council additional tools to enhance their ability to further study both the causes and possible solutions for conditions that negatively affect black men and boys, and allows the Council to accept both public and private funding to defray clerical and administrative costs. The bill removes outdated provisions requiring the Attorney General to set up an initial meeting of the Council, authorizes the Council to establish local Councils on the Social Status of Black Men and Boys, and removes the 2012 sunset date.

The bill also authorizes the Department of Legal Affairs to establish a direct-support organization which will form strategic partnerships to foster the development of community and private sector resources; and act as a liaison with state agencies, other state governments, and the public and private sectors on matters that relate to underlying conditions that affect black men and boys to bring about an environment that promotes the values of learning, family, prosperity, unity, and self-worth. To that end, and in conjunction with the Council, the bill requires the direct-support organization to develop a strategic program and funding initiative to do the following:

- Implement the 5000 Role Models of Excellence program in specified counties;
- Implement the Reading 4 Success program in specified counties;
- Implement the One Church, One Child program statewide;
- Implement the Mapping the Future for Black Males program within specified community colleges;
- Develop a marketing and public awareness campaign showcasing programs funded by the direct-support organization and the Council; and
- Fund the clerical and administrative costs of the Council.

The bill requires the direct-support organization to operate under written contract with the Department of Legal Affairs, and provides for staggered appointment of a 13-member Board of Directors. The bill also requires the direct-support organization to consider the participation of other Florida counties that demonstrate a willingness to participate and an ability to be successful in any programs funded by the direct-support organization.

CS/HB 1395 appropriates \$50,000 in non-recurring general revenue funds to the Department of Legal Affairs for the purpose of implementing this act. The bill has an effective date of July 1, 2008.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1395d.PBC.doc
DATE: 3/28/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill appropriates \$50,000 to maintain the Council and start up a direct-support organization which will then fund several initiatives with privately-raised funds; and removes the Council's 2012 sunset date.

B. EFFECT OF PROPOSED CHANGES:

Background:

In 2006, the Florida Legislature established The Florida Council on the Social Status of Black Men and Boys. The Council was charged with studying the conditions affecting black men and boys, including, but not limited to, homicide rates, arrest and incarceration rates, poverty, violence, drug abuse, death rates, disparate annual income levels, health issues, and school performance.

The Council's goal was to propose measures to alleviate and correct the underlying causes of these conditions.

The Council is administratively located in the Office of the Attorney General, and has 19 members from the legislature, governmental agencies, public and private organizations and private citizens. Established in section 16.615, Florida Statutes, the Council is required to submit an annual report to the Governor, the President of the Senate, Speaker of the House of Representatives and chairpersons of the standing committees of jurisdiction in each chamber.

Annual Report:

On January 15, 2008, the Council submitted its first annual report per legislative mandate and the research presented in the report highlights numerous issues that are designed to alleviate the frequency and intensity of Black-on-Black crime.¹ The report includes findings from the Council's five committees: Improving Economic Outcomes, Improving Educational Outcomes, Improving Foster Care and Families, Improving Health Outcomes and Legislative Review.

The Council's Top 15 Recommendations include:²

Economics:

- 1.) Analyze the participation rates of Black-owned firms and the dollar amounts awarded through bidding and/or direct contracting with state agencies.
- 2.) In consultation with other entities such as the Florida Regional Minority Business Council and the Florida Minority Supplier Development Council, develop an assessment tool to identify business capacities, strengths and/or weaknesses.
- 3.) Encourage and support opportunities for joint-ventures between and among Black-owned businesses, to increase contract performance capacities, shared costs and increased outcomes.

Education:

¹ Florida Council on the Social Status of Black Men and Boys, 2007 Annual Report. (<http://www.cssbmb.com>)

² Id.

- 4.) Review the statewide and district level policies, procedures and outcomes of school discipline throughout Florida. Require all public and charter schools to collect student disciplinary data, including teacher/SRO referral rates, suspension rates and grade distributions (along with rationale and outcomes) for all K-12 teachers and staff. Require training of all principals, teachers and SRO officers on school disciplinary procedures.
- 5.) Identify intervention programs with proven records of success working with Black Males, such as Role Models of Excellence.

Foster Care and Adoption:

- 6.) Require school districts to implement Kinship Care Support Programs. Non-relative care givers should receive cash benefits for caring for a dependent child.
- 7.) Community based care agencies serving foster youth should offer weekly Independent Living skills classes to all current and former foster youth age 13 to 23, as well as transportation for the youth to enable them to attend the classes.
- 8.) Promote adoption through "One Church, One Child". "One Church, One Child" of Florida needs to be restored to recruiting, preparing and approving families for children in foster care in need of adoption service.
- 9.) Invest in a public education drive about the benefits of early screening for health care.

Health:

- 10.) The state should invest in a public education campaign to promote the benefits of early screening for health care. This should include use of mass media, dissemination of information in public and private schools as well as non-traditional systems such as mobile medical units.

The Council also made these 5 recommendations for legislative review:

- 11.) Appropriate \$250,000 for the Council for fiscal year 2008-2009, including the hiring of an Executive Director (FTE with full benefits).
- 12.) Eliminate the Council's sunset date. The Council should also be made a permanent commission.³
- 13.) Establish at least one local Council on the Social Status of Black Men and Boys in each of Florida's sixty-seven counties, to serve as a network for communication, education and action.
- 14.) Reestablish the Governor's Ex-Offender Task Force (Governor Bush's original task force sunsetted in January 2007).

³ "Commission," as defined in 20.03, F.S., unless otherwise required by the State Constitution, means a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor. Section 20.052, (5)(b)F.S., requires that members of a commission must be confirmed by the Senate. "Council or Advisory Council" as defined in s. 20.03, F.S., means an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

- 15.) Support the study and recommendations of the Department of Juvenile Justice's Blueprint Commission.⁴

The Bill:

The bill makes several changes to s. 16.615, F.S., regarding the Council on the Social Status of Black Men and Boys:

- Eliminates the term "of black origin" and replaces it with "African American" as defined in s.760.80 (2), F.S.;⁵
- Eliminates the outdated initial responsibilities of the Attorney General's office to organize the first meeting of the Council, as such duties have already been performed;
- Removes the sunset date of 2012;
- Requires the Council to monitor outcomes of the direct-support organization;
- Requires the Council to develop a strategic program and funding initiative to establish local Councils; and
- Allows the Council to:
 - Access data held by state agencies which is otherwise a public record;
 - Make requests directly to the Joint Legislative Auditing Committee for assistance with research and monitoring from OPPAGA;
 - Request through legislator-members assistance from the Legislature's Office of Economic and Demographic Research;
 - Request information and assistance from any state agency, political subdivision, municipal corporation, etc;
 - Apply for and accept funds, grants, gifts, and services for the purpose of defraying clerical and administrative costs.

The bill also creates s. 16.616, F.S., which does the following:

- Creates a direct-support organization (DSO) within the Department of Legal Affairs, which is required to operate under written contract with the Department. The contract is required to provide for:
 - Approval of the articles of incorporation and bylaws by the Department;
 - Submission of the annual budget for approval by the Department;
 - Certification by the Department that the DSO is complying with the contract in a manner consistent with statutory purposes and in the best interests of the state;
 - Reversion to the Department of any money and property held in trust should the DSO cease to exist or is no longer approved to operate;
 - Disclosure of material provisions of the contract and the distinction between the Board of Directors and the DSO to donors;
 - An annual financial audit;
 - Fiscal year to begin July 1 of each year and end June 30 of the following year;
 - Appointment of the Board of Directors to be made pursuant to statute; and
 - Authority to hire an executive director.
- Requires the DSO to consist of 13 members appointed to staggered 4-year terms. Four appointments each by the Speaker and President; 3 by the Attorney General; 2 by the Council.
- Funded exclusively by the DSO, and working in conjunction with the Council, the DSO is charged with the following duties:

⁴ The Florida Department of Juvenile Justice's Blueprint Commission Annual Report(<http://www.djj.state.fl.us/blueprint/index.html>).

⁵ According to s. 760.80(2) F.S., an African American is a person having origins in any of the racial groups of the African Diaspora.

- Develop a strategic program and funding initiative to implement the 5000 Role Models of Excellence⁶ in Broward, Palm Beach, Duval, Orange, and Hillsborough Counties. Report to Legislature by 2/15/09.
- Develop a strategic program and funding initiative to implement the Reading 4 Success Program by the 100 Black Men of Florida⁷ in Broward, Miami-Dade, Palm Beach, Duval, Orange, Pinellas, and Hillsborough Counties. Report back to Legislature by 2/15/09.
- Develop a strategic program and funding initiative to implement the One Church, One Child⁸ program statewide. Report to Legislature by 2/15/09.
- Develop a strategic program and funding initiative to implement the Mapping the Future for Black Males program⁹ within community colleges identified by the Council. Report back to the Legislature by 2/15/09.
- Develop a public awareness and marketing campaign showcasing programs funded by the DSO as well as other opportunities to implement the statutory duties of the DSO and the Council, and encourage the idea that each one of us has a responsibility to make a difference in the community.
- Fund the clerical and administrative costs of the Council as may be necessary in carrying out the Council's duties under s. 16.615, F.S.
- The DSO may also do the following:
 - Develop a strategic program and funding initiative to implement a health-screening program using mobile screening services;
 - Hold a statewide black policy summit in conjunction with a Florida university;
 - Create a compendium of intervention programs in each county in order to determine how to maximize existing resources to address unmet needs.
- The DSO is required to consider the participation of Florida counties that demonstrate a willingness to participate and an ability to be successful in any programs funded by the DSO.

Lastly, the bill makes an appropriation of \$50,000 of non-recurring funds from General Revenue to the Department of Legal Affairs for the purpose of implementing the provisions of this act.

C. SECTION DIRECTORY:

Section 1: Amends s. 16.615, F.S., relating to Council on Social Status of Black Men and Boys.

Section 2: Creates s. 16.616, F.S., authorizing the creation of the direct-support organization.

Section 3. Provides an appropriation.

⁶ The 5000 Role Models of Excellence program was founded in 1993 as a dropout prevention/intervention program for minority boys at-risk of dropping out of school and/or choosing a life of crime. The program currently serves more than 6,000 students in 101 Miami-Dade County public schools, and 450 students in Pinellas County public schools. The program offers workshops; scholarships; peer, group, and one-on-one mentoring; and field trips to both colleges and prisons.

⁷ The Reading 4 Success provides a combination of instructional and independent reading and comprehensive learning techniques to accommodate students between second and fourth grades in an effort to increase the number of black males reading and comprehending at grade level by the sixth grade. The intention is that successful implementation of the program will improve the students' educational experience, ultimately resulting in a lower rate of juvenile delinquency.

⁸ The One Church, One Child program operates as a licensed child placing agency designed to find at least one family per church to adopt at least one child, and is a vital component in the State's efforts to recruit African American foster and adoptive parents.

⁹ Mapping the Future for Black Males is a program designed to decrease the drop-out rate of black males in community colleges, and increase the number of black males who are admitted and successfully complete post-secondary education by reducing their need for remediation. The program includes a year-round instruction component, career advising, character development programs, visits to two-year colleges, pre-collegiate residential experiences, community outreach, and a parenting component for fathers.

Section 4: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill includes a \$50,000 appropriation from non-recurring general revenue funds to the Department of Legal Affairs for the purpose of implementing the provisions of this act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Committee on Constitution & Civil Law recommended a strike-all amendment by Rep. Llorente. The amendment makes the following changes:

1. Removes the Council's 2012 sunset date;
2. Removes duties of the AG regarding setting up the initial meetings of the Council, as this has been accomplished;
3. Creates a direct-support organization (DSO) within the Department of Legal Affairs, which is required to operate under written contract with the Department. The contract is required to provide for:
 - a. Approval of the articles of incorporation and bylaws by the Department;
 - b. Submission of the annual budget for approval by the Department;
 - c. Certification by the Department that the DSO is complying with the contract in a manner consistent with statutory purposes and in the best interests of the state;
 - d. Reversion to the Department of any money and property held in trust should the DSO cease to exist or is no longer approved to operate;
 - e. Disclosure of material provisions of the contract and the distinction between the Board of Directors and the DSO to donors;
 - f. An annual financial audit;
 - g. Fiscal year to begin July 1 of each year and end June 30 of the following year;
 - h. Appointment of the Board of Directors to be made pursuant to statute;
 - i. Authority to hire an executive director.
4. Requires the DSO to consist of 13 members appointed to staggered 4-year terms. Four appointments each by the Speaker and President; 3 by the AG; 2 by the Council.
5. Funded exclusively by the DSO, and working in conjunction with the Council, the DSO is charged with the following duties:
 - a. Develop a strategic program and funding initiative to implement the 5000 Role Models of Excellence in Broward, Palm Beach, Duval, Orange, and Hillsborough Counties. Report to Legislature by 2/15/09.
 - b. Develop a strategic program and funding initiative to implement the Reading 4 Success Program by the 100 Black Men of Florida in Broward, Miami-Dade, Palm Beach, Duval, Orange, Pinellas, and Hillsborough Counties. Report back to Legislature by 2/15/09.
 - c. Develop a strategic program and funding initiative to implement the One Church, One Child program statewide. Report to Legislature by 2/15/09.
 - d. Develop a strategic program and funding initiative to implement the Mapping the Future for Black Males program within community colleges identified by the Council. Report back to the Legislature by 2/15/09.
 - e. Develop a public awareness and marketing campaign showcasing programs funded by the DSO based on the Project One Campaign developed by Mad 4 Marketing, which recognizes that each one of us has a responsibility to make a difference in the community.

6. The DSO may also do the following:
 - a. Develop a strategic program and funding initiative to implement a health-screening program using mobile screening services;
 - b. Hold a statewide black policy summit in conjunction with a Florida university;
 - c. Create a compendium of intervention programs in each county in order to determine how to maximize existing resources to address unmet needs.
7. The DSO is required to consider the participation of Florida counties that demonstrate a willingness to participate and an ability to be successful in any programs funded by the DSO.
8. Requires the Council to monitor outcomes of the DSO;
9. Requires the Council to develop a strategic program and funding initiative to establish local Councils;
10. Allows the Council to:
 - a. Access data held by state agencies which is otherwise a public record;
 - b. Make requests directly to the Joint Legislative Auditing Committee for assistance with research and monitoring from OPPAGA;
 - c. Request through legislator-members assistance from the Legislature's Office of Economic and Demographic Research;
 - d. Request information and assistance from any state agency, political subdivision, municipal corporation, etc;
 - e. Apply for and accept funds, grants, gifts, and services for the purpose of defraying clerical and administrative costs.
11. Removes the \$250,000 appropriation.

On March 26, 2008, the Safety & Security Council adopted the strike-all amendment recommended by the Committee on Constitution & Civil Law, and also adopted two amendments to the strike-all. Those amendments allow the DSO to fund the clerical and administrative costs of the Council, clarify the DSO's marketing requirement, and makes a \$50,000 appropriation in non-recurring General Revenue to the Department of Legal Affairs to implement the provisions of the act.

This analysis is drawn to the bill as amended.

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A bill to be entitled
 An act relating to the Council on the Social Status of
 Black Men and Boys; amending s. 16.615, F.S.; removing
 outdated provisions; providing additional duties and
 powers of the council; removing certain duties of the
 Attorney General; removing a provision that discontinues
 the council under certain conditions; creating s. 16.616,
 F.S.; creating a direct-support organization; specifying
 duties and requiring a contract; providing contract
 requirements; providing for appointment of members of the
 board of directors; requiring the direct-support
 organization to form strategic partnerships for specified
 purposes, including in specified counties; requiring
 certain reports; providing additional duties and powers of
 the direct-support organization; requiring the direct-
 support organization to consider the participation of
 certain other counties; providing an appropriation;
 providing an effective date.

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

Section 1. Section 16.615, Florida Statutes, is amended to
 read:

16.615 Council on the Social Status of Black Men and
 Boys.--

(1) The Council on the Social Status of Black Men and Boys
 is established within the Department of Legal Affairs and shall
 consist of 19 members appointed as follows:

29 (a) Two members of the Senate who are not members of the
 30 same political party, appointed by the President of the Senate
 31 with the advice of the Minority Leader of the Senate.

32 (b) Two members of the House of Representatives who are
 33 not members of the same political party, appointed by the
 34 Speaker of the House of Representatives with the advice of the
 35 Minority Leader of the House of Representatives.

36 (c) The Secretary of Children and Family Services or his
 37 or her designee.

38 (d) The director of the Mental Health Program Office
 39 within the Department of Children and Family Services or his or
 40 her designee.

41 (e) The State Surgeon General or his or her designee.

42 (f) The Commissioner of Education or his or her designee.

43 (g) The Secretary of Corrections or his or her designee.

44 (h) The Attorney General or his or her designee.

45 (i) The Secretary of Management Services or his or her
 46 designee.

47 (j) The director of the Agency for Workforce Innovation or
 48 his or her designee.

49 (k) A businessperson who is an African American, as
 50 defined in s. 760.80(2)(a), ~~of black origin~~ appointed by the
 51 Governor.

52 (l) Two persons appointed by the President of the Senate
 53 who are not members of the Legislature or employed by state
 54 government. One of the appointees must be a clinical
 55 psychologist.

56 (m) Two persons appointed by the Speaker of the House of
 57 Representatives who are not members of the Legislature or
 58 employed by state government. One of the appointees must be an
 59 Africana studies professional.

60 (n) The deputy secretary for Medicaid in the Agency for
 61 Health Care Administration or his or her designee.

62 (o) The Secretary of Juvenile Justice or his or her
 63 designee.

64 (2) Each member of the council shall be appointed to a 4-
 65 year term; however, for the purpose of providing staggered
 66 terms, of the initial appointments, 9 members shall be appointed
 67 to 2-year terms and 10 members shall be appointed to 4-year
 68 terms. A member of the council may be removed at any time by the
 69 member's appointing authority who shall fill the vacancy on the
 70 council.

71 (3) (a) At the first meeting of the council each year, the
 72 members shall elect a chair and a vice chair.

73 (b) A vacancy in the office of chair or vice chair shall
 74 be filled by vote of the remaining members.

75 (4) (a) The council shall make a systematic study of the
 76 conditions affecting black men and boys, including, but not
 77 limited to, homicide rates, arrest and incarceration rates,
 78 poverty, violence, drug abuse, death rates, disparate annual
 79 income levels, school performance in all grade levels including
 80 postsecondary levels, and health issues.

81 (b) The council shall propose measures to alleviate and
 82 correct the underlying causes of the conditions described in
 83 paragraph (a). These measures may consist of changes to the law

84 or systematic changes that can be implemented without
85 legislative action.

86 (c) The council may study other topics suggested by the
87 Legislature or as directed by the chair of the council.

88 (d) The council shall receive suggestions or comments
89 pertinent to the applicable issues from members of the
90 Legislature, governmental agencies, public and private
91 organizations, and private citizens.

92 (e) The council shall monitor outcomes of the direct-
93 support organization created pursuant to s. 16.616.

94 (f) The council shall develop a strategic program and
95 funding initiative to establish local Councils on the Social
96 Status of Black Men and Boys.

97 (5) The council may:

98 (a) Access data held by any state departments or agencies,
99 which data is otherwise a public record.

100 (b) Make requests directly to the Joint Legislative
101 Auditing Committee for assistance with research and monitoring
102 of outcomes by the Office of Program Policy Analysis and
103 Government Accountability.

104 (c) Request, through council members who are also
105 legislators, research assistance from the Office of Economic and
106 Demographic Research within the Florida Legislature.

107 (d) Request information and assistance from the state or
108 any political subdivision, municipal corporation, public
109 officer, or governmental department thereof.

110 (e) Apply for and accept funds, grants, gifts, and
111 services from the state, the Federal Government or any of its

112 agencies, or any other public or private source for the purpose
 113 of defraying clerical and administrative costs as may be
 114 necessary for carrying out its duties under this section.

115 (6)-(5) The Office of the Attorney General shall provide
 116 staff and administrative support to the council.

117 (7)-(6) The council shall meet quarterly and at other times
 118 at the call of the chair or as determined by a majority of
 119 council members and approved by the Attorney General.

120 (8)-(7) Eleven of the members of the council ~~shall~~
 121 constitute a quorum, and an affirmative vote of a majority of
 122 the members present is required for final action.

123 (9)-(8)(a) The council shall issue its first annual report
 124 by December 15, 2007, and by December 15 each following year,
 125 stating the findings, conclusions, and recommendations of the
 126 council. The council shall submit the report to the Governor,
 127 the President of the Senate, the Speaker of the House of
 128 Representatives, and the chairpersons of the standing committees
 129 of jurisdiction in each chamber.

130 (b) The initial report must include the findings of an
 131 investigation into factors causing black-on-black crime from the
 132 perspective of public health related to mental health, other
 133 health issues, cultural disconnection, and cultural identity
 134 trauma.

135 (10)-(9) Members of the council shall serve without
 136 compensation. Members are entitled to reimbursement for per diem
 137 and travel expenses as provided in s. 112.061. State officers
 138 and employees shall be reimbursed from the budget of the agency

139 through which they serve. Other members may be reimbursed by the
 140 Department of Legal Affairs.

141 (11)~~(10)~~ The council and any subcommittees it forms are
 142 ~~shall be~~ subject to the provisions of chapter 119, related to
 143 public records, and the provisions of chapter 286, related to
 144 public meetings.

145 (12)~~(11)~~ Each member of the council who is not otherwise
 146 required to file a financial disclosure statement pursuant to s.
 147 8, Art. II of the State Constitution or s. 112.3144, must file a
 148 disclosure of financial interests pursuant to s. 112.3145.

149 ~~(12) Notwithstanding subsection (6), the Attorney General~~
 150 ~~shall:~~

151 ~~(a) Within 60 days after the effective date of this act,~~
 152 ~~fix a date for the initial meeting of the council.~~

153 ~~(b) Notify each member of the council of the time, date,~~
 154 ~~and place where the initial meeting will be held.~~

155 ~~(c) Make any other arrangements concerning the initial~~
 156 ~~meeting of the council.~~

157 ~~(d) Serve as the presiding officer at the initial meeting~~
 158 ~~of the council until a chair is elected.~~

159 ~~(13) This section expires July 1, 2012, unless reenacted~~
 160 ~~by the Legislature.~~

161 Section 2. Section 16.616, Florida Statutes, is created to
 162 read:

163 16.616 Direct-support organization.--

164 (1) The Department of Legal Affairs shall establish a
 165 direct-support organization that is:

166 (a) A Florida corporation, not for profit, incorporated
 167 under the provisions of chapter 617 and approved by the
 168 Secretary of State.

169 (b) Organized and operated exclusively to solicit funds;
 170 request and receive grants, gifts, and bequests of money;
 171 acquire, receive, hold, invest, and administer, in its own name,
 172 property and funds; and make expenditures for the benefit of the
 173 purposes as specified by this section.

174 (c) Certified by the department, after review, to be
 175 operating in a manner consistent with the statutory goals of the
 176 organization and in the best interests of the state.

177 (2) The direct-support organization shall operate under
 178 written contract with the Department of Legal Affairs. The
 179 contract must provide for:

180 (a) Approval of the articles of incorporation and bylaws
 181 of the direct-support organization by the department.

182 (b) Submission of an annual budget for the approval by the
 183 department.

184 (c) Certification by the department that the direct-
 185 support organization is complying with the terms of the contract
 186 and in a manner consistent with the statutory goals and purposes
 187 and in the best interests of the state. Such certification must
 188 be made annually.

189 (d) The reversion to the department of moneys and property
 190 held in trust by the direct-support organization if the direct-
 191 support organization is no longer approved to operate or ceases
 192 to exist.

193 (e) The disclosure of material provisions of the contract
 194 and the distinction between the board of directors and the
 195 direct-support organization to donors of gifts, contributions,
 196 or bequests, as well as on all promotional and fundraising
 197 publications.

198 (f) An annual financial audit in accordance with s.
 199 215.981.

200 (g) The fiscal year of the direct-support organization, to
 201 begin July 1 of each year and end June 30 of the following year.

202 (h) Appointment of the board of directors to be made
 203 pursuant to this section.

204 (i) Authority of the board of directors of the direct-
 205 support organization to hire an executive director.

206 (3) The board of directors of the direct-support
 207 organization shall consist of 13 members. Each member of the
 208 board of directors shall be appointed to a 4-year term; however,
 209 for the purpose of providing staggered terms, the Speaker of the
 210 House of Representatives and the President of the Senate shall
 211 each initially appoint two members to serve a 2-year term, and
 212 the Attorney General and the chair of the Council on the Social
 213 Status of Black Men and Boys shall each initially appoint one
 214 member to serve a 2-year term. All subsequent appointments shall
 215 be for 4-year terms. Any vacancy that occurs shall be filled in
 216 the same manner as the original appointment and shall be for the
 217 unexpired term of that seat. The board of directors shall be
 218 appointed as follows:

219 (a) Two members of the Council on the Social Status of
 220 Black Men and Boys, appointed by the council chair.

221 (b) Three members appointed by the Attorney General.
 222 (c) Four members appointed by the Speaker of the House of
 223 Representatives.
 224 (d) Four members appointed by the President of the Senate.
 225 (4) In conjunction with the Council on the Social Status
 226 of Black Men and Boys, and funded exclusively by the direct-
 227 support organization, the direct-support organization shall form
 228 strategic partnerships to foster the development of community
 229 and private sector resources and shall act as a liaison with
 230 state agencies, other state governments, and the public and
 231 private sectors on matters that relate to underlying conditions
 232 that affect black men and boys to bring about an environment
 233 that promotes the values of learning, family, prosperity, unity,
 234 and self-worth. To that end, the direct-support organization is
 235 charged with the following duties:
 236 (a) Develop a strategic program and funding initiative to
 237 implement the 5000 Role Models of Excellence in Broward, Palm
 238 Beach, Duval, Orange, and Hillsborough Counties. The strategic
 239 program and funding initiative shall be reported to the
 240 Legislature by February 15, 2009.
 241 (b) Develop a strategic program and funding initiative to
 242 implement the Reading 4 Success Program by the 100 Black Men of
 243 Florida in Broward, Miami-Dade, Palm Beach, Duval, Orange,
 244 Pinellas, and Hillsborough Counties. The strategic program and
 245 funding initiative shall be reported to the Legislature by
 246 February 15, 2009.
 247 (c) Develop a strategic program and funding initiative to
 248 implement the One Church, One Child program statewide. The

249 strategic program and funding initiative shall be reported to
 250 the Legislature by February 15, 2009.

251 (d) Develop a strategic program and funding initiative to
 252 implement the Mapping the Future for Black Males Program within
 253 community colleges identified by the Council on the Social
 254 Status of Black Men and Boys. The strategic program and funding
 255 initiative shall be reported to the Legislature by February 15,
 256 2009.

257 (e) Develop a public awareness and marketing campaign
 258 showcasing programs funded by the direct-support organization,
 259 as well as other opportunities to implement the statutory duties
 260 of the direct-support organization and the Council on the Social
 261 Status of Black Men and Boys, pursuant to s. 16.615(4). The
 262 campaign should also encourage the idea that each one of us has
 263 a responsibility to make a difference in the community.

264 (f) Fund the clerical and administrative costs of the
 265 Council on the Social Status of Black Men and Boys, as may be
 266 necessary for carrying out the council's duties under s. 16.615.

267 (5) The direct-support organization may:

268 (a) Develop a strategic program and funding initiative to
 269 implement a health-screening program using mobile screening
 270 services.

271 (b) Hold a statewide Black Policy Summit in conjunction
 272 with a university in this state.

273 (c) Create a compendium of intervention programs in each
 274 county, which can be used to determine how to maximize existing
 275 resources and address under-served populations or unmet needs.

276 (6) The direct-support organization shall consider the
 277 participation of counties, in addition to those specified in
 278 subsection (4), that demonstrate a willingness to participate
 279 and an ability to be successful in any programs funded by the
 280 direct-support organization.

281 Section 3. The sum of \$50,000 in nonrecurring funds is
 282 appropriated from the General Revenue Fund to the Department of
 283 Legal Affairs for the purpose of implementing the provisions of
 284 this act.

285 Section 4. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No. **CS/HB 1395**

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy & Budget Council
2 Representative Llorente offered the following:

3
4 **Amendment**

5 Remove lines 282-284 and insert:
6 appropriated from the General Revenue Fund for Fiscal Year 2008-
7 09 to the Department of Legal Affairs for the purpose of
8 implementing the provisions of this act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – This joint resolution will provide a lower threshold for taxpayers to successfully challenge the assessment of property subject to taxation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 193.011, F.S., sets forth eight factors that the property appraiser must consider in arriving at the just value of property (fair market value) for ad valorem tax purposes. These factors are:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Chapter 194, F.S., sets forth procedures for a taxpayer to challenge the assessment of property by the property appraiser. The taxpayer may either petition the Value Adjustment Board (VAB) or file a petition in circuit court. If the taxpayer is not successful before the VAB, he or she may file a petition in circuit court. The property appraiser may appeal the decision of the VAB, if certain criteria set forth in s. 194.036(1), F.S. are met.

Section 194.301, F.S., provides that in both the VAB and the courts, the assessment determined by the property appraiser is presumed correct unless the taxpayer can overcome the presumption in one of two ways:

(1) The taxpayer can show by a preponderance of the evidence that the property appraiser has failed to consider properly the criteria in s. 193.011 or that the assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. If the taxpayer shows either of these facts, the presumption of correctness is lost, and the taxpayer must prove by a preponderance of the evidence that the assessment is in excess of just value.

(2) If the taxpayer cannot make the showing described in (1), the property appraiser's assessment retains the presumption of correctness and the taxpayer must prove by clear and convincing evidence that the assessment is in excess of just value (fair market value).

Black's Law Dictionary defines clear and convincing evidence and preponderance of the evidence as follows:

Preponderance of the evidence -- The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

Clear and convincing evidence -- Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

Effect of Proposed Changes

This HJR amends the Taxpayers' Bill of Rights contained in Article I, section 25 of the Florida Constitution to add the entitlement to a full and fair opportunity to challenge the government's assessment of the valuation of property for purposes of all taxation.

In any challenge to an assessment, the HJR removes the government's presumption of correctness and places the burden of proof by a preponderance of the evidence upon the government to prove that the assessment does not exceed just value. Also, the HJR provides that evidence that an assessment is based upon appraisal practices that differ from those applied to comparable property within the state is relevant in determining whether the assessment exceeds just value. Finally, the HJR provides that the taxpayer or other person contesting the assessment is entitled to reasonable attorney's fees and costs under appropriate circumstances to be specified by general law.

The HJR requires the legislature to adopt implementing legislation with an effective date no later than January 1, 2009.

C. SECTION DIRECTORY:

A section directory is not applicable to a Joint Resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The state constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held. The Department of State, Division of Elections, estimates that the average non-recurring cost of compliance is approximately \$60,000 in FY2007-08.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact of this proposal is dependent on approval by the voters and on the legislature's implementation of the attorney's fee provision. As such, the impact is indeterminate. However, if the voters approve the measure and the legislature implements a meaningful attorney's fee provision, the Revenue Estimating Conference has estimated the effect of the proposal will be to reduce the assessment of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on local government tax revenues is estimated to exceed \$324 million in FY 2009-10, increasing to at least \$1.585 billion by FY 2013-14.

2. Expenditures:

If approved by the voters, property appraisers will need to prove the correctness of their assessments in valuation challenges. This may result in additional expenditures by the property appraisers to prove valuation. The HJR has not been to a Revenue Estimating Conference.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers are likely to prevail more often in challenges to valuation assessments and thereby reduce the assessed value of their property.

D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE) – the amount of property taxes that a school district must levy in order to participate in the Florida Education Finance Program (FEFP). The provisions of this joint resolution, if approved by the voters, will reduce the property tax base that is available for RLE. If the legislature were to set a RLE amount designed to maintain the current RLE millage rate, the RLE amount would be less than under current law by \$87 million in FY 2009-10, increasing to at least \$425 million in 2013-14.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of the Florida Constitution does not apply to Joint Resolutions.

2. Other:

Pursuant to Article XI, section 1 of the Florida Constitution, joint resolutions must be approved by a three-fifths vote of each house of the Legislature. Article XI, section 5(e) of the Florida Constitution requires constitutional amendments to be approved by vote of at least sixty percent of the electors voting on the measure.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The HJR appears to be intended to address problems with the ability of a taxpayer to challenge the assessment of property for property tax purposes. However, the language used in the HJR, particularly in new subsection (b) of Section 25 of Article 1 refers to "any tax." It is not clear what taxes, other than property taxes, are contemplated. It may be advisable to clarify the intent of the proposal.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

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House Joint Resolution

A joint resolution proposing an amendment to Section 25 of Article I of the State Constitution to expand the Taxpayers' Bill of Rights to entitle a full and fair opportunity to challenge the government's assessment of the value of property, specify criteria for such challenges, and require the Legislature to adopt implementing legislation by a certain date.

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

That the following amendment to Section 25 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 25. Taxpayers' Bill of Rights.--

(a) By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. ~~This section shall be effective July 1, 1993.~~

(b) (1) Every taxpayer or other person contesting the assessment of any tax is entitled to a full and fair opportunity

28 to challenge the government's assessment of the value of the
 29 property for purposes of all taxation.

30 (2) In any challenge to an assessment brought by the
 31 taxpayer or person contesting the assessment:

32 a. The government's assessment shall enjoy no presumption
 33 of correctness and the government shall bear the burden of
 34 proving by a preponderance of the evidence that the assessment
 35 does not exceed the property's just value.

36 b. Evidence that an assessment is based upon appraisal
 37 practices that differ from those applied to comparable property
 38 within the state shall be relevant in determining whether the
 39 assessment exceeds just value.

40 c. The taxpayer or other person contesting the assessment
 41 shall be entitled to receive reasonable attorney's fees and
 42 costs incurred in the challenge under appropriate circumstances
 43 to be specified by general law.

44 (c) Following voter approval of this amendment, the
 45 legislature shall adopt legislation implementing this section
 46 and having an effective date no later than January 1, 2009.

47 BE IT FURTHER RESOLVED that the following statement be
 48 placed on the ballot:

49 CONSTITUTIONAL AMENDMENT

50 ARTICLE I, SECTION 25

51 TAXPAYERS' BILL OF RIGHTS.--Proposing an amendment to the
 52 State Constitution to entitle persons contesting the assessment
 53 of any tax to a full and fair opportunity to challenge the
 54 government's assessment of the value of property; to specify in
 55 any challenge to the government's assessment of value for

HJR 7005

2008

56 | purposes of taxation that the government's assessment enjoys no
 57 | presumption of correctness, require the government to prove by a
 58 | preponderance of the evidence that the assessment does not
 59 | exceed the property's just value, declare the relevance of
 60 | evidence that the assessment is based on appraisal practices
 61 | differing from practices applied to comparable property, and
 62 | entitle persons contesting such assessments to reasonable
 63 | attorney fees and costs incurred in the challenge; and to
 64 | require the Legislature to adopt implementing legislation
 65 | effective no later than January 1, 2009.

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
 2 Representative(s) Attkisson offered the following:

Amendment (with ballot, and title amendments)

Remove line(s) 26-43 and insert:

6 (b) (1) Every taxpayer or other person contesting the
 7 assessment of ad valorem taxes is entitled to a full and fair
 8 opportunity to challenge a property appraiser's assessment of
 9 the value of the property for purposes of all taxation.

10 (2) In any challenge to an assessment brought by the
 11 taxpayer or person contesting the assessment:

12 a. The property appraiser's assessment shall enjoy no
 13 presumption of correctness and the property appraiser shall bear
 14 the burden of proving by a preponderance of the evidence that
 15 the assessment does not exceed the property's just value.

16 b. Evidence that an assessment is based upon appraisal
 17 practices that differ from those applied to comparable property
 18 within the state shall be relevant in determining whether the
 19 assessment exceeds just value.

20 c. The prevailing taxpayer or other person contesting the
 21 assessment shall be entitled to receive reasonable attorney's

Amendment No. 1

22 fees and costs incurred in the challenge under appropriate
23 circumstances to be specified by general law.

24
25
26 -----
27 **B A L L O T A M E N D M E N T**

28
29 Delete line 53 - 57 and insert:
30 of ad valorem taxes to a full and fair opportunity to challenge
31 the property appraiser's assessment of the value of property; to
32 specify in any challenge to the property appraiser's assessment
33 of value for purposes of taxation that the property appraiser's
34 assessment enjoys no presumption of correctness, require the
35 property appraiser to prove by a

36
37
38 -----
39 **T I T L E A M E N D M E N T**

40 Delete line 5 and insert:
41 opportunity to challenge the property appraiser's assessment of
42

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill consolidates biomedical research under a single entity, the James and Esther King Biomedical Research Program. The bill deletes similar or redundant functions for facilitating or providing state funding for biomedical research.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Programs or Entities Dedicated to Biomedical Research-Related Activities

Florida Statutes define at least 21 entities that are authorized to conduct research in this state using state appropriated funds.¹ There are another six entities that are statutorily authorized to make or recommend the award of biomedical research grants,² and another 12 statutory entities are authorized to facilitate biomedical research in this state through fostering coordination among research entities, recommending new areas of research focus, notifying researchers of grant opportunities in this state, hosting research summits, reviewing proposed research, collecting tissue for research or other similar activities.³

In several of these cases, the legislation provides for annual allocations of state general revenue funds to be used for developing research capabilities or awarding research grants.⁴ For example, the James and Esther King Biomedical Research Program receives an annual \$6 million appropriation plus additional designated annual funding from the Lawton Chiles Endowment Program, which totaled 3.9 million for fiscal year 2007-2008. The William G. Bankhead and David Coley Cancer Research Program receives an annual appropriation of \$9 million, and the Johnny B. Byrd, Sr. Alzheimer's Institute receives an annual appropriation of \$13.5 million.⁵

Additional funds for research may be allocated through the General Appropriations Act or raised by other means. In fact, for Fiscal Year 2007-2008, \$49.3 million was appropriated for the 21 entities

¹ See ss. 430.501-430.504 (Alzheimer's Disease Brain Bank); 430.502 (15 Alzheimer's Memory disorder clinics, only 13 of which currently receive state funds); s. 381.79 (Brain and Spinal Cord injury Research Programs); s. 1011.52 (First Accredited Medical School-University of Miami, which received an additional \$1.8 million in fiscal year 2007-2008 for cancer research); s. 381.853 Florida Center for Brain Tumor Research; 1004.43, 210.20, and 210.201 (H. Lee Moffitt Cancer Center and Research Institute, Inc.); and 1004.445 (Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute).

² See ss. 215.5602 (James and Esther King Biomedical Research Program); 381.853 (Florida Center for Brain Tumor Research); 381.92 (Florida Cancer Council); 381.922 (William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program); 1004.445 (Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute); and 1004.435, F.S. (Cancer Control and Research Advisory Council).

³ See ss. 318.85 (Florida Biomedical and Social Research); 381.0404 (Center for Health Technologies); 1004.226 (The 21st Century Technology, Research, and Scholarship Enhancement Act); and 381.98, F.S. (Florida Public Health Foundation, Inc.); 385.202 (Statewide Cancer Registry Program); (Alzheimer's Disease Advisory Committee); 381.855 (Florida Center for Universal Research to Eradicate Disease); Florida Center for Brain Tumor Research; Institutional Review Board; s. 215.5601(Lawton Chiles Endowment Fund); Cancer Control and Research Advisory Council; and (Florida Cancer Council).

⁴ See, e.g., s. 215.5602(12), F.S. (annually appropriating \$6 million in General Revenue to the Biomedical Research Trust Fund for the James and Esther King Biomedical Research Program).

⁵ See ss. 215.5602(12) (James and Esther King Biomedical Research Program); 381.922(5) (William G. "Bill" Bankhead, Jr., and David Coley Cancer research Program); and 1004.445(12), F.S. (Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute).

conducting research; \$32.4 million was appropriated for the 6 entities administering grant programs for research; and \$95⁶ million was appropriated for the 12 entities facilitating research.

Although connected by a common theme and purpose, these various programs operate independently, sometimes redundantly, to focus on selected diseases, narrowly defined objectives, and single-purpose initiatives, which may result in duplication of administrative costs or overlooking research on non-specified diseases.

Statutory Biomedical Research, Grant Award and Research Facilitation Programs in Florida

Brain and Spinal Cord Injury Trust Fund

Pursuant to s. 381.79, F.S., the Colleges of Medicine at University of Florida and University of Miami receive five percent of the monthly revenues, up to \$500,000 each, deposited into the Brain and Spinal Cord Injury Trust Fund pursuant to s. 318.21(2)(d), F.S., for their respective brain and spinal cord injury programs. The trust fund is funded a percentage of the fees (8.2%) generated from certain civil penalties paid to county courts, such as traffic-related fines, surcharges for boating or driving under the influence convictions, temporary license tag fees, and a percentage of the funds from the motorcycle specialty tag. For fiscal year 2007-2008, the University of Florida College of Medicine received \$500,000 and the University of Miami College of Medicine received \$1.2 million (\$500,000 as set forth above and an additional \$700,000) for their brain and spinal cord injury programs.

Florida Center for Brain Tumor Research

The Florida Center for Brain Tumor Research is located within the Evelyn F. and William L. McKnight Brain Institute at the University of Florida and guided by an 11-member Scientific Research Advisory Council.⁷ The Center coordinates with state public and private universities and hospitals to discover brain tumor cures and treatment modalities, monitors brain tumor research programs in the state, and is authorized by statute to develop a competitive, peer-review process for awarding brain tumor research. For fiscal year 2007-2008, the Center received \$250,000 non-recurring General Revenue for the purpose of conducting substance abuse treatment research.

The Florida Center for Universal Research to Eradicate Disease

Located in the Department of Health and guided by a 16-member advisory council, the Florida Center for Universal Research to Eradicate Disease ("FL CURED") was created to facilitate research to find cures for diseases such as cancer, heart disease, lung disease, diabetes, autoimmune disorders, and neurological disorders, including Alzheimer's disease, epilepsy, and Parkinson's disease. To that end, the FL CURED is tasked with monitoring, coordinating, improving, and expanding all biomedical research programs in the state, facilitating funding opportunities by serving as a registry of all known grants opportunities in the state, assisting entities in preparing grant applications, developing and maintaining a registry of all known research, hosting an annual biomedical research summit, encouraging clinical trials by facilitating partnerships between researchers, treating physicians, and community hospitals, as well as partnerships between researchers in this state with institutions in other states.

Furthermore, the FL CURED hosts a website with links to peer-reviewed biomedical research which serves as a registry of all known opportunities for biomedical research grants, monitors supply and demand needs of researchers related to stem cell and other types of human tissue research, and facilitates partnerships among researchers working to cure all types of diseases.

⁶ The \$95 million includes the \$93.5 million appropriated pursuant to the 21st Century Technology, Research, and Scholarship Enhancement Act, s. 1004.226. The amount of the \$93.5 million that may be expended on biomedical research pursuant to these programs is indeterminate at this time.

⁷ s. 381.853, F.S.

The FL CURED receives an annual appropriation of \$250,000 from the James and Esther King Biomedical Research Program pursuant to s. 215.5602(12), F.S.

Prostate Cancer Awareness Program

Pursuant to s. 381.911, F.S., the Department of Health administers the Prostate Cancer Awareness Program in coordination with the Florida Public Health Foundation, Inc. The program, which is advised and assisted by a nine-member advisory council, was created to implement the recommendations of January 2000 of the Florida Prostate Cancer Task Force to provide for statewide outreach and health education activities related to early detection and awareness of prostate cancer.

Alzheimer's Disease Advisory Committee

Created pursuant to the Alzheimer's Disease Initiative, the Alzheimer's Disease Advisory Committee is comprised of 10 members appointed by the Governor, with the Secretary of the Florida Department of Elderly Affairs serving as an ex officio member.⁸ The Committee is tasked with advising the Department of Elderly Affairs about legislative, programmatic, and administrative matters that relate to Alzheimer's disease patients and their caretakers, including the development of fee schedules for functionally impaired elderly individuals, and evaluates the need for additional memory disorder clinics in the state.⁹ Further the Committee is authorized to advise the Department on the award of research grants related to Alzheimer's disease control or prevention, education, and training if funds are made available to the Department.¹⁰ Information obtained or retained by the Committee about clients received through files, reports, inspections, or otherwise, is confidential and exempt under Florida public records laws.¹¹

The Committee receives per diem and reimbursement for travel. For Fiscal Year 2006-2006, the total amount provided for per diem and travel for the Committee was \$7,599.39. The amount for Fiscal Year 2007-2008 cannot yet be determined.

Cancer Control and Research Advisory Council

The Cancer Control and Research Advisory Council is located within the H. Lee Moffitt Cancer Center and Research Institute and is comprised of 32 members appointed by the Governor and one member of the House of Representatives and the Senate appointed by the Speaker and President respectively.¹² The primary functions of the Council are to create the "Florida Cancer Plan," formulate and recommend to the State Surgeon General a plan for the care and treatment of persons suffering from cancer, and recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in Florida.¹³

For example, if funds are specifically appropriated to the Council to develop or purchase standardized written summaries informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening about treatment alternatives and the risks associated with that treatment.¹⁴ Such pamphlets are specifically referenced in ss. 458.324 and 459.0125, F.S., relating to breast cancer information and treatment alternatives that licensed physicians are required to provide patients.

⁸ s. 430.501, F.S.

⁹ Id.

¹⁰ s. 430.501, F.S.

¹¹ s. 430.504, F.S.

¹² s. 1004.435, F.S.

¹³ Id.

¹⁴ s. 1004.445(m), F.S.

Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute

The Legislature created the Alzheimer's Center and Research Institute at the University of South Florida in 2002, and subsequently renamed it the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute in 2004.¹⁵ The Legislature established the center as a not-for-profit corporation, and authorized the center to create both not-for-profit or for-profit corporate subsidiaries to fulfill its mission.¹⁶

Grants are awarded by the center's board of directors for the purpose of conducting Alzheimer's disease research, following a review of all research proposals by a peer review panel of independent, scientifically qualified individuals.¹⁷

During 2007 Special Session C, the Legislature appropriated \$13.5 million in recurring general revenue funding to the Grants and Donations Trust Fund within the Department of Elderly Affairs (DOEA) for use by the Center.¹⁸ The funding provided to the center is intended to assist the center in its efforts in researching, educating, treating, preventing, and detecting Alzheimer's disease, as well as "providing institutional research grants and investigator-initiated research grants, developing and operating integrated data projects, and providing assistance to statutorily-designated memory disorder clinics as provided under s. 430.502, F.S." From this annual appropriation, not less than 80 percent of the funds are to be expended for these statutorily-prescribed purposes, and not less than 20 percent are to be expended in awarding peer-reviewed investigator-initiated research grants.¹⁹

Section 1004.445, F.S., expires on January 1, 2011, unless reviewed and reenacted by the Legislature before that date.²⁰

Center for Health Technologies

Pursuant to s. 381.0404, F.S., the Center for Health Technologies is required to be administered by a statutory teaching hospital in Miami-Dade County. When it was active, the Mount Sinai Medical Center administered the program. The Center, which received federal funding, functioned to encourage the development and growth of health sciences in the state, with an emphasis on technologies which will help to prevent illness and reduce health care costs; assist coordination between and with educational institutions, health care providers, and persons engaged in research and development of health care products; provide services to persons and incipient firms engaged in the incubation of health care products; assist in technology transfer; and establish academic laboratories, libraries, and other resource facilities to be shared among the Center's constituents. The Center is not currently active at this time.

Biomedical and Social Research Review Council

The Biomedical and Social Research Review Council was created in the Department of Health and was comprised of 3 members appointed by the Governor (1), Speaker (1), and the Senate President (1).²¹ The purpose of the Council was to evaluate proposed biomedical research to be conducted on adults or children in the state of Florida by the Department of Health or with funds appropriated to the Department of Health. The Council is no longer functional as the Institutional Review Board within the Department of Health was created pursuant to s. 381.86, F.S., in 2004 to review all biomedical or behavioral research on human subjects that is funded or supported by the Department of Health.²²

¹⁵ Chapters 2002-387 and 2002-289, Laws of Florida (L.O.F.), and Chapter 2004-2, L.O.F.

¹⁶ s. 1004.445(2), F.S.

¹⁷ s. 1004.445(8), F.S.

¹⁸ Chapter 2007-332, L.O.F.

¹⁹ Id.

²⁰ s. 1004.445(15), F.S.

²¹ s. 381.85, F.S.

²² See 2004-350, L.O.F.

Cervical Cancer Elimination Task Force

The Cervical Elimination Task Force was established in 2004 pursuant to s. 381.912, F.S., to recommend actions and strategies to reduce costs and burdens associated with cervical cancer in Florida. The 11-member Task Force is tasked with presenting interim reports by set deadlines to the Speaker, Governor, Senate President, the FL CURED, the Florida Cancer Council, and the Florida Public Health Foundation, Inc., with the final report scheduled for delivery by June 30, 2008. The Task Force is statutorily sunset after the delivery of that final report.

Florida Cancer Council

The Florida Cancer Council is an 18-member Council located in the Department of Health.²³ The Council coordinates with the FL CURED and identifies ways to attract new research talent in the state, seeks to continue to improve research and treatment by identifying ways to increase enrollment in clinical trials, creates awareness within the medical professional industry of clinical trials available in the state, aids other multidisciplinary research-supported activities as they inure to the advancement of cancer research, ensures improved cancer research and treatment, and seeks to make Florida a center of excellence for cancer research.²⁴

The Council is statutorily authorized to institute a peer-reviewed, competitive process to identify and fund the best proposals to expand cancer research in the state, and consult with the FL CURED in making annual funding recommendations to the Legislature and Governor. At present, the Council is not active.

Florida Public Health Foundation, Inc.

The Florida Public Health Foundation, Inc. is a 501(c)(3) corporation managed by an executive director appointed by the Board of Directors.²⁵ The Foundation enters into contract with the Department of Health for services related to disseminating information regarding biomedical research and clinical trials in the state, making treatment providers and patients aware of specified diseases, conditions, and available methods of preventing, diagnosing, treating, and curing those diseases and conditions, and protecting and improve the health and well-being of Floridians through partnerships committed to program innovation, education, applied research, and policy development.²⁶

The Foundation has a monthly health awareness schedule and it coordinates with the FL CURED and the Department of health to ensure communication with biomedical researchers and health care providers according to the monthly schedule.²⁷ The Foundation and the Department of Health are statutorily authorized to enter into partnerships with providers of continuing education to ensure that practitioners are aware of the most recent and complete diagnostic and treatment tools.²⁸

As of December 7, 2007, the Department of Health had contracted with the Foundation for \$10,550 in services for the current fiscal year.

²³ s. 381.92, F.S.

²⁴ s. 381.921, F.S.

²⁵ s. 381.98, F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Examples of Current Grant Award Programs

The following are examples of award processes used by current state and federal grant award programs.²⁹

The James and Esther King Biomedical Research Program

Pursuant to s. 215.5602, F.S., the James and Esther King Biomedical Research Program, administered by the Department of Health, recommends the award of grants for biomedical research concerning tobacco related diseases.

To award grants, the Department of Health, in coordination with the James and Esther King Program, issues a call for grant applications. Any university or established research institute in the state is eligible to compete for funding through the program, and the program awards investigator-initiated research grants, institutional research grants, and predoctoral and postdoctoral research fellowships.³⁰

Interested applicants submit their applications electronically to the Lytmos Group, a Department of Health contractor that facilitates the independent, peer-review and scoring of applications by disinterested peer reviewers outside the state of Florida. The Lytmos Group has approximately 150 peer reviewers that are available to review and score applications, and traditionally has assigned 5 reviewers per application.³¹ After peer-reviewers review the assigned application, the application receives a score of one through five from each reviewer, with one being the best score and five being the worst. Traditionally, Lytmos would eliminate the highest and lowest scores and average the remaining three scores to come up with an overall score for the application.³²

Once the average score for applications is derived, the Lytmos Group removes all identifying information about the applicants and submits a ranking report to the Biomedical Research Advisory Council ("BRAC"). The BRAC is comprised of 11 members including the chief executive officer of the Florida Division of the American Cancer Society, the chief executive officer of the Greater Southeast Florida/Puerto Rico Affiliate of the American Heart Association, and the chief executive officer of the American Lung Association of Florida, or their designees, as well as 8 individuals appointed by the Governor (4), Speaker (2) and Senate President (2). In an open meeting, the BRAC discusses the ranking report from the peer reviewers and develops funding priorities. Included in those funding priorities is a score break-off point, meaning the BRAC will not consider applications that receive an average score below a certain level. Moreover, the BRAC considers potential funding and the scientific merit, including its relatedness to tobacco-related diseases, for each application up for consideration. The BRAC then recommends to the State Surgeon General the amount and length of funding for each successful application.

Department of Health staff conducts a final review of the applications for eligibility and the State Surgeon General makes a final funding decision based, which may include different award amounts than those recommended by the BRAC. After funds are appropriated by the Legislature, the DOH issues award letters, and enters into contracts with successful grantees in the beginning of the new fiscal year. Grant awards run from 1-3 years depending upon the grant type.

If an award is for more than one year, then before funding is continued for each successive year, the grantee's progress must be re-evaluated, often by the peer reviewers initially assigned to the application, to determine whether funding should be continued.

²⁹ Of these examples, only the James and Esther King Program and Bankhead-Coley Program award process are affected by this bill. The bill does not repeal or modify in any way, the Department of State Historical Preservation Grant Program.

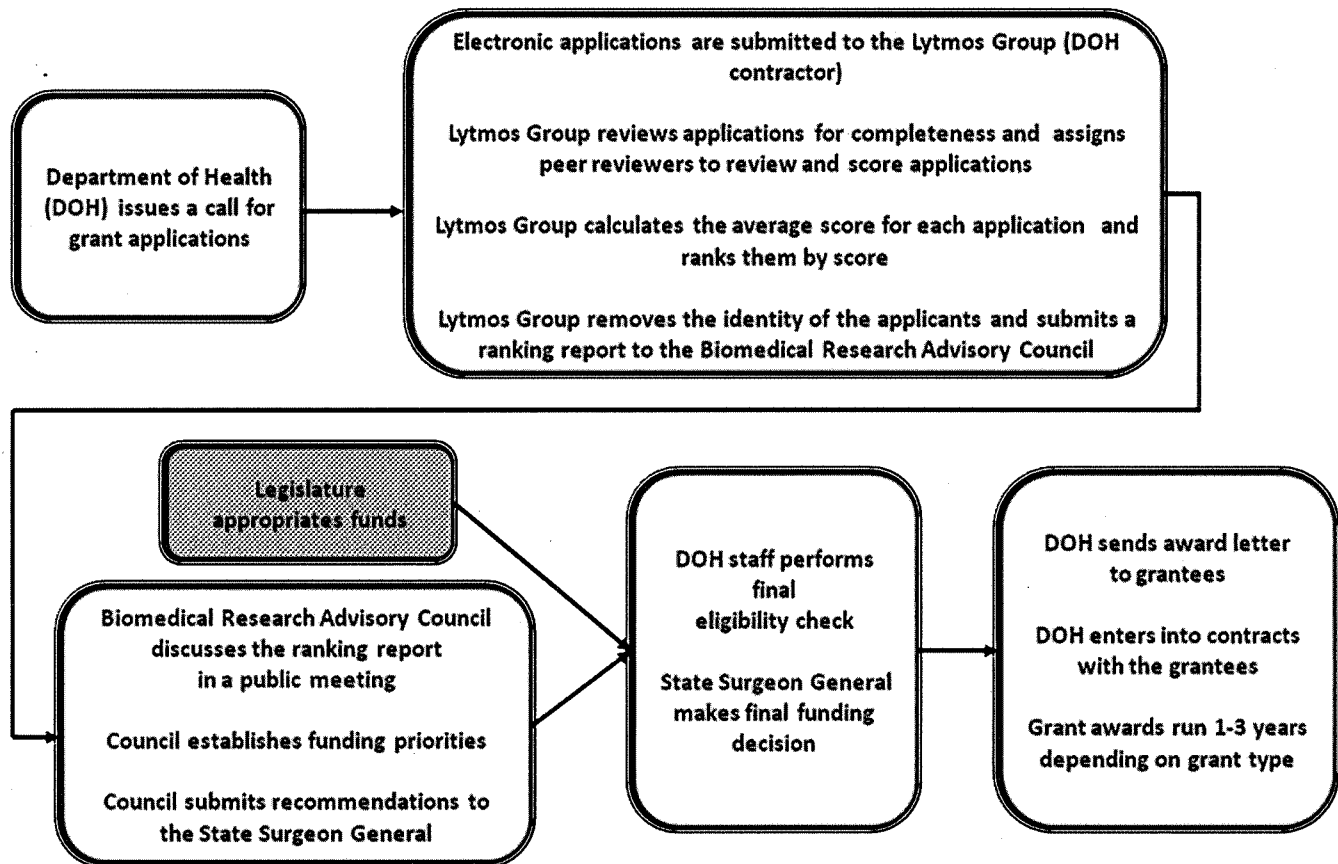
³⁰ s. 215.5602, F.S.

³¹ As set forth in more detail below, the BRAC traditionally assigned 5 reviewers per application; however, for this FY, the BRAC will be piloting new methods of reviewing and scoring by peer reviewers.

³² This year, the BRAC has been piloting a new process for determining the average score for each application; however, this analysis will focus on the traditional model that the BRAC has used in the past.

The above-described process for awarding grants and fellowships by the James and Esther King Program is illustrated in the following flow chart:

JAMES AND ESTHER KING BIOMEDICAL RESEARCH PROGRAM GRANT AWARD PROCESS



The William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program

Pursuant to s. 381.922, F.S., the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program ("Bankhead-Coley Program") is also located in the Department of Health and administered by the Department and guided by the Biomedical Research Advisory Council. The purpose of the Bankhead-Coley Program is to provide funding for grants that further the search for cures of cancer.

The Bankhead-Coley Program utilizes identical processes as the James and Esther King Program for awarding grants to any university or established research institute in the state for collaborative research projects, including those that advance the finding of cures through basic or applied research, investigator-initiated research, or institutional research.³³ (See James and Esther King Program description and flow chart above).

As set forth above, the Bankhead-Coley Program has been designated a \$9 million annual appropriation in General Revenue, which is appropriated to the Biomedical Research Trust Fund.³⁴ The Program is scheduled to sunset on January 1, 2011 unless reenacted by the Legislature by that date.³⁵

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

The National Institutes of Health Grant Award Programs

Similar to the James and Esther King Biomedical Research Program, the National Institutes of Health (“NIH”) traditional model³⁶ for awarding grants includes a two-step review process for each grant awarded by the more than 20 Centers and Institutes comprising the NIH.

In most cases, after grant announcements or requests for applications are made, all applications are sent to the NIH Center for Scientific Review where the applications are either assigned to a Scientific Review Group³⁷ or an Initial/Integrated Review Group, depending on whether the application has been assigned to a specific Institute or Center, for peer-review.³⁸ These review groups usually meet three times a year in closed meetings, and are comprised of members appointed by the NIH or a particular Institute/Center Director. Assignment to a particular review group is made based on the scientific or technical needs of the group.

Prior to peer-review meetings, peer reviewers prepare individual written critiques of the applications based upon criteria established by the NIH, which includes the significance, approach, and innovation of the proposed research, the qualifications and training of the researchers involved, and the conduciveness of the scientific environment within which the research will be conducted to producing successful research.³⁹ At the peer review meetings, reviewers openly discuss and critique the applications and, at the conclusion of the discussion, each peer reviewer scores the application. Each reviewer’s score is then averaged to create a “priority score” for the application.

Applications and scores are then referred to NIH program staff, and staff develops a grant funding plan for each application and submits the plan to the National Advisory Council or Board for the second level of review.

National Advisory Councils are established at each NIH Institute or Center, and are comprised of scientists focused in the areas of biomedical, behavioral, social and public health research, as well as leaders in fields such as economics, law, management, health policy and public policy. Patients, relatives of patients, and advocates may also serve on the council.⁴⁰ The Council is tasked with reviewing grant funding plans and considering the needs of the Institute or Center, and makes funding recommendations to the Director of the Institute or Center. Similar to the James and Esther King Biomedical Research Program, recommended funding is usually based upon anticipated funding levels, as annual appropriations bills may not have passed through Congress by the time these recommendations are made. The Institute or Center Director makes the final funding decision based upon Council and staff advice.

Before applications are funded, applications must go through a “Pre-Award Process,” which consists of review by NIH staff to: ensure alignment with the NIH’s funding principles; review the proposed budget for the project; assess the applicant’s management systems; ensure applicant eligibility; and ensure compliance with public policy requirements. At the conclusion of this process, a “Notice of Award” is issued to successful applicants, which includes all terms and conditions, including the length of the award, and contact information for the grants management officer assigned to the applicant by the Institute or Center. Awards range from 1-5 years; however, the grant period is initially 1 year, and

³⁶ While there are many new review processes being piloted by the NIH, this analysis will focus on the traditional grant award process used by the NIH. Except where expressly otherwise indicated, all information in this section has been derived from the “Grants” link on the NIH website located at <http://grants.nih.gov/grants/oer.htm>, and this footnote shall serve as attribution for all such information.

³⁷ The Center for Scientific Review has approximately 18,000 experts available to review grant applications through Scientific Review Groups.

³⁸ Sometimes a particular grant announcement or application calls for reviewers to have particular expertise, or there are conflicts of interest that may exist, so the application will be assigned to a Special Emphasis Panel for the initial peer review; however

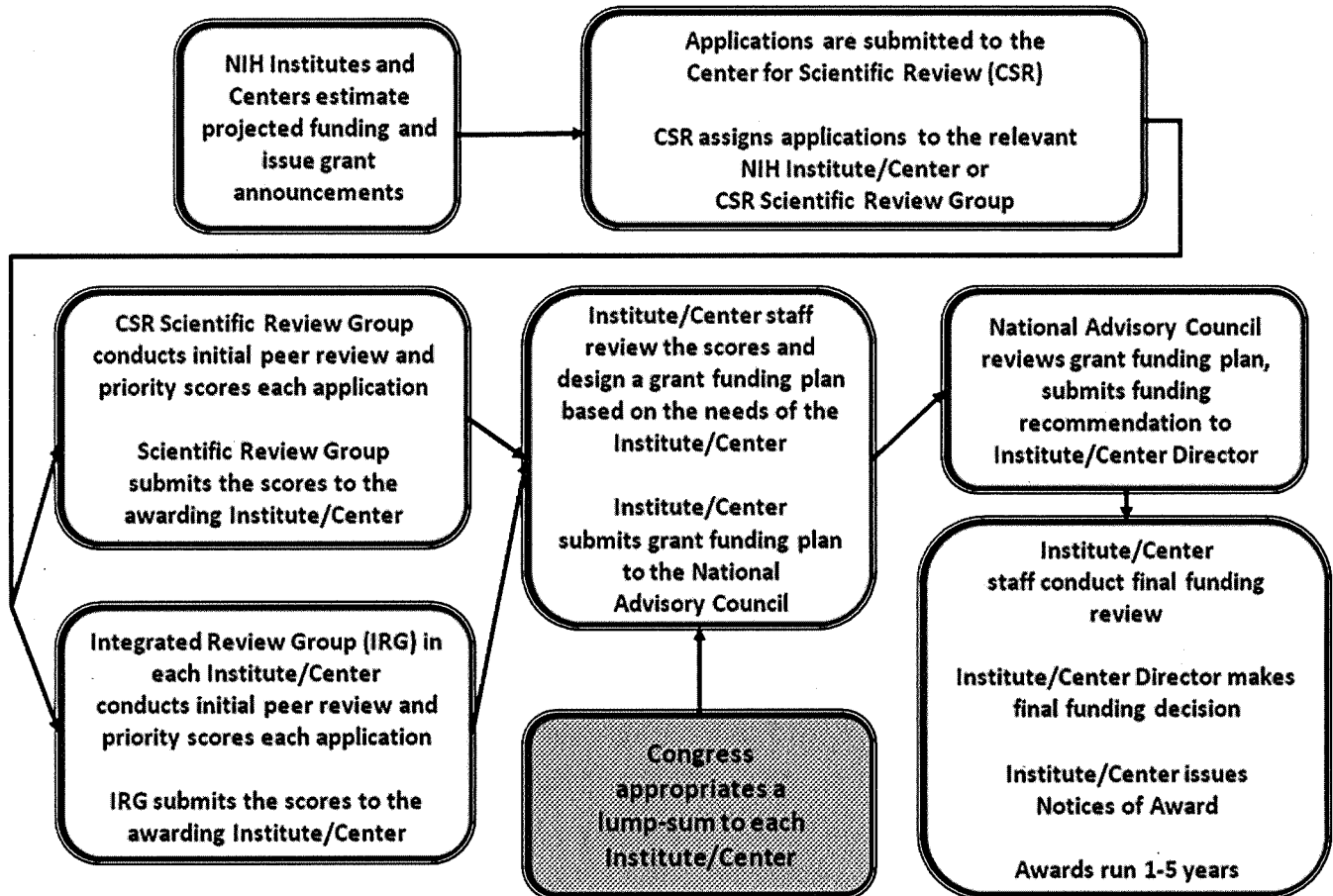
³⁹ Peer-reviewers will also consider public policy issues/factors in their review, such as policies concerning the protection of human subjects, use of vertebrate animals in research, the inclusion of women, minorities and children in research.

⁴⁰ Members of the National Advisory Councils are appointed by either the Secretary of Health or the President of the United States.

subsequent continuation awards are made in 1 year increments.⁴¹ Each year grantees must submit a "Non-Competing Grant Progress Report" application, and the NIH Institute or Center that made the award conducts an annual assessment of the grantee's progress and management practices to determine whether to continue funding for the next year of the grant award period.⁴²

The National Institutes of Health grant award process described above is illustrated in the following flow chart:

NATIONAL INSTITUTES OF HEALTH GRANT AWARD PROCESS



The Department of State Historical Preservation Grant Program⁴³

The Florida Department of State, through its various divisions, administers several grant award programs, including the Florida Historic Preservation Grant Award Program ("Historic Grants Program").⁴⁴ One of the grant types awarded by the Historic Grants Program are special category grants-in-aid, which are grants that range from \$50,000 to \$350,000⁴⁵, and are awarded to assist with

⁴¹ See 42 C.F.R. s. 52a.6(a)-(b).

⁴² *Id.*

⁴³ The information in this section of the analysis is comprised of information obtained from Florida Statutes (ss. 267.0612, 267.0617, F.S.) applicable Department of State Rules (s.1A-35.002 – 1A-35.007, F.A.C.) and from the Florida Department of State, Division of Historical Resources website (<http://www.flheritage.com>) pertaining to grant awards, including links to grant guidelines and overviews therein provided.

⁴⁴ This program is administered by the Division of Historical Resources within the Department of State. The Department of State also has grant award programs for libraries, museums, and other cultural affairs programs.

⁴⁵ A minimum need and match of \$50,000 is required.

major restorations and rehabilitations of historic buildings and structures, major archeological excavations, and major museum exhibits relating to Florida history.⁴⁶

The Florida Historical Commission⁴⁷ comprises 11 members, seven of whom are appointed by the governor and 4 of whom are appointed by the Speaker of the House and the Senate President (2 each), and advises and assists the Division in by reviewing and ranking special category grant applications and advises the Division with regard to policy and preservation needs of the State. The Department of State has developed extensive rules for administering the program, including application requirements and criteria and procedures for reviewing and evaluating applications.

To award special category grants, which are open to agencies or departments of the state, city, county, or unit of local government, and not-for-profit organizations, the Division of Historical Resources makes a grant announcement. Applications are sent the Division, where they are initially reviewed by Division staff to ensure completeness and eligibility. The Division provides that Commission with an opinion as to whether the applicant and project are eligible for the type of grant assistance indicated in the application, as well as any additional information or clarification requested from an applicant. Prior to being submitted to members of the Commission, the Division assigns each application an identifying number so that the identity of the applicant is not known to the Commission.

The Commission reviews and evaluates each application in an open meeting, and makes recommendations to the Secretary of State, including a priority ranking of each application that reflects those evaluations, funding levels for each application, and any appropriate special conditions for certain applications. The priority ranking is developed by ranking each project relative to the others.

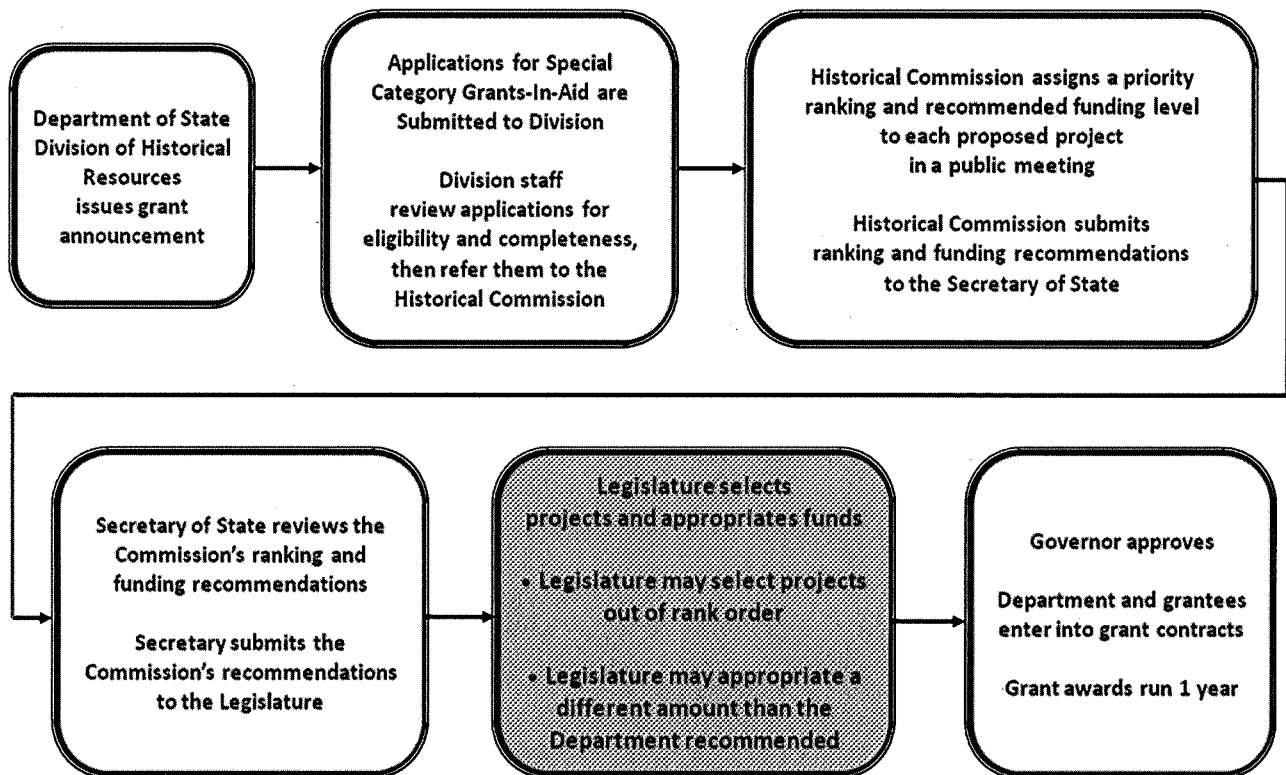
The Secretary of State reviews the Commission's priority ranking and funding recommendations and develops of final priority listing of the applications considered, as well as the recommended funding level for each, and submits the ranking to the Legislature for approval and funding. Once the Legislature makes a final funding decision and appropriates funds, the Division enters into grant award agreements with successful applicants. Funding is limited to projects that go through this review process.

The above-described process for awarding special category grants-in aid by the Department of State Historical Commission is illustrated in the following flow chart:

⁴⁶ The Historic Grants Program also awards historic preservation grant-in-aid, which are 1:1 matching grants up to \$50,000 awarded for excavating, identifying, protecting, and rehabilitating historic and archeological sites, providing public information about these important resources, and encouraging historic preservation in smaller cities; however, the grants are awarded through a somewhat different process from the process described herein and are not subject to Legislative approval for funding.

⁴⁷ The Commission, created in 2001 to assist the Division and enhance public participation and involvement in the process, replaced the Historic Preservation Advisory Council.

HISTORICAL PRESERVATION SPECIAL CATEGORY GRANTS-IN-AID AWARD PROCESS



Effect of Proposed Changes

The bill amends the James and Esther King Biomedical Research Program to consolidate processes for awarding funds appropriated by the Legislature for biomedical research beginning in 2009-2010. To accomplish this purpose, the bill revises provisions relating to funding and renames the Biomedical Research Advisory Council the Biomedical Research Commission (the "Commission") in order to incorporate the increased responsibilities of the Commission. The bill amends the membership of the Commission from 11 to 15 members, including the chief executive officer of the South Coastal Region of the American Diabetes Association and the president of the Florida Medical association, or their designees, and four representatives from volunteer health organizations operating in Florida that focus on Alzheimer's disease, Parkinson's disease, epilepsy, stroke, or autoimmune or genetic disorders appointed by the Speaker of the House of Representatives (2 appointees, 1 of which is an additional appointment) and the President of the Senate (2 appointees, one of which is an additional appointment) as new members. In addition, the bill requires establishment of certain committees by the Commission.

The bill provides that, other than the Bankhead-Coley Program, the James and Esther King Program shall serve as the exclusive source of state funding for biomedical research. The bill exempts the World Class Scholars Program, the Centers of Excellence, or the State University Research Commercialization Assistance Grant Programs from these limitations on state funding. The bill deletes requirements for other entities to establish and implement grant funding programs and revises or repeals other sections of statute in order to conform to the consolidation of these activities under the James and Esther King Biomedical Research Program. Finally, the bill segregates the Biomedical Research Trust Fund to ensure that funds appropriated for the Bankhead-Coley Cancer Research Program and tobacco-related research through the James and Esther King Program are not co-mingled with funds appropriated for other biomedical research grants that will be awarded by the James and Esther King Program pursuant to the changes in the bill, and extends the amount of time that balances of appropriations from the Biomedical Research Trust Fund can be carried forward to five years.

Specifically, the bill:

- Expands the disease focus of the James and Esther King Biomedical Research Program to include the most deadly and widespread acute, chronic, and degenerative disease including, but not limited to tobacco-related diseases, cancer, cardiovascular disease, stroke, pulmonary disease, diabetes, autoimmune and genetic disorders, and neurological disorders, including Alzheimer's disease, epilepsy, and Parkinson's disease.
- Revises the long-term goals of the Program to incorporate the new expanded disease focus.
- Beginning in fiscal year 2009-2010, expands the types of research that qualify for grants and fellowships awarded by the Program to include the new disease focus of the Program.
- Renames the Biomedical Research Advisory Council the Biomedical Research Commission.
- Increases the membership of the Biomedical Research Commission from 11 to 15 members. The new specifically designated members include chief executive officer of the South Coastal Region of the American Diabetes Association and the president of the Florida Medical association, or their designees. In addition, the bill provides one additional appointment each for the President of the Senate and the Speaker of the House of Representatives consisting of a member from a volunteer health organization operating in Florida that focuses on Alzheimer's disease, Parkinson's disease, epilepsy, stroke, or autoimmune and genetic disorders. Further the bill modifies one of the current appointees of the Speaker from one appointee representing a professional medical organization to one appointee from a volunteer health organization as described above and the Senate President from one appointee representing a cancer program approved by the American College of Surgeons to one appointee from a volunteer health organization as described above.
- Provides that, except for the Bankhead-Coley Cancer Research Program, in fiscal year 2009-2010, the James and Esther King Program shall serve as the exclusive source of awarding grants or fellowships for biomedical research in the state using state funds, and provides an exception for programs that award grants using non-state appropriated funds.
- Requires the Commission to create committees to focus on disease-specific areas and adopt policies and procedures regarding the creation and composition of the committees, reporting and recommendations by the committees to the Commission, coordination between the Commission and committees, and the methods for receiving information and recommendations from outside entities.
- Revises the advisory nature of the Biomedical Research Commission, authorizing the Commission to make recommendations to the State Surgeon General and Legislature for future appropriations.
- Starting in 2009, requires the Commission to provide to the State Surgeon General a priority list of biomedical research projects, including the recommended length and amount of funding, which shall be forwarded without modification to the Legislature for consideration.
- Expands the length of awards from 1-3 years to 1-5 years, and requires research to go through the Program award process in order to receive state funds.
- Requires any program, board, commission council, advisory group, or committee (other than the Bankhead-Coley Program, the World Class Scholars Program, the Centers of Excellence, or the State University Research Commercialization Assistance Grant Programs), created in state law that currently awards, intends to award, or recommends the award of, biomedical research grants, from state funds to apply for grants through the Program or make recommendations to the Biomedical Research Commission for Fiscal Year 2009-2010 and thereafter.
- Requires the Biomedical Research Commission to take several factors into consideration when prioritizing grant awards, specifically including applications that have the most profound impact on the most deadly and widespread diseases and applications propose the best and most efficient use of state funds.
- Reduces administrative expenses for the Program from 15 percent to ten percent beginning fiscal year 2009-2010.

- Consistent with the changes in the bill, provides an expiration date for the Commission's functions as they relate to the Bankhead-Coley Program.
- Modifies provisions related to appropriations to the James and Esther King Program to conform to the changes in the bill.
- Makes identical changes to the Bankhead-Coley Program within the Department of Health, directing the Biomedical Research Commission, starting in 2009, to provide the State Surgeon General a priority list of biomedical research projects for the Bankhead-Coley Program, including the recommended length and amount of funding, which shall be forwarded to the Legislature for consideration.
- Provides a sunset date for the Bankhead-Coley Program of June 30, 2009 and removes provisions related to sunset review.
- Provides for the expiration of dedicated funding from the Brain and Spinal Cord Injury Program Trust Fund to the University of Florida and University of Miami Medical Schools on June 30, 2009.
- Requires the Florida Center for Brain Tumor Research to compete for state research funds through the James and Esther King Program beginning in fiscal year 2009-2010.
- Expands the functions of the FL CURED to include attracting new research talent to the State, providing information regarding research needs of the state to the Biomedical Research Commission, and, upon a specific appropriation, disseminating information about specified diseases and conditions, and available methods of preventing, diagnosing, treating, and curing those diseases or conditions.
- Revises the make-up of the advisory council to the FL CURED to conform to changes in the bill.
- Requires the Department of Elderly Affairs to consult with the Alzheimer's Disease Brain Bank and model day care programs concerning the need for additional memory disorder clinics.
- Deletes cross references to the Florida Cancer Control and Research Advisory Council, and materials to be developed by the advisory council, in provisions concerning breast cancer treatment alternatives and information in order to conform to changes in the bill.
- Revises the duties of the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, deleting the authority of the Center to provide research grants beginning in 2009-2010, requiring the Center to compete for state funds for research activities, and provides an expiration date of June 30, 2009 to the council of scientific advisors.
- Repeals the Center for Health Technologies, Biomedical and Social Research, the Cervical Cancer Elimination Task Force, the Florida Cancer Council, the Florida Cancer Council mission and duties, the Florida Public Health Foundation, Inc., Health awareness campaigns, the Alzheimer's Disease Advisory Committee, cancer control and research, and the Cancer Control and Research Advisory Council.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.435, F.S., relating to the Biomedical Research Trust Fund.

Section 2. Amends s. 215.5602, F.S., relating to the James and Esther King Biomedical Research Program.

Section 3. Amends s. 381.79, F.S., relating to the Brian and Spinal Cord Injury Trust Fund.

Section 4. Amends s. 381.853, F.S., relating to the Florida Center for Brain Tumor Research.

Section 5. Amends s. 381.855, F.S., relating to the Florida Center for Universal Research to Eradicate Disease.

Section 6. Amends s. 381.911, F.S., relating to the Prostate Cancer Awareness Program.

Section 7. Amends s. 381.922, F.S., relating to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Council.

Section 8. Amends s. 430.502, F.S., relating to Alzheimer's disease; memory disorder clinics and day care and respite care programs.

Section 9. Amending s. 430.503, F.S., relating to Alzheimer's Disease Initiative; fees and administrative expenses.

Section 10. Amending s. 430.504, F.S., relating to Confidentiality of information related to Alzheimer's disease issues.

Section 11. Amending s. 458.324, F.S., relating to Breast Cancer; information on treatment alternatives.

Section 12. Amending s. 459.0125, F.S., relating to Breast cancer; information on treatment alternatives.

Section 13. Amends s. 1004.445, F.S., relating to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.

Section 14. Repeals ss. 381.0404, 381.85, 381.912, 381.92, 381.921, 381.98, 381.981, 430.501, and 1004.435, F.S., relating to the Center for Health Technologies, Biomedical and Social Research, the Cervical Cancer Elimination Task Force, the Florida Cancer Council, the Florida Cancer Council mission and duties the Florida Public Health Foundation, Inc., Health awareness campaigns, the Alzheimer's Disease Advisory Committee, cancer control and research, and the Cancer Control and Research Advisory Council, respectively.

Section 15. Provides for severability if any provision of the act is held invalid.

Section 16. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consolidation of process for awarding state funds for biomedical research will make it easier for researchers, including those in the private sector, to identify and apply for available funding. The amended process also allows researchers in a broader range of disease areas to compete for and obtain funding.

D. FISCAL COMMENTS:

The bill consolidates all biomedical research funding beginning Fiscal Year 2009-2010 into the Biomedical Research Trust Fund within the Department of Health. All funds deposited into the Biomedical Research Trust Fund must be used for the award of grants and fellowships related to the program for which funding is appropriated. The bill also extends the timeframe that funds may be carried forward from 3 to 5 years from the date of the original appropriation.

The statutorily required \$9 million annual General Revenue appropriation for the Bankhead-Coley Cancer Research Program remains the same until the program sunsets on June 30, 2011. Moreover, the statutory requirement to allocate \$6 million for the James and Esther King Biomedical Research Program, as well as dedicated funding to the Program from the Lawton Chiles Endowment Fund, remains intact. Additionally, the bill reduces appropriations to the Johnnie B. Byrd, Sr., Alzheimer's Disease and Research Institute to \$5 million beginning in Fiscal Year 2008-2009; and, beginning Fiscal Year 2009-2010 and each fiscal year thereafter, the bill limits the use of the Institute's funds to providing assistance to statutorily designated memory disorder clinics and for education, treatment, prevention and early detection of Alzheimer's disease, developing and operating integrated data projects, and providing assistance to statutorily designated memory disorder clinics. Finally, all entities, unless otherwise specified, who seek to conduct biomedical research using state funds, are required to apply for funding through the James and Esther King Program.

The bill specifies that the revenues in the Brain and Spinal Cord Injury Program Trust Fund appropriated to the University of Florida and the University of Miami for spinal cord injury and brain injury research sunsets June 30, 2009.

The 21st Century Technology, Research, and Scholarship Act is expressly exempted from the requirements of this act and, therefore, may continue to receive funding for biomedical-related research in the general appropriations act.

The bill clarifies that the 15 members of the Biomedical Research Commission may be reimbursed for travel and other necessary expenses when they attend committee meetings. The bill specifies that the department must submit an annual report by February 1, to the Legislature. The fiscal impacts for these two items are anticipated to be nominal.

Currently, the James and Esther King Biomedical Research Program is allowed to contract on a competitive-bid basis with an appropriate entity to administer the program. The contracted administrative expenses may not exceed 15 percent of the total funds available to the program in any given year. The bill reduces administrative expenses to 10 percent of the total funds effective July 1, 2009.

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 Department of Health has sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Health Care Council adopted one amendment to the PCB, which reduces administrative expenses for the biomedical research program to five percent beginning July 1, 2011.

The PCB was reported favorably with one amendment.

1 A bill to be entitled
2 An act relating to biomedical research; amending s.
3 20.435, F.S.; specifying use of funds deposited in the
4 Biomedical Research Trust Fund; revising a time limit
5 relating to certain undisbursed balances of appropriations
6 from the trust fund; amending s. 215.5601, F.S.;
7 conforming a cross-reference; amending s. 215.5602, F.S.;
8 revising the purposes and long-term goals of the James and
9 Esther King Biomedical Research Program; providing for
10 certain funds appropriated for the program to be deposited
11 into the Biomedical Research Trust Fund; specifying use of
12 such funds; renaming the Biomedical Research Advisory
13 Council the Biomedical Research Commission; revising
14 membership of the commission; providing that the
15 commission serves as an exclusive source of biomedical
16 research grant and fellowship awards; requiring the
17 commission to create committees for specified purposes;
18 requiring the commission to adopt policies and procedures
19 regarding the committees and to receive input from outside
20 sources; revising responsibilities of the commission;
21 creating a future requirement for the commission to submit
22 priorities for funding research related to tobacco-related
23 and nontobacco-related diseases to the State Surgeon
24 General; requiring the State Surgeon General to provide
25 commission funding priorities to the Legislature;
26 providing restrictions on the State Surgeon General;
27 providing criteria for ranking priorities; authorizing the
28 State Surgeon General to award grants or fellowships;

29 providing for the award of grants or fellowships upon a
 30 specific appropriation; prohibiting the funding of
 31 research projects not in compliance with the requirements
 32 of the section; providing restrictions on the
 33 recommendation or award of grants or fellowships by other
 34 programs and entities; providing for future reductions of
 35 limits on annual administrative expenses; revising
 36 requirements relating to the commission's annual progress
 37 report; providing a future expiration date for the
 38 commission to award grants for the Bankhead-Coley Program;
 39 revising provisions relating to appropriations; extending
 40 the expiration date of the program; amending s. 381.79,
 41 F.S.; providing for the expiration of a provision relating
 42 to the distribution of funds from the Brain and Spinal
 43 Cord Injury Program Trust Fund; amending s. 381.853, F.S. ;
 44 providing a requirement for the Florida Center for Brain
 45 Tumor Research relating to the use of state funds for
 46 biomedical research; amending s. 381.855, F.S.; providing
 47 additional program functions for the Florida Center for
 48 Universal Research to Eradicate Disease; requiring the
 49 center to disseminate certain information if an
 50 appropriation is made; conforming references to changes
 51 made by the act; amending s. 381.911, F.S.; conforming
 52 references to changes made by the act; amending s.
 53 381.922, F.S., relating to the William G. "Bill" Bankhead,
 54 Jr., and David Coley Cancer Research Program; creating a
 55 future requirement for the commission to submit priorities
 56 for funding cancer research to the State Surgeon General;

57 requiring the State Surgeon General to provide commission
 58 funding priorities to the Legislature; providing
 59 restrictions on the State Surgeon General; providing
 60 criteria for ranking priorities; authorizing the State
 61 Surgeon General to award grants; providing for the award
 62 of grants upon a specific appropriation; prohibiting the
 63 funding of research projects not in compliance with the
 64 requirements of the section; conforming references to
 65 changes made by the act; revising process and provisions
 66 relating to future peer review of grant applications to
 67 conform to the changes to the biomedical research program
 68 made by the act; deleting a provision requiring the
 69 Division of Statutory Revision within the Office of
 70 Legislative Services to certify certain language and
 71 citations related to the program; deleting a provision
 72 requiring future legislative review of the program;
 73 revising the expiration date of the program; amending s.
 74 430.502, F.S.; requiring the Department of Elderly
 75 Affairs, in consultation with the Alzheimer's Disease
 76 Brain Bank, to evaluate the need for additional memory
 77 disorder clinics in the state; conforming references to
 78 changes made by the act; deleting obsolete language;
 79 amending ss. 430.503, 430.504, 458.324, and 459.0125,
 80 F.S.; conforming references to changes made by the act;
 81 amending s. 1004.445, F.S.; providing for the future
 82 repeal of specified provisions to conform to changes made
 83 by the act; reducing appropriations for fiscal year 2008-
 84 2009; providing for and specifying use of future

85 appropriations; repealing s. 381.0404, F.S., relating to
 86 the Center for Health Technologies; repealing s. 381.85,
 87 F.S., relating to biomedical and social research;
 88 repealing s. 381.912, F.S., relating to the Cervical
 89 Cancer Elimination Task Force; repealing s. 381.92, F.S.,
 90 relating to the Florida Cancer Council; repealing s.
 91 381.921, F.S., relating to the Florida Cancer Council;
 92 repealing s. 381.98, F.S., relating to the Florida Public
 93 Health Foundation, Inc.; repealing s. 381.981, F.S.,
 94 relating to health awareness campaigns; repealing s.
 95 430.501, F.S., relating to the Alzheimer's Disease
 96 Advisory Committee; repealing s. 1004.435, F.S., relating
 97 to cancer control and research; providing for
 98 severability; providing an effective date.

99

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

101

102 Section 1. Paragraph (h) of subsection (1) of section
 103 20.435, Florida Statutes, is amended to read:

104 20.435 Department of Health; trust funds.--

105 (1) The following trust funds are hereby created, to be
 106 administered by the Department of Health:

107 (h) Biomedical Research Trust Fund.

108 1. Funds to be credited to the trust fund shall consist of
 109 funds deposited pursuant to s. 215.5601 and any other funds
 110 appropriated by the Legislature. Funds shall be used for the
 111 purposes of the James and Esther King Biomedical Research
 112 Program and the William G. "Bill" Bankhead, Jr., and David Coley

113 Cancer Research Program as specified in ss. 215.5602, 288.955,
 114 and 381.922. The trust fund is exempt from the service charges
 115 imposed by s. 215.20.

116 2. Funds deposited into the trust fund pursuant to s.
 117 215.5601 and any other funds appropriated by the Legislature as
 118 specified in s. 215.5602(12)(a) or other provisions of law for
 119 research related to tobacco-related diseases shall be used
 120 exclusively for the purpose of awarding grants and fellowships
 121 for research regarding the prevention, diagnosis, treatment, and
 122 cure of tobacco-related diseases by the James and Esther King
 123 Biomedical Research Program.

124 3. Funds deposited into the trust fund pursuant to the
 125 William G. "Bill" Bankhead, Jr., and David Coley Cancer Research
 126 Program as specified in s. 381.922 shall be used for the purpose
 127 of awarding grants for cancer research by the William G. "Bill"
 128 Bankhead, Jr., and David Coley Cancer Research Program.

129 4. All other funds deposited into the trust fund shall be
 130 used for the purpose of awarding grants and fellowships for
 131 biomedical research regarding the prevention, diagnosis,
 132 treatment, and cure of the most deadly and widespread
 133 nontobacco-related acute, chronic, and degenerative diseases by
 134 the James and Esther King Biomedical Research Program as
 135 specified in s. 215.5602(2)(b) and (12)(b).

136 ~~5.2~~ Notwithstanding the provisions of s. 216.301 and
 137 pursuant to s. 216.351, any balance in the trust fund at the end
 138 of any fiscal year shall remain in the trust fund at the end of
 139 the year and shall be available for carrying out the purposes of
 140 the trust fund. The department may invest these funds

HB 7061

2008

141 independently through the Chief Financial Officer or may
 142 negotiate a trust agreement with the State Board of
 143 Administration for the investment management of any balance in
 144 the trust fund.

145 ~~6.3-~~ Notwithstanding s. 216.301 and pursuant to s.
 146 216.351, any balance of any appropriation from the Biomedical
 147 Research Trust Fund which is not disbursed but which is
 148 obligated pursuant to contract or committed to be expended may
 149 be carried forward for up to 5 ~~3~~ years following the effective
 150 date of the original appropriation.

151 Section 2. Paragraph (e) of subsection (5) of section
 152 215.5601, Florida Statutes, is amended to read:

153 215.5601 Lawton Chiles Endowment Fund.--

154 (5) AVAILABILITY OF FUNDS; USES.--

155 (e) Notwithstanding s. 216.301 and pursuant to s. 216.351,
 156 all unencumbered balances of appropriations from each
 157 department's respective Tobacco Settlement Trust Fund as of June
 158 30 or undisbursed balances as of December 31 shall revert to the
 159 endowment's principal. Unencumbered balances in the Biomedical
 160 Research Trust Fund shall be managed as provided in s.
 161 20.435 (1) (h) 5.2-

162 Section 3. Section 215.5602, Florida Statutes, is amended
 163 to read:

164 215.5602 James and Esther King Biomedical Research
 165 Program.--

166 (1) There is established within the Department of Health
 167 the James and Esther King Biomedical Research Program funded by
 168 the proceeds of the Lawton Chiles Endowment Fund pursuant to s.

169 215.5601. The purpose of the James and Esther King Biomedical
 170 Research Program is to provide an annual and perpetual source of
 171 funding in order to support research initiatives that address
 172 the health care problems of Floridians in the areas of tobacco-
 173 related cancer, cardiovascular disease, stroke, and pulmonary
 174 disease and nontobacco-related acute, chronic, and degenerative
 175 diseases, including cancer, cardiovascular disease, stroke,
 176 pulmonary disease, diabetes, autoimmune and genetic disorders,
 177 and neurological disorders, including Alzheimer's disease,
 178 epilepsy, and Parkinson's disease. The long-term goals of the
 179 program are to:

180 (a) Improve the health of Floridians by researching better
 181 prevention, diagnoses, treatments, and cures for the most deadly
 182 and widespread acute, chronic, and degenerative diseases,
 183 including, but not limited to, tobacco-related diseases, cancer,
 184 cardiovascular disease, stroke, and pulmonary disease, diabetes,
 185 autoimmune and genetic disorders, and neurological disorders,
 186 including Alzheimer's disease, epilepsy, and Parkinson's
 187 disease.

188 (b) Expand the foundation of biomedical knowledge relating
 189 to the prevention, diagnosis, treatment, and cure of tobacco-
 190 related diseases ~~related to tobacco use,~~ including cancer,
 191 cardiovascular disease, stroke, and pulmonary disease.

192 (c) Expand the foundation of biomedical knowledge relating
 193 to the prevention, diagnosis, treatment, and cure of the most
 194 widespread acute, chronic, and degenerative diseases affecting
 195 Floridians, including, but not limited to, cancer,
 196 cardiovascular disease, stroke, pulmonary disease, diabetes,

197 autoimmune and genetic disorders, and neurological disorders,
 198 including Alzheimer's disease, epilepsy, and Parkinson's
 199 disease.

200 (d)~~(e)~~ Improve the quality of the state's academic health
 201 centers by bringing the advances of biomedical research into the
 202 training of physicians and other health care providers.

203 (e)~~(d)~~ Increase the state's per capita funding for
 204 research by undertaking new initiatives in public health and
 205 biomedical research that will attract additional funding from
 206 outside the state.

207 (f)~~(e)~~ Stimulate economic activity in the state in areas
 208 related to biomedical research, such as the research and
 209 production of pharmaceuticals, biotechnology, and medical
 210 devices.

211 (2) (a) Funds appropriated for the James and Esther King
 212 Biomedical Research Program pursuant to the Lawton Chiles
 213 Endowment Fund created in s. 215.5601 and additional funding
 214 provided under paragraph (12) (a) or other provisions of law for
 215 research related to tobacco-related diseases shall be credited
 216 to the Biomedical Research Trust Fund pursuant to s. 20.435 and
 217 shall be used exclusively for the award of grants and
 218 fellowships related to the prevention, diagnosis, treatment, and
 219 cure of tobacco-related diseases, including cancer,
 220 cardiovascular disease, stroke, and pulmonary disease and for
 221 expenses incurred in the administration of this section.
 222 Priority shall be granted to research designed to prevent or
 223 cure tobacco-related diseases.

224 (b) Beginning in fiscal year 2009-2010, and each fiscal
 225 year thereafter, all other funds appropriated for the James and
 226 Esther King Biomedical Research Program shall be credited to the
 227 Biomedical Research Trust Fund pursuant to s. 20.435 and shall
 228 be used exclusively for the award of grants and fellowships as
 229 established in this section, for research relating to the
 230 prevention, diagnosis, treatment, and cure of the most deadly
 231 and widespread acute, chronic, and degenerative nontobacco-
 232 related diseases affecting Floridians related to tobacco use,
 233 including cancer, cardiovascular disease, stroke, and pulmonary
 234 disease, diabetes, autoimmune and genetic disorders, and
 235 neurological disorders, including Alzheimer's disease, epilepsy,
 236 and Parkinson's disease, and for expenses incurred in the
 237 administration of this section. Priority shall be granted to
 238 research designed to prevent or cure disease.

239 (3) There is created within the Department of Health the
 240 Biomedical Research Commission Advisory Council.

241 (a) The commission council shall consist of 15 ~~11~~ members,
 242 including: the chief executive officer of the Florida Division
 243 of the American Cancer Society, or a designee; the chief
 244 executive officer of the Greater Southeast Florida/Puerto Rico
 245 Affiliate of the American Heart Association, or a designee; and
 246 the chief executive officer of the American Lung Association of
 247 Florida, or a designee; the chief executive officer of the South
 248 Coastal Region of the American Diabetes Association, or a
 249 designee; and the president of the Florida Medical Association,
 250 or a designee. The remaining 10 & members of the commission
 251 council shall be appointed as follows:

HB 7061

2008

252 1. The Governor shall appoint four members, two members
 253 with expertise in the field of biomedical research, one member
 254 from a research university in the state, and one member
 255 representing the general population of the state.

256 2. The President of the Senate shall appoint three ~~two~~
 257 members, one member with expertise in the field of behavioral or
 258 social research and two members representing volunteer health
 259 organizations operating in the state that focus on Alzheimer's
 260 disease, Parkinson's disease, epilepsy, stroke, or autoimmune
 261 and genetic disorders ~~one representative from a cancer program~~
 262 ~~approved by the American College of Surgeons.~~

263 3. The Speaker of the House of Representatives shall
 264 appoint three ~~two~~ members, two members representing volunteer
 265 health organizations operating in the state that focus on
 266 Alzheimer's disease, Parkinson's disease, epilepsy, stroke, or
 267 autoimmune and genetic disorders ~~one member from a professional~~
 268 ~~medical organization~~ and one member representing representative
 269 ~~from~~ a cancer program approved by the American College of
 270 Surgeons.

271
 272 In making these appointments, the Governor, the President of the
 273 Senate, and the Speaker of the House of Representatives shall
 274 select primarily, but not exclusively, Floridians with
 275 biomedical and lay expertise in the general areas of cancer,
 276 cardiovascular disease, stroke, ~~and~~ pulmonary disease, diabetes,
 277 autoimmune and genetic disorders, and neurological disorders,
 278 including Alzheimer's disease, epilepsy, and Parkinson's
 279 disease. The appointments shall be for a 3-year term and shall

280 reflect the diversity of the state's population. An appointed
 281 member may not serve more than two consecutive terms.

282 (b) Except for the William G. "Bill" Bankhead, Jr., and
 283 David Coley Cancer Research Program that expires June 30, 2011,
 284 pursuant to s. 381.922, beginning in fiscal year 2009-2010, and
 285 each fiscal year thereafter, funds appropriated for the James
 286 and Esther King Biomedical Research Program shall serve as the
 287 exclusive source of awarding grants or fellowships for
 288 biomedical research in the state using state funds. This
 289 paragraph does not preclude another grant or fellowship program
 290 created by state law from awarding grants from funds received
 291 from private or federal sources if permitted by state law.

292 (c) The commission shall create committees to focus on
 293 disease-specific areas, including, but not limited to, tobacco-
 294 related diseases, cancer, stroke, cardiovascular disease,
 295 pulmonary disease, diabetes, autoimmune and genetic disorders,
 296 and neurological disorders, including Alzheimer's disease,
 297 epilepsy, and Parkinson's disease.

298 (d) ~~(b)~~ The ~~commission council~~ shall adopt internal
 299 organizational procedures as necessary for its efficient
 300 organization, including policies and procedures regarding the
 301 creation and composition of the committees, the submission of
 302 reports and recommendations by committees regarding the awarding
 303 of grants and fellowships, coordination between the commission
 304 and committees, and the methods for receiving input from
 305 individuals, organizations, or entities that are not members of
 306 the commission or its committees regarding the prioritization of
 307 research.

308 (e)~~(e)~~ The department shall provide such staff,
 309 information, and other assistance as is reasonably necessary to
 310 assist the commission council in carrying out its
 311 responsibilities, including those of its committees.

312 (f)~~(d)~~ Members of the commission council shall serve
 313 without compensation, but may receive reimbursement as provided
 314 in s. 112.061 for travel and other necessary expenses incurred
 315 in the performance of their official duties, including attending
 316 committee meetings.

317 (4) The commission council shall, after considering the
 318 recommendations of its committees, advise the State Surgeon
 319 General as to the direction and scope of the biomedical research
 320 program. The responsibilities of the commission council may
 321 include, but are not limited to:

322 (a) Establishing ~~Providing advice on~~ program priorities
 323 and emphases.

324 (b) Evaluating ~~Providing advice on~~ the overall program
 325 budget and making recommendations to the State Surgeon General
 326 and the Legislature regarding future appropriations.

327 (c) Participating in periodic program evaluation.

328 (d) Developing ~~Assisting in the development of~~ guidelines
 329 to ensure fairness, neutrality, and adherence to the principles
 330 of merit and quality in the conduct of the program.

331 (e) Developing ~~Assisting in the development of~~ appropriate
 332 linkages to nonacademic entities, such as voluntary
 333 organizations, health care delivery institutions, industry,
 334 government agencies, and public officials.

335 (f) Developing criteria and standards for the award of
 336 research grants.

337 (g) Developing administrative procedures relating to
 338 solicitation, independent peer review, and award of research
 339 grants and fellowships, to ensure an impartial, high-quality,
 340 science-based peer review system.

341 (h) Developing and supervising ~~research~~ peer review
 342 panels.

343 (i) Reviewing reports of peer review panels and making
 344 recommendations for research grants and fellowships.

345 (j) Developing and providing oversight regarding
 346 mechanisms for the dissemination of research results.

347 (5)(a) Applications for biomedical research funding under
 348 the program may be submitted from any university or established
 349 research institute in the state. All qualified investigators in
 350 the state, regardless of institution affiliation, shall have
 351 equal access and opportunity to compete for the research
 352 funding.

353 (b) Beginning in fiscal year 2008-2009, grants and
 354 fellowships shall be awarded by the State Surgeon General, after
 355 consultation with the commission ~~council~~, on the basis of
 356 scientific merit, as determined by an open competitive peer
 357 review process that ensures objectivity, consistency, and high
 358 quality.

359 (c) Beginning in fiscal year 2009-2010, and each fiscal
 360 year thereafter, the State Surgeon General shall submit to the
 361 Legislature by February 1 priority lists for the funding of both
 362 tobacco-related and nontobacco-related biomedical research by

363 the Legislature based on the recommendations made by the
 364 commission after peer review and scoring of the applications
 365 received. Recommendations to the Legislature shall be in the
 366 form of lists submitted by the State Surgeon General of the
 367 commission's rank order of priority from the proposal with the
 368 highest priority through the proposal with the lowest priority,
 369 including the recommended dollar amount and duration for each
 370 proposal. The State Surgeon General may not reject or modify the
 371 commission's recommendations. Successful applicants shall be
 372 awarded grants or fellowships by the State Surgeon General based
 373 upon the recommendations of the commission and the final funding
 374 decision made by the Legislature. Funding for grant and
 375 fellowship applications for tobacco-related research shall be
 376 based upon funds available pursuant to paragraphs (2)(a) and
 377 (12)(a) and s. 215.5601.

378 (d) Beginning in fiscal year 2009-2010, and each fiscal
 379 year thereafter, the commission's overall ranking of grant and
 380 fellowship applications shall be based on the score awarded to
 381 the proposal by peer reviewers on the basis of scientific merit
 382 through an open competitive peer review process that ensures
 383 objectivity, consistency, and high quality and the commission's
 384 determination of the following:

385 1. The projected impact that the proposed research will
 386 have on the most deadly and widespread diseases affecting
 387 Floridians at the time the grant or fellowship is awarded;

388 2. The likelihood or possibility that the proposed
 389 research will result in new treatment modalities or technology
 390 during the term of the grant or fellowship; and

391 3. Whether the research proposed offers an efficient use
 392 of state funds in order to prevent or cure disease.

393 (e) The following types of applications shall be
 394 considered for funding:

- 395 1. Investigator-initiated research grants.
- 396 2. Institutional research grants.
- 397 3. Predoctoral and postdoctoral research fellowships.

398 (f) The State Surgeon General shall award grants or
 399 fellowships for terms of 1 to 5 years. State funds shall only be
 400 provided for research that was applied for, reviewed, and
 401 recommended in accordance with this section.

402 (g) Except for the William G. "Bill" Bankhead, Jr., and
 403 David Coley Cancer Research Program that expires June 30, 2011,
 404 pursuant to s. 381.922, beginning July 1, 2009, and each fiscal
 405 year thereafter, any program, board, commission, council,
 406 advisory group, agency, or entity created by state law that
 407 awards or recommends the award of grants or fellowships for
 408 biomedical research may not award grants or fellowships that
 409 require the use of state funds and, instead, shall make any
 410 recommendation to the commission and its committees for the
 411 prioritization and award of grants and fellowships through the
 412 James and Esther King Biomedical Research Program. This section
 413 does not apply to the 21st Century World Class Scholars, Centers
 414 of Excellence, or State University Research Commercialization
 415 Assistance Grant Programs established under s. 1004.226.

416 (6) To ensure that all proposals for research funding are
 417 appropriate and are evaluated fairly on the basis of scientific
 418 merit, the State Surgeon General, in consultation with the

419 commission ~~council~~, shall appoint a peer review panel of
 420 independent, scientifically qualified individuals to review the
 421 scientific content of each proposal and establish its scientific
 422 priority score. The priority scores shall be forwarded to the
 423 commission and its committees ~~council~~ and must be considered in
 424 determining which proposals shall be recommended for funding.

425 (7) The commission, the committees, ~~council~~ and the peer
 426 review panel shall establish and follow rigorous guidelines for
 427 ethical conduct and adhere to a strict policy with regard to
 428 conflict of interest. A member of the commission, committee,
 429 ~~council~~ or panel may not participate in any discussion or
 430 decision with respect to a research proposal by any firm,
 431 entity, or agency with which the member is associated as a
 432 member of the governing body or as an employee, or with which
 433 the member has entered into a contractual arrangement. Meetings
 434 of the commission, committees, ~~council~~ and ~~the~~ peer review
 435 panels shall be subject to the provisions of chapter 119, s.
 436 286.011, and s. 24, Art. I of the State Constitution.

437 (8) The department may contract on a competitive-bid basis
 438 with an appropriate entity to administer the program.
 439 Administrative expenses may not exceed 15 percent of the total
 440 funds available to the program in any given year. Effective July
 441 1, 2009, administrative expenses may not exceed 10 percent of
 442 the total funds available to the program in any given year.
 443 Effective July 1, 2011, administrative expenses may not exceed 5
 444 percent of the total funds available to the program in any given
 445 year.

446 (9) The department, after consultation with the commission
 447 ~~council~~, may adopt rules pursuant to ss. 120.536(1) and 120.54
 448 as necessary to implement this section.

449 (10) In addition to its recommendations regarding
 450 appropriations for the award of grants and fellowships to the
 451 State Surgeon General and the Legislature, the commission
 452 ~~council~~ shall submit an annual progress report on the state of
 453 biomedical research in this state to the Florida Center for
 454 Universal Research to Eradicate Disease and to the Governor, the
 455 State Surgeon General, the President of the Senate, and the
 456 Speaker of the House of Representatives by February 1. The
 457 report must include:

458 (a) A list of current research projects supported by
 459 grants or fellowships awarded under the program.

460 (b) A list of recipients of program grants or fellowships.

461 (c) A list of publications in peer-reviewed ~~peer-reviewed~~
 462 journals involving research supported by grants or fellowships
 463 awarded under the program.

464 (d) The total amount of biomedical research funding
 465 currently flowing into the state.

466 (e) New grants for biomedical research which were funded
 467 based on research supported by grants or fellowships awarded
 468 under the program.

469 (f) Progress in the prevention, diagnosis, treatment, and
 470 cure of the most deadly and widespread acute, chronic, and
 471 degenerative tobacco-related diseases affecting Floridians
 472 ~~diseases related to tobacco use~~, including cancer,
 473 cardiovascular disease, stroke, ~~and~~ pulmonary disease, diabetes,

474 autoimmune and genetic disorders, and neurological disorders,
 475 including Alzheimer's disease, epilepsy, and Parkinson's
 476 disease.

477 (11) The commission council shall award grants for cancer
 478 research through the William G. "Bill" Bankhead, Jr., and David
 479 Coley Cancer Research Program created in s. 381.922. This
 480 subsection expires June 30, 2011.

481 (12) (a) Beginning in fiscal year 2006-2007, the sum of \$6
 482 million is appropriated annually from recurring funds in the
 483 General Revenue Fund to the Biomedical Research Trust Fund
 484 within the Department of Health for purposes of the award of
 485 grants and fellowships by the James and Esther King Biomedical
 486 Research Program for research relating to tobacco-related
 487 diseases pursuant to this section. From these funds up to
 488 \$250,000 shall be available for the operating costs of the
 489 Florida Center for Universal Research to Eradicate Disease.

490 (b) Beginning in fiscal year 2009-2010, and each fiscal
 491 year thereafter, the Legislature may appropriate funds from
 492 recurring funds in the General Revenue Fund to the Biomedical
 493 Research Trust Fund within the Department of Health for purposes
 494 of the award of grants and fellowships by the James and Esther
 495 King Biomedical Research Program for research of the most deadly
 496 and widespread nontobacco-related acute, chronic, and
 497 degenerative diseases pursuant to this section. Any research
 498 grant or fellowship awarded for Alzheimer's research pursuant to
 499 this section shall be named a "Johnnie B. Byrd, Sr. Alzheimer's
 500 Grant." Any research grant or fellowship awarded for cancer

HB 7061

2008

501 research pursuant to this section shall be named a "Bankhead-
 502 Coley Cancer Grant."

503 (13) By June 1, 2014 ~~2009~~, the Division of Statutory
 504 Revision of the Office of Legislative Services shall certify to
 505 the President of the Senate and the Speaker of the House of
 506 Representatives the language and statutory citation of this
 507 section, which is scheduled to expire January 1, 2016 ~~2011~~.

508 (14) The Legislature shall review the performance, the
 509 outcomes, and the financial management of the James and Esther
 510 King Biomedical Research Program during the 2015 ~~2010~~ Regular
 511 Session of the Legislature and shall determine the most
 512 appropriate funding source and means of funding the program
 513 based on its review.

514 (15) This section expires January 1, 2016 ~~2011~~, unless
 515 reviewed and reenacted by the Legislature before that date.

516 Section 4. Subsection (3) of section 381.79, Florida
 517 Statutes, is amended to read:

518 381.79 Brain and Spinal Cord Injury Program Trust Fund.--

519 (3) Annually, 5 percent of the revenues deposited monthly
 520 in the fund pursuant to s. 318.21(2)(d) shall be appropriated to
 521 the University of Florida and 5 percent to the University of
 522 Miami for spinal cord injury and brain injury research. The
 523 amount to be distributed to the universities shall be calculated
 524 based on the deposits into the fund for each quarter in the
 525 fiscal year, but may not exceed \$500,000 per university per
 526 year. Funds distributed under this subsection shall be made in
 527 quarterly payments at the end of each quarter during the fiscal
 528 year. This subsection expires June 30, 2009.

529 Section 5. Paragraph (h) is added to subsection (4) of
 530 section 381.853, Florida Statutes, to read:

531 381.853 Florida Center for Brain Tumor Research.--

532 (4) The Florida Center for Brain Tumor Research is
 533 established within the Evelyn F. and William L. McKnight Brain
 534 Institute of the University of Florida.

535 (h) Beginning in fiscal year 2009-2010, and each fiscal
 536 year thereafter, if the center seeks to conduct biomedical
 537 research using state funds, the center shall apply for funding
 538 through the James and Esther King Biomedical Research Program
 539 pursuant to s. 215.5602.

540 Section 6. Paragraph (a) of subsection (5) of section
 541 381.855, Florida Statutes, is amended, and paragraphs (n), (o),
 542 and (p) are added to subsection (3) of that section, to read:

543 381.855 Florida Center for Universal Research to Eradicate
 544 Disease.--

545 (3) There is established within the Department of Health
 546 the Florida Center for Universal Research to Eradicate Disease,
 547 which shall be known as "CURED."

548 (n) The center shall identify ways to attract new research
 549 talent and attendant national grant producing researchers to
 550 research facilities in this state.

551 (o) If funds are specifically appropriated by the
 552 Legislature, the center shall disseminate information to
 553 Floridians and treatment providers about specified diseases and
 554 conditions and available methods of preventing, diagnosing,
 555 treating, and curing those diseases and conditions.

556 (p) The center shall provide information regarding
 557 research needs in the state to the Biomedical Research
 558 Commission located in the James and Esther King Biomedical
 559 Research Program.

560 (5) There is established within the center an advisory
 561 council that shall meet at least annually.

562 (a) The council shall consist of one representative from a
 563 Florida not-for-profit institution engaged in basic and clinical
 564 biomedical research and education which receives more than \$10
 565 million in annual grant funding from the National Institutes of
 566 Health, to be appointed by the State Surgeon General from a
 567 different institution each term, and one representative from and
 568 appointed by each of the following entities:

- 569 1. Enterprise Florida, Inc.
- 570 2. BioFlorida.
- 571 3. The Biomedical Research Commission ~~Advisory Council.~~
- 572 4. The Florida Medical Foundation.
- 573 5. Pharmaceutical Research and Manufacturers of America.
- 574 ~~6. The Florida Cancer Council.~~
- 575 6.7. The American Cancer Society, Florida Division, Inc.
- 576 7.8. The American Heart Association.
- 577 8.9. The American Lung Association of Florida.
- 578 9.10. The American Diabetes Association, South Coastal
 579 Region.
- 580 10.11. The Alzheimer's Association.
- 581 11.12. The Epilepsy Foundation.
- 582 12.13. The National Parkinson Foundation.
- 583 ~~14. The Florida Public Health Foundation, Inc.~~

584 13.15 The Florida Research Consortium.
 585 Section 7. Subsections (2), (3), and (4) of section
 586 381.911, Florida Statutes, are amended to read:
 587 381.911 Prostate Cancer Awareness Program.--
 588 (2) For purposes of implementing the program, the
 589 Department of Health and ~~the Florida Public Health Foundation,~~
 590 ~~Inc.~~, may:
 591 (a) Conduct activities directly or enter into a contract
 592 with a qualified nonprofit community education entity.
 593 (b) Seek any available gifts, grants, or funds from the
 594 state, the Federal Government, philanthropic foundations, and
 595 industry or business groups.
 596 (3) A prostate cancer advisory committee is created to
 597 advise and assist the Department of Health and ~~the Florida~~
 598 ~~Public Health Foundation, Inc.~~, in implementing the program.
 599 (a) The State Surgeon General shall appoint the advisory
 600 committee members, who shall consist of:
 601 1. Three persons from prostate cancer survivor groups or
 602 cancer-related advocacy groups.
 603 2. Three persons who are scientists or clinicians from
 604 public universities or research organizations.
 605 3. Three persons who are engaged in the practice of a
 606 cancer-related medical specialty from health organizations
 607 committed to cancer research and control.
 608 (b) Members shall serve without compensation but are
 609 entitled to reimbursement, pursuant to s. 112.061, for per diem
 610 and travel expenses incurred in the performance of their
 611 official duties.

HB 7061

2008

612 ~~(4) The program shall coordinate its efforts with those of~~
 613 ~~the Florida Public Health Foundation, Inc.~~

614 Section 8. Section 381.922, Florida Statutes, is amended
 615 to read:

616 381.922 William G. "Bill" Bankhead, Jr., and David Coley
 617 Cancer Research Program.--

618 (1) The William G. "Bill" Bankhead, Jr., and David Coley
 619 Cancer Research Program, which may be otherwise cited as the
 620 "Bankhead-Coley Program," is created within the Department of
 621 Health. The purpose of the program shall be to advance progress
 622 towards cures for cancer through grants awarded through a peer-
 623 reviewed, competitive process.

624 (2) The program shall provide grants for cancer research
 625 to further the search for cures for cancer.

626 (a) Emphasis shall be given to the goals that enumerated
 627 ~~in s. 381.921, as those goals~~ support the advancement of such
 628 cures.

629 (b) Preference may be given to grant proposals that foster
 630 collaborations among institutions, researchers, and community
 631 practitioners, as such proposals support the advancement of
 632 cures through basic or applied research, including clinical
 633 trials involving cancer patients and related networks.

634 (3)(a) Applications for funding for cancer research may be
 635 submitted by any university or established research institute in
 636 the state. All qualified investigators in the state, regardless
 637 of institutional affiliation, shall have equal access and
 638 opportunity to compete for the research funding. Collaborative

639 proposals, including those that advance the program's goals
 640 enumerated in subsection (2), may be given preference.

641 (b) For fiscal year 2008-2009, grants shall be awarded by
 642 the State Surgeon General, after consultation with the
 643 Biomedical Research Commission ~~Advisory Council~~, on the basis of
 644 scientific merit ~~through, as determined by~~ an open, competitive
 645 peer review process that ensures objectivity, consistency, and
 646 high quality.

647 (c) Beginning in fiscal year 2009-2010, and each fiscal
 648 year thereafter, the State Surgeon General shall submit to the
 649 Legislature by February 1 a priority list for cancer research
 650 funding by the Legislature based on the recommendations of the
 651 commission after peer review and scoring of the applications
 652 received. Recommendations to the Legislature shall be in the
 653 form of a list submitted by the State Surgeon General of the
 654 commission's rank order of priority from the proposal with the
 655 highest priority through the proposal with the lowest priority,
 656 including the recommended dollar amount and duration for each
 657 proposal. The State Surgeon General may not reject or modify the
 658 commission's recommendations. Successful applicants shall be
 659 awarded grants by the State Surgeon General based upon the
 660 recommendations of the commission and the final funding decision
 661 made by the Legislature.

662 (d) Beginning in fiscal year 2009-2010, and each fiscal
 663 year thereafter, the commission's overall ranking of grant
 664 applications shall be based on the score awarded to the proposal
 665 by peer reviewers on the basis of scientific merit through an
 666 open competitive peer review process that ensures objectivity,

HB 7061

2008

667 consistency, and high quality and the commission's determination
 668 of the following:

669 1. The projected impact that the proposed research will
 670 have on cancer research at the time the grant is awarded;

671 2. The likelihood or possibility that the proposed
 672 research will result in new treatment modalities or technology
 673 during the term of the grant; and

674 3. Whether the research proposed offers an efficient use
 675 of state funds in order to prevent or cure cancer.

676 (e) The following types of applications shall be
 677 considered for funding:

678 1. Investigator-initiated research grants.

679 2. Institutional research grants.

680 3. Collaborative research grants, including those that
 681 advance the finding of cures through basic or applied research.

682 (f) Beginning in fiscal year 2009-2010, and each fiscal
 683 year thereafter, state funds shall only be provided for research
 684 that was applied for, reviewed, and recommended in accordance
 685 with this section.

686 (g) ~~(b)~~ In order to ensure that all proposals for research
 687 funding are appropriate and are evaluated fairly on the basis of
 688 scientific merit, the State Surgeon General, in consultation
 689 with the commission ~~council~~, shall appoint a peer review panel
 690 of independent, scientifically qualified individuals to review
 691 the scientific content of each proposal and establish its
 692 priority score. The priority scores shall be forwarded to the
 693 commission and its committees ~~council~~ and must be considered in
 694 determining which proposals shall be recommended for funding.

695 (h)~~(e)~~ The commission, the committees, ~~council~~ and the
 696 peer review panel shall establish and follow rigorous guidelines
 697 for ethical conduct and adhere to a strict policy with regard to
 698 conflicts of interest. A member of the commission, a committee,
 699 ~~council~~ or the panel may not participate in any discussion or
 700 decision with respect to a research proposal by any firm,
 701 entity, or agency with which the member is associated as a
 702 member of the governing body or as an employee or with which the
 703 member has entered into a contractual arrangement. Meetings of
 704 the commission, the committees, ~~council~~ and the peer review
 705 panels are subject to chapter 119, s. 286.011, and s. 24, Art. I
 706 of the State Constitution.

707 (4) By December 15 of each year, the Department of Health
 708 shall submit to the Governor, the President of the Senate, and
 709 the Speaker of the House of Representatives a report indicating
 710 progress towards the program's mission and making
 711 recommendations that further its purpose.

712 (5) Beginning in fiscal year 2006-2007, the sum of \$9
 713 million is appropriated annually from recurring funds in the
 714 General Revenue Fund to the Biomedical Research Trust Fund
 715 within the Department of Health for purposes of the William G.
 716 "Bill" Bankhead, Jr., and David Coley Cancer Research Program
 717 and shall be distributed pursuant to this section to provide
 718 grants to researchers seeking cures for cancer, ~~with emphasis~~
 719 ~~given to the goals enumerated in s. 381.921.~~ From the total
 720 funds appropriated, an amount of up to 10 percent may be used
 721 for administrative expenses.

722 ~~(6) By June 1, 2009, the Division of Statutory Revision of~~
 723 ~~the Office of Legislative Services shall certify to the~~
 724 ~~President of the Senate and the Speaker of the House of~~
 725 ~~Representatives the language and statutory citation of this~~
 726 ~~section, which is scheduled to expire January 1, 2011.~~

727 ~~(7) The Legislature shall review the performance, the~~
 728 ~~outcomes, and the financial management of the William G. "Bill"~~
 729 ~~Bankhead, Jr., and David Coley Cancer Research Program during~~
 730 ~~the 2010 Regular Session of the Legislature and shall determine~~
 731 ~~the most appropriate funding source and means of funding the~~
 732 ~~program based on its review.~~

733 ~~(6)(8)~~ This section expires June 30 ~~January 1~~, 2011,
 734 unless reviewed and reenacted by the Legislature before that
 735 date.

736 Section 9. Subsection (3) of section 430.502, Florida
 737 Statutes, is amended to read:

738 430.502 Alzheimer's disease; memory disorder clinics and
 739 day care and respite care programs.--

740 (3) The Department of Elderly Affairs shall consult with
 741 the Alzheimer's Disease Brain Bank and model day care programs
 742 to Alzheimer's Disease Advisory Committee must evaluate the need
 743 for additional memory disorder clinics in the state. ~~The first~~
 744 ~~report will be due by December 31, 1995.~~

745 Section 10. Section 430.503, Florida Statutes, is amended
 746 to read:

747 430.503 Alzheimer's Disease Initiative; fees and
 748 administrative expense.--

749 (1) Sections 430.502-430.504 ~~430.501-430.504~~ may be cited
 750 as the "Alzheimer's Disease Initiative."

751 (2) Provider agencies are responsible for the collection
 752 of fees for services in accordance with rules adopted by the
 753 department. Provider agencies shall assess fees for services
 754 rendered in accordance with those rules. To help pay for
 755 services received pursuant to the Alzheimer's Disease
 756 Initiative, a functionally impaired elderly person shall be
 757 assessed a fee based on an overall ability to pay. The fee to be
 758 assessed shall be fixed according to a schedule to be
 759 established by the department. Services of specified value may
 760 be accepted in lieu of a fee. The fee schedule shall be
 761 developed in cooperation with the ~~Alzheimer's Disease Advisory~~
 762 ~~Committee~~, area agencies on aging, and service providers.

763 Section 11. Section 430.504, Florida Statutes, is amended
 764 to read:

765 430.504 Confidentiality of information.--Information about
 766 clients of programs created or funded under ~~s. 430.501~~ or s.
 767 430.503 which is received through files, reports, inspections,
 768 or otherwise, by the department or by authorized departmental
 769 employees, by persons who volunteer services, or by persons who
 770 provide services to clients of programs created or funded under
 771 ~~s. 430.501~~ or s. 430.503 through contracts with the department
 772 is confidential and exempt from the provisions of s. 119.07(1).
 773 Such information may not be disclosed publicly in such a manner
 774 as to identify a person who receives services under ~~s. 430.501~~
 775 or s. 430.503, unless that person or that person's legal
 776 guardian provides written consent.

HB 7061

2008

777 Section 12. Subsection (1) and paragraph (a) of subsection
 778 (2) of section 458.324, Florida Statutes, are amended to read:
 779 458.324 Breast cancer; information on treatment
 780 alternatives.--

781 (1) DEFINITION.--As used in this section, the term
 782 "medically viable," as applied to treatment alternatives, means
 783 modes of treatment generally considered by the medical
 784 profession to be within the scope of current, acceptable
 785 standards, ~~including treatment alternatives described in the~~
 786 ~~written summary prepared by the Florida Cancer Control and~~
 787 ~~Research Advisory Council in accordance with s. 1004.435(4)(m).~~

788 (2) COMMUNICATION OF TREATMENT ALTERNATIVES.--Each
 789 physician treating a patient who is, or in the judgment of the
 790 physician is at high risk of being, diagnosed as having breast
 791 cancer shall inform such patient of the medically viable
 792 treatment alternatives available to such patient; shall describe
 793 such treatment alternatives; and shall explain the relative
 794 advantages, disadvantages, and risks associated with the
 795 treatment alternatives to the extent deemed necessary to allow
 796 the patient to make a prudent decision regarding such treatment
 797 options. In compliance with this subsection:

798 (a) The physician may, in his or her discretion:

799 1. Orally communicate such information directly to the
 800 patient or the patient's legal representative;

801 2. Provide the patient or the patient's legal
 802 representative with a copy of a ~~the~~ written summary ~~prepared in~~
 803 ~~accordance with s. 1004.435(4)(m)~~ and express a willingness to

HB 7061

2008

804 discuss the summary with the patient or the patient's legal
 805 representative; or

806 3. Both communicate such information directly and provide
 807 a copy of the written summary to the patient or the patient's
 808 legal representative for further consideration and possible
 809 later discussion.

810

811 Nothing in this subsection shall reduce other provisions of law
 812 regarding informed consent.

813 Section 13. Subsection (1) and paragraph (a) of subsection
 814 (2) of section 459.0125, Florida Statutes, are amended to read:

815 459.0125 Breast cancer; information on treatment
 816 alternatives.--

817 (1) DEFINITION.--As used in this section, the term
 818 "medically viable," as applied to treatment alternatives, means
 819 modes of treatment generally considered by the medical
 820 profession to be within the scope of current, acceptable
 821 standards, ~~including treatment alternatives described in the~~
 822 ~~written summary prepared by the Florida Cancer Control and~~
 823 ~~Research Advisory Council in accordance with s. 1004.435(4)(m).~~

824 (2) COMMUNICATION OF TREATMENT ALTERNATIVES.--It is the
 825 obligation of every physician treating a patient who is, or in
 826 the judgment of the physician is at high risk of being,
 827 diagnosed as having breast cancer to inform such patient of the
 828 medically viable treatment alternatives available to such
 829 patient; to describe such treatment alternatives; and to explain
 830 the relative advantages, disadvantages, and risks associated
 831 with the treatment alternatives to the extent deemed necessary

HB 7061

2008

832 to allow the patient to make a prudent decision regarding such
 833 treatment options. In compliance with this subsection:

834 (a) The physician may, in her or his discretion:

835 1. Orally communicate such information directly to the
 836 patient or the patient's legal representative;

837 2. Provide the patient or the patient's legal
 838 representative with a copy of a ~~the~~ written summary ~~prepared in~~
 839 ~~accordance with s. 1004.435(4)(m)~~ and express her or his
 840 willingness to discuss the summary with the patient or the
 841 patient's legal representative; or

842 3. Both communicate such information directly and provide
 843 a copy of the written summary to the patient or the patient's
 844 legal representative for further consideration and possible
 845 later discussion.

846

847 Nothing in this subsection shall reduce other provisions of law
 848 regarding informed consent.

849 Section 14. Subsections (7), (8), and (12) of section
 850 1004.445, Florida Statutes, as amended by chapter 2007-332, Laws
 851 of Florida, are amended to read:

852 1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and
 853 Research Institute.--

854 (7) The board of directors of the not-for-profit
 855 corporation shall create a council of scientific advisers to the
 856 chief executive officer comprised of leading researchers,
 857 physicians, and scientists. The council shall review programs
 858 and recommend research priorities and initiatives to maximize
 859 the state's investment in the institute. The members of the

860 council shall be appointed by the board of directors of the not-
 861 for-profit corporation. Each member of the council shall be
 862 appointed to serve a 2-year term and may be reappointed to the
 863 council. This subsection expires on June 30, 2009.

864 (8)(a) Applications for Alzheimer's disease research
 865 funding may be submitted from any university or established
 866 research institute in the state. All qualified investigators in
 867 the state, regardless of institutional affiliation, shall have
 868 equal access and opportunity to compete for the research
 869 funding. Grants shall be awarded by the board of directors of
 870 the not-for-profit corporation on the basis of scientific merit,
 871 as determined by an open, competitive peer review process that
 872 ensures objectivity, consistency, and high quality. The
 873 following types of applications shall be considered for funding:

- 874 1. Investigator-initiated research grants.
- 875 2. Institutional research grants.
- 876 3. Collaborative research grants, including those that
 877 advance the finding of cures through basic or applied research.

878 (b) Preference may be given to grant proposals that foster
 879 collaboration among institutions, researchers, and community
 880 practitioners because these proposals support the advancement of
 881 cures through basic or applied research, including clinical
 882 trials involving Alzheimer's patients and related networks.

883 (c) To ensure that all proposals for research funding are
 884 appropriate and are evaluated fairly on the basis of scientific
 885 merit, the board of directors of the not-for-profit corporation,
 886 in consultation with the council of scientific advisors, shall
 887 appoint a peer review panel of independent, scientifically

888 qualified individuals to review the scientific content of each
 889 proposal and establish its scientific priority score. The
 890 priority scores shall be forwarded to the council and must be
 891 considered by the board of directors of the not-for-profit
 892 corporation in determining which proposals shall be recommended
 893 for funding.

894 (d) The council of scientific advisors and the peer review
 895 panel shall establish and follow rigorous guidelines for ethical
 896 conduct and adhere to a strict policy with regard to conflict of
 897 interest. All employees, members of the board of directors, and
 898 affiliates of the not-for-profit corporation shall follow the
 899 same rigorous guidelines for ethical conduct and shall adhere to
 900 the same strict policy with regard to conflict of interest. A
 901 member of the council or panel may not participate in any
 902 discussion or decision with respect to a research proposal by
 903 any firm, entity, or agency with which the member is associated
 904 as a member of the governing body or as an employee or with
 905 which the member has entered into a contractual arrangement.
 906 Meetings of the council and the peer review panels are subject
 907 to chapter 119, s. 286.011, and s. 24, Art. I of the State
 908 Constitution.

909 (e) This subsection expires on June 30, 2009.

910 (12) (a) Beginning in fiscal year 2008-2009 ~~2007-2008~~, the
 911 sum of \$5 ~~\$13.5~~ million is appropriated annually from recurring
 912 funds in the General Revenue Fund to the Grants and Donations
 913 Trust Fund within the Department of Elderly Affairs for the
 914 Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute
 915 at the University of South Florida for the purposes as provided

916 under paragraph (6)(a), conducting and supporting research,
 917 providing institutional research grants and investigator-
 918 initiated research grants, developing and operating integrated
 919 data projects, and providing assistance to statutorily
 920 designated memory disorder clinics as provided under s. 430.502.
 921 Not less than 80 percent of the appropriated funds shall be
 922 expended for these purposes, and not less than 20 percent of the
 923 appropriated funds shall be expended for peer-reviewed
 924 investigator-initiated research grants.

925 (b) Beginning in fiscal year 2009-2010, and each fiscal
 926 year thereafter, the sum appropriated in paragraph (a) shall be
 927 used for programs that fulfill the mission of the institute in
 928 education, treatment, prevention, and early detection of
 929 Alzheimer's disease, developing and operating integrated data
 930 projects, and providing assistance to statutorily designated
 931 memory disorder clinics. If the institute intends to conduct
 932 research using state funds, it shall compete for funding through
 933 the James and Esther King Biomedical Research Program pursuant
 934 to s. 215.5602.

935 Section 15. Sections 381.0404, 381.85, 381.912, 381.92,
 936 381.921, 381.98, 381.981, 430.501, and 1004.435, Florida
 937 Statutes, are repealed.

938 Section 16. If any provision of this act or the
 939 application thereof to any person or circumstance is held
 940 invalid, the invalidity does not affect other provisions or
 941 applications of the act which can be given effect without the
 942 invalid provision or application, and to this end the provisions
 943 of this act are declared severable.

HB 7061

2008

944

Section 17. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No. 7061

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
2 Representative(s) Bean offered the following:

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Amendment

Remove line(s) 118 and insert:
specified in s. 215.5602(12)(a) for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (02)

Bill No. 7061

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
2 Representative(s) Bean offered the following:

3
4 **Amendment**

5 Remove line(s) 214 and insert:
6 provided under paragraph (12)(a) for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (03)

Bill No. 7061

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
2 Representative(s) Bean offered the following:

3
4 **Amendment (with title amendments)**

5 Remove line(s) 503-515 and insert:

6 (13) This section shall not apply to the World Class
7 Scholars, Centers of Excellence, or State University Research
8 Commercialization Assistance Grant Programs as set forth in s.
9 1004.226, the University Major Gifts Program as set forth in s.
10 1011.94, or to the use of general operating funds appropriated
11 to universities.

12 (14)~~(13)~~ By June 1, 2014 ~~2009~~, the Division of Statutory
13 Revision of the Office of Legislative Services shall certify to
14 the President of the Senate and the Speaker of the House of
15 Representatives the language and statutory citation of this
16 section, which is scheduled to expire January 1, 2016 ~~2011~~.

17 (15)~~(14)~~ The Legislature shall review the performance, the
18 outcomes, and the financial management of the James and Esther
19 King Biomedical Research Program during the 2015 ~~2010~~ Regular
20 Session of the Legislature and shall determine the most

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (03)

21 appropriate funding source and means of funding the program
22 based on its review.

23 (16)~~(15)~~ This section expires January 1, 2016 ~~2011~~, unless
24 reviewed and reenacted by the Legislature before that date.

25

26

27

T I T L E A M E N D M E N T

28

Remove line(s) 39 and insert:

29

revising provisions relating to appropriations; providing

30

exclusions from the requirements of the program; extending

31

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (04)

Bill No. 7061

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
2 Representative(s) Bean offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line(s) 736-776.

6
7 -----

8 **T I T L E A M E N D M E N T**

9 Remove line(s) 73-79 and insert:

10 revising the expiration date of the program; amending ss.
11 458.324 and 459.0125,
12

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (05)

Bill No. 7061

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
2 Representative(s) Bean offered the following:

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Amendment

Remove line(s) 911 and insert:
sum of \$3.75 ~~\$13.5~~ million is appropriated annually from
recurring

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (06)

Bill No. 7061

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Policy and Budget Council
2 Representative(s) Bean offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line(s) 936 and insert:
6 381.921, 381.98, 381.981, and 1004.435, Florida

7 -----

8 **T I T L E A M E N D M E N T**

9 Remove line(s) 95-96 and insert:
10 1004.435, F.S., relating

11

