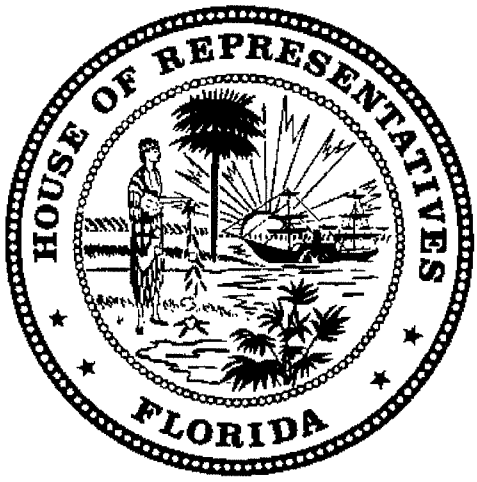


# Policy and Budget Council

**April 14, 2008**
**3:15 p.m.**
**212 Knott Building**

# Meeting Packet

# (2 of 2)

**Marco Rubio**
**Speaker**

**Ray Sansom**
**Chair**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 861 Department of Veterans' Affairs
**SPONSOR(S):** Healthcare Council; Reagan and others
**TIED BILLS:** HB 863 **IDEN./SIM. BILLS:** SB 1462

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Healthy Seniors | 8 Y, 0 N | DePalma/Massengale | Ciccone |
| 2) Healthcare Council | 17 Y, 0 N, As CS | DePalma/Massengale | Gormley |
| 3) Policy & Budget Council | | Leznoff | Hansen |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

The Council Substitute for House Bill 861 directs the Florida Department of Veterans' Affairs ("the department") to establish a direct support-organization (DSOs) for the purpose of providing assistance, funding, and support to the department. The bill provides for governance of the DSO by a board of directors, and specifies board composition and term limits. The bill additionally requires that a DSO shall operate under a written contract with the department, and provides contract requirements. The bill authorizes the department to permit use of departmental property, facilities, and personal services by the DSO under certain circumstances. Finally, the bill restricts transactions or agreements between the DSO it authorizes and another DSO absent approval by the department's executive director, requires the DSO to submit certain federal tax documents to the department, and provides for an annual financial audit of the DSO in accordance with s. 215.981, F.S.

The bill redirects twenty percent of the funds generated from the sale of the "Florida Salutes Veterans" specialty license plate – presently deposited in the State Homes for Veterans Trust Fund and administered by the department – toward the DSO for the sole purpose of providing direct or indirect benefit to the department. The bill specifies that such redistribution occurs only during the initial 24 months following the date the DSO is incorporated.

The bill also repeals the Florida Commission on Veterans' Affairs (FCVA), an unfunded entity assigned to the department for purposes of conducting a biennial survey of possible contributions that veterans or veterans' organizations could make to the state. The bill deletes statutory cross-references to the FCVA, provides that the Department of Management Services shall consult with the department in designating and approving the Florida Medal of Honor Wall, and specifies that three members of the board of directors of the DSO established by this bill shall sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas.

The bill has an annual negative fiscal impact on the State Homes for Veterans Trust Fund of approximately $80,226. However, the bill provides that the State Homes for Veterans Trust Fund will be impacted by the establishment of a DSO only for the initial 24 months following the date the DSO is incorporated.

The bill provides an effective date of July 1, 2008.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill repeals the Florida Commission on Veterans' Affairs, an unfunded entity assigned to the Department of Veterans' Affairs, and reassigns certain responsibilities and duties of the commission to the department and members of the direct-support organization established by this legislation.

**Empower Families** – To the extent that the direct-support organization established by this bill is successful in generating contributions for the direct or indirect benefit of the Department of Veterans' Affairs, the department would potentially be better-equipped to meet the needs of the growing number of younger veterans who have served or are serving in the Global War on Terror, and who claim Florida as their home of record.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Direct-Support Organizations

While no general statutory definition for a direct-support organization (DSO) exists in Florida Statute, a DSO is a Florida not-for-profit corporation, incorporated under the provisions of ch. 617, F.S., and authorized by law to benefit or provide assistance to a governmental entity. Generally, a DSO is created to give a governmental entity the flexibility to seek an additional funding source, and to enhance the mission of the departments or political subdivisions they support.

Each DSO tends to be specifically authorized or created in statute. Oftentimes, the authorizing statute establishes requirements for the organization's articles of incorporation – as well as other oversight requirements – and membership and appointment procedures for the DSO's board of directors are provided.

Some more familiar state DSOs are the Florida National Guard Foundation and the Florida Juvenile Justice Foundation. Various other state agencies and political subdivisions are statutorily-empowered to authorize DSOs, including the Statewide Public Guardianship Office;[1] the Statewide Guardian Ad Litem Office;[2] the Office of Tourism, Trade, and Economic Development;[3] the Department of Military Affairs;[4] the Department of Corrections;[5] and the Department of Education.[6]

DSOs with annual expenditures in excess of $100,000 that are administered by a state agency are statutorily-required to provide for an annual financial audit of accounts and records to be conducted by an independent certified public accountant. Such audit report is submitted by the DSO within 9 months

[1] S. 744.7082, F.S.
[2] S. 39.8298, F.S.
[3] S. 288.1229, F.S.
[4] S. 250.115, F.S.
[5] S. 944.802, F.S.
[6] S. 1001.24, F.S.

after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.[7]

Florida Salutes Veterans License Plates

Pursuant to s. 320.08058, F.S., the Department of Veterans' Affairs ("the department") administers all proceeds from the sale of the "Florida Salutes Veterans" specialty license plates. Annual fees are deposited in the State Homes for Veterans Trust Fund in the State Treasury, for the sole use of constructing, operating, and maintaining domiciliary and nursing homes for veterans, as well as for the continuing promotion and marketing of the license plate.

In Fiscal Year 2006-07, the department collected $401,130 in revenue from the sale of "Florida Salutes Veterans" specialty license plates.

The Florida Commission on Veterans' Affairs

The Florida Commission on Veterans' Affairs (FCVA, or "the commission") is composed of nine commissioners appointed by the Governor, subject to confirmation by the Senate. The commission is charged with conducting a biennial survey of possible contributions that veterans or state organizations of veterans and their auxiliaries could make to the state, and to report survey results to the department together with recommendations for encouraging such contributions. The commission also works with various veterans' organizations and their auxiliaries in the state, and functions as a liaison between these organizations and the department on matters pertaining to veterans.[8]

Although the commission serves as an advisory body to the department (which in turn is responsible for providing administrative staff support for the commission), the commission, in the performance of its duties, is not subject to the control, supervision, or direction of the department.

Presently, the commission also consults with the Department of Management Services in designating and approving plaques on the Florida Medal of Honor Wall at the State Capitol Building,[9] and the chair of the commission appoints three commission members to sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas.[10]

**Effect of Proposed Changes**

Establishment of a Direct-Support Organization

The bill provides that the Department of Veterans' Affairs shall establish a direct-support organization to provide assistance, funding, and support for the department. A DSO established pursuant to this newly-created statute shall be not-for-profit, incorporated under chapter 617, F.S., exempted from filing fees, and approved by the Department of State. Such DSO must also be:

- organized and operated exclusively to obtain funds;
- request, and receive grants, gifts, and bequests of moneys;
- acquire, receive, hold, invest, and administer in its own name securities, funds, or property;

[7] S. 215.981, F.S.; note that the Auditor General, the state agency administering the DSO, and the Office of Program Policy Analysis and Government Accountability are further provided with the authority to require and receive from the DSO or from the independent auditor any records relative to the operation of the organization.
[8] S. 292.04, F.S.
[9] S. 265.002, F.S.
[10] S. 337.111(1), F.S.

- make expenditures to or for the direct or indirect benefit of the department, the veterans of the state, and congressionally-chartered veteran service organizations incorporated within the state; and,
- determined by the department to be operating in a manner consistent with the goals of the department and in the best interest of the state.

*Board of Directors*

The bill specifies that the DSO will be governed by a board of directors, consisting of no fewer than five members appointed by the department's executive director, and provides for the ability of veteran service organizations in the state to recommend nominees. Board members' term limits shall be for 3 years, except to the extent that staggering the initial terms of appointees is necessary, and members may be reappointed when their term expires.

The bill provides for the executive director of the department (or his or her designee) to be an ex officio member of the board of directors. Board members must also be residents of the state, and a majority of members must be both veterans[11] and "highly knowledgeable about the U.S. military, its service personnel, its veterans, and its missions." Finally, the bill authorizes the executive director of the department to remove any board member for cause, and to appoint a replacement for any vacancy that occurs.

*Contract*

The bill requires the DSO to operate under a written contract with the department, which must provide for:

- annual certification by the department that the DSO is complying with the terms of the contract and is doing so consistent with the goals and purposes of the department and in the best interest of the state;
- the reversion of moneys and property held by the DSO (to the department if the DSO is no longer approved to operate for the department, to the department if the DSO ceases to exist, or to the state if the department ceases to exist); and
- the disclosure of the material provisions of the contract, and the distinction between the department and DSO, to donors of gifts, contributions or bequests (including such disclosure on all promotional and fundraising publications).

*Use of Department Property*

The bill authorizes the department to permit use of department property, facilities, and personal services by the DSO, and further provides that the department may prescribe by contract any condition with which a DSO must comply to use such departmental property and services. However, the bill specifies that the department may not permit use of its property, facilities, or personal services by a DSO where such DSO does not provide equal opportunities to all persons regardless of race, color, national origin, gender, age, or religion.

*Other Provisions Relating to the Establishment of DSO*

The bill requires that the executive director of the department must approve any transaction or agreement between a DSO authorized by the bill and another DSO or entity. The bill also clarifies that the fiscal year of the DSO runs from July 1 of each year to June 30 of the following year, and further

[11] Per s. 1.01(14), F.S., a "veteran" is an individual who "served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only, or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans' Affairs on individuals discharged or released with other than honorable discharges."

requires the DSO to submit to the department copies of its Internal Revenue Service Forms 1023 and 990. Finally, the bill provides that the DSO shall provide for an annual financial audit in accordance with s. 215.981, F.S.

Redirection of Specialty License Plate Revenue

The bill redistributes twenty percent of the annual funds collected through sale of the "Florida Salutes Veterans" specialty license plate to the DSO authorized in the bill for the sole purpose of providing direct or indirect benefit to the department. This redistribution reduces the amount of plate proceeds deposited into the State Homes for Veterans Trust Fund to eighty percent. However, the bill specifies that such redistribution occurs only during the initial 24 months following the date the DSO is incorporated.

Repeal of Florida Commission on Veterans' Affairs

The bill repeals s. 292.04, F.S., relating to the creation of a Florida Commission on Veterans' Affairs, and makes conforming changes to other places in Florida law where the commission was referenced by transferring certain duties and responsibilities of the commission to the department and members of the newly-appointed DSO.

The bill provides that the Department of Management Services shall consult with the department in designating and approving the Florida Medal of Honor Wall at the State Capitol, and specifies that three members of the board of directors of the DSO established by this bill shall be appointed by the executive director of the department to sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas. The bill adds that terms of appointed committee members shall run concurrently with the members' terms on the board of directors of the DSO.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 292.055, F.S.; authorizing the Department of Veterans' Affairs to establish a direct support organization for the purpose of providing support to the department; providing definitions; providing for governance of the direct-support organization by a board of directors; specifying board composition; detailing contract requirements between the department and the direct-support organization; allowing for use of departmental property, facilities, and personal services under certain circumstances; providing that the department's executive director must approve agreements between the direct-support organization being organized and other direct-support organizations; requiring the direct-support organization to submit certain federal tax documents to the department; providing for annual financial audits in accordance with s. 215.981, F.S.

**Section 2.** Amends s. 265.002, F.S.; deleting references to the Florida Commission on Veterans' Affairs; providing that the Department of Management Services shall consult with the department in designating an appropriate area of the Capitol Building for a Florida Medal of Honor Wall; providing for departmental approval of plaques on the Medal of Honor Wall.

**Section 3.** Amends s. 320.08058, F.S.; redirecting twenty percent of the annual funds collected through sale of the "Florida Salutes Veterans" license plate to the direct-support organization for a period not to exceed 24 months after the date the direct-support organization is incorporated.

**Section 4.** Amends s. 337.111, F.S.; deleting references to the Florida Commission on Veterans' Affairs; providing for membership of three members of the board of directors of the direct-support organization established under s. 292.055, F.S. on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas; specifying term limits for appointed members.

**Section 5.** Repeals s. 292.04, F.S.; relating to the creation of the Florida Commission on Veterans' Affairs.

**Section 6.** Provides that the act is effective July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments" below.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments" below.

D. FISCAL COMMENTS:

The bill requires no direct appropriation from the annual General Appropriations Act. However, a provision amending s. 320.08058, F.S., and redirecting twenty percent of the funds generated from the sale of the "Florida Salutes Veterans" license plates to the direct-support organization would shift funds normally allotted for the State Veterans' Nursing Home Trust Fund. The bill authorizes such redistribution for a period not to exceed 24 months following the date of incorporation of the DSO.

According to the Department of Highway Safety and Motor Vehicles, the "Florida Salutes Veterans" specialty plate generated $401,130 in Fiscal Year 2006-07. Twenty percent of this amount is $80,226.

## 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

None provided.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 11, 2008, the Committee on Healthy Seniors adopted a strike-all amendment to HB 861 as filed. The amendment:

- Names the legislation "The Sergeant First Class Paul R. Smith Memorial Act:;
- Clarifies that the Department of Veterans' Affairs is directed to authorize the establishment of a single direct-support organization;
- Provides that the approval of a majority of members of the organization's board of directors is necessary for the executive director of the department to remove a board member for cause;
- Specifies that the direct-support organization is authorized to make expenditures to or for the direct or indirect benefit of the veterans of Florida, and congressionally-chartered veteran service organizations with subdivisions incorporated in the state; and
- Provides that the twenty percent redistribution to the newly-established direct support-organization occurs for a period not to exceed 24 months after its date of incorporation.

The Committee reported the bill favorably with one amendment.

At the April 1, 2008 meeting of the Healthcare Council, a strike-all amendment was adopted which conformed the language of HB 861 to language in its Senate companion. The bill was reported favorably as a Council Substitute. This analysis reflects the Council Substitute.

A bill to be entitled

An act relating to direct-support organizations; creating s. 292.055, F.S.; creating the "Sergeant First Class Paul R. Smith Memorial Act"; authorizing the Department of Veterans' Affairs to establish a direct-support organization to assist the department; providing definitions; providing purposes, objectives, and duties of the direct-support organization; providing for a board of directors and membership requirements for the board members; requiring the direct-support organization to operate under contract with the department; delineating contract and other governance requirements; providing guidelines for the use of funds; providing for the use of property, facilities, and personal services of the department; providing restrictions; providing limits on the direct-support organization; requiring the direct-support organization to submit certain federal tax forms to the department; providing for an annual audit; amending s. 265.002, F.S.; providing for the Department of Veterans' Affairs to replace the Florida Commission on Veterans' Affairs in cooperating with the Department of Management Services to establish the Florida Medal of Honor Wall; amending s. 320.08058, F.S.; requiring that a certain percentage of the annual license plate fee collected from the sale of the "Florida Salutes Veterans" license plate be distributed to the direct-support organization created for the purpose of providing benefit to the Department of Veterans' Affairs for a specified

period; providing that the remaining fees be deposited in the State Homes for Veterans Trust Fund; amending s. 337.111, F.S.; providing that three members of the direct-support organization of the Department of Veterans' Affairs participate on a committee to approve contracts to install monuments and memorials honoring Florida's military veterans at highway rest areas around the state; repealing s. 292.04, F.S., relating to the Florida Commission on Veteran's Affairs; providing an effective date.

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

Section 1. Section 292.055, Florida Statutes, is created to read:

292.055 Direct-support organization.--

(1) SHORT TITLE; DIRECT-SUPPORT ORGANIZATION ESTABLISHED.--This section may be cited as the "Sergeant First Class Paul R. Smith Memorial Act." The Department of Veterans' Affairs may establish a direct-support organization to provide assistance, funding, and support for the department in carrying out its mission. This section governs the creation, use, powers, and duties of the direct-support organization.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Department" means the Department of Veterans' Affairs.

(b) "Direct-support organization" means an organization that is:

1. A Florida corporation not for profit, incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.

2. Organized and operated exclusively to obtain funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and make expenditures to or for the direct or indirect benefit of the department, the veterans of this state, and congressionally chartered veteran service organizations having subdivisions that are incorporated in this state.

3. Determined by the department to be operating in a manner consistent with the goals of the department and in the best interest of the state.

(c) "Personal services" includes full-time or part-time personnel.

(3) BOARD OF DIRECTORS.--The direct-support organization shall be governed by a board of directors.

(a) The board of directors shall consist of no fewer than five members appointed by the executive director of the department. Veteran service organizations in this state may recommend nominees to the executive director of the department.

(b) The term of office of the board members shall be 3 years, except that the terms of the initial appointees shall be for 1 year, 2 years, or 3 years in order to achieve staggered terms. A member may be reappointed when his or her term expires. The executive director of the department or his or her designee shall serve as an ex officio member of the board of directors.

(c) Members must be current residents of this state. A majority of the members must be veterans, as defined in s. 1.01(14), and highly knowledgeable about the United States military, its service personnel, its veterans, and its missions. The executive director of the department may remove any member of the board for cause and with the approval of a majority of the members of the board of directors. The executive director of the department shall appoint a replacement for any vacancy that occurs.

(4) CONTRACT.--A direct-support organization shall operate under a written contract with the department. The written contract must provide for:

(a) Certification by the department that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the department and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(b) The reversion of moneys and property held by the direct-support organization:

1. To the department if the direct-support organization is no longer approved to operate for the department;

2. To the department if the direct-support organization ceases to exist; or

3. To the state if the department ceases to exist.

(c) The disclosure of the material provisions of the contract, and the distinction between the department and the direct-support organization, to donors of gifts, contributions,

or bequests, including such disclosure on all promotional and fundraising publications.

(5) USE OF PROPERTY.--

(a) The department may permit the use of property, facilities, and personal services of the department by the direct-support organization, subject to this section.

(b) The department may prescribe by contract any condition with which the direct-support organization must comply in order to use property, facilities, or personal services of the department.

(c) The department may not permit the use of its property, facilities, or personal services by any direct-support organization organized under this section which does not provide equal employment opportunities to all persons regardless of race, color, national origin, gender, age, or religion.

(6) ACTIVITIES; RESTRICTIONS.--Any transaction or agreement between the direct-support organization organized under this section and another direct-support organization or other entity must be approved by the executive director of the department.

(7) ANNUAL BUDGETS AND REPORTS.--

(a) The fiscal year of the direct-support organization shall begin on July 1 of each year and end on June 30 of the following year.

(b) The direct-support organization shall submit to the department its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from

Income Tax form (Form 990).

(8) ANNUAL AUDIT.--The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

Section 2. Subsections (2) and (3) of section 265.002, Florida Statutes, are amended to read:

265.002 Legislative intent; Florida Medal of Honor Wall; duties of the Department of Veterans' Affairs.--

(2)(a) There is hereby established the Florida Medal of Honor Wall. The Department of Management Services shall, in consultation with the Department of ~~Florida Commission on~~ Veterans' Affairs, designate an appropriate area on the Plaza Level of the Capitol Building in Tallahassee for this purpose. The department shall also subsequently consult with the Department of ~~Commission on~~ Veterans' Affairs regarding the design and theme of such area.

(b) Each recipient who is accredited, or associated by birth, to the State of Florida and has been awarded the Medal of Honor shall have a plaque or similar designation approved by the Department of ~~Florida Commission on~~ Veterans' Affairs placed on the Medal of Honor Wall, which designation shall provide information regarding the Floridian's particular act of heroism as well as other information relating to the nature of the act.

(3) Verification of residency, dates of the receipt of the award, and other specific information pertaining to each recipient shall be the responsibility of the ~~Florida~~ Department of Veterans' Affairs, which shall certify eligibility for inclusion of individuals to be added to the Florida Medal of

Honor Wall.

Section 3. Subsection (4) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.--

(4) FLORIDA SALUTES VETERANS LICENSE PLATES.--

(a) The department shall develop a Florida Salutes Veterans license plate. The words "Florida Salutes Veterans" and the flag of the United States of America must appear on the plate.

(b) The Florida Salutes Veterans license plate annual use fee shall be distributed as follows:

1. Twenty percent shall be distributed to a direct-support organization created under s. 292.055 for a period not to exceed 24 months after the date the direct-support organization is incorporated.

2. Any remaining fees must be deposited in the State Homes for Veterans Trust Fund, which is created in the State Treasury. All such moneys are to be administered by the Department of Veterans' Affairs and must be used solely for the purpose of constructing, operating, and maintaining domiciliary and nursing homes for veterans and for continuing promotion and marketing of the license plate, subject to the requirements of chapter 216.

Section 4. Subsection (1) of section 337.111, Florida Statutes, is amended to read:

337.111 Contracting for monuments and memorials to military veterans at rest areas.--The Department of Transportation is authorized to enter into contract with any not-for-profit group or organization that has been operating for

not less than 2 years for the installation of monuments and memorials honoring Florida's military veterans at highway rest areas around the state pursuant to the provisions of this section.

(1) Proposals for contracts must be approved by a committee composed of the Secretary of Transportation or the secretary's designee, the executive director of the Department of Veterans' Affairs or the executive director's designee, and three members of the board of directors of the direct-support organization established under s. 292.055, ~~Florida Commission on Veterans' Affairs~~ appointed by the executive director ~~chair~~ of the Department of Veterans' Affairs ~~commission~~. The terms of the appointed members may ~~shall be appointed for terms~~ not ~~to~~ exceed 2 years and shall run concurrently with the members' terms on the board of directors of the direct-support organization. Appointed members may be reappointed to the committee. ~~Appointed members' terms expire on January 31 of each even numbered year.~~

Section 5. Section 292.04, Florida Statutes, is repealed.

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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 863 Pub. Rec./Direct-Support Organization/DVA
**SPONSOR(S):** Healthcare Council; Reagan
**TIED BILLS:** HB 861 **IDEN./SIM. BILLS:** SB 1464

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Healthy Seniors | 7 Y, 1 N | DePalma/Massengale | Ciccone |
| 2) Healthcare Council | 17 Y, 0 N, As CS | DePalma/Massengale | Gormley |
| 3) Policy & Budget Council | | Leznoff | Hansen MH |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

The Council Substitute for House Bill 863 is the public records exemption companion to HB 861, which permits the Florida Department of Veterans' Affairs to establish a direct-support organization for the purpose of providing assistance, funding, and support to the department. The bill makes confidential and exempt, from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution, the identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, as well as all identifying information of such donor or prospective donor. The bill further provides a further exemption for portions of meetings of the direct-support organization during which the identity of donors or prospective donors is discussed.

The bill specifies this exemption is subject to the Open Government and Sunset Review Act in accordance with s. 119.15, F.S., and provides that such exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption.

The bill creates a new public records exemption and, as a result, is subject to Article I, s. 24(a) of the Florida Constitution, which requires that two-thirds of the members present and voting in each house shall pass the bill.

The bill provides that the bill is effective July 1, 2008, contingent upon HB 861 taking effect and becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – This bill decreases access to certain public records.

B. EFFECT OF PROPOSED CHANGES:

**Background**

HB 861

HB 861 permits the Florida Department of Veterans' Affairs ("the department") to establish a direct support-organization (DSO) for the purpose of providing assistance, funding, and support to the department. The bill provides for governance of the DSO by a board of directors, and specifies board composition and term limits. The bill additionally requires that a DSO shall operate under a written contract with the department, and provides contract requirements. The bill authorizes the department to permit use of departmental property, facilities, and personal services by the DSO under certain circumstances. Finally, the bill restricts transactions or agreements between the DSO it authorizes and another DSO absent approval by the department's executive director, requires the DSO to submit certain federal tax documents to the department, and provides for an annual financial audit of the DSO in accordance with s. 215.981, F.S.

Veterans Returning from the Global War on Terror

According to the department, the number of members of the United States Armed Forces who have served or are presently serving in the Global War on Terror and who claim Florida as their home of record (a good indicator of where such individuals are likely to reside after leaving the service) as of December 2007 is 158,349. This figure is up from 143,469 in December 2006. It is the department's contention that this influx of younger veterans will require increased flexibility on the part of the department to meet their needs.

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

[1] S. 1390,1391, F.S., (Rev. 1892).

[2] Article I, s. 24 of the Florida Constitution.

In addition to the State Constitution, the Public Records Act,[3] which predates the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., states:

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

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

> ...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Supreme Court of Florida has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act[14] provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or

---

[3] Ch. 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

[5] S. 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633,640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

[8] Article I, s. 24(c) of the Florida Constitution.

[9] *Memorial Hospital-West Volusia v. News Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News Journal Corporation*, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Article I, s. 24(c) of the Florida Constitution.

[12] Attorney General Opinion 85-62

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

[14] S. 119.15, F.S.

the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria, and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

(1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
(2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
(3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:

(1) What specific records or meetings are affected by the exemption?
(2) Whom does the exemption uniquely affect, as opposed to the general public?
(3) What is the identifiable public purpose or goal of the exemption?
(4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
(5) Is the record or meeting protected by another exemption?
(6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4)(e), F.S., makes explicit the fact that:

> ...notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions not any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 119.10(1)(a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed $500. Further, under paragraph (b) of that section, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first degree misdemeanor penalty, and is subject to suspension and removal from office or impeachment. Additionally, any person who willfully and

[15] *Id.*
[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

knowingly violates any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year, and a fine not exceeding $1,000.

**Effect of Proposed Changes**

The bill is the public records exemption companion to HB 861, which permits the Florida Department of Veterans' Affairs to establish a direct-support organization for the purpose of providing assistance, funding, and support to the department. The bill makes confidential and exempt, from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution, the identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, as well as all identifying information of such donor or prospective donor. The bill further provides a further exemption for portions of meetings of the direct-support organization during which the identity of donors or prospective donors is discussed

The bill specifies this exemption as subject to the Open Government and Sunset Review Act in accordance with s. 119.15, F.S., and provides that such exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption.

The bill creates a new public records exemption and, as a result, is subject to Article I, s. 24(a) of the Florida Constitution, which requires that two-thirds of the members present and voting in each house shall pass the bill.

The bill provides that the bill is effective July 1, 2008, contingent upon HB 861 taking effect and becoming law.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 292.055(6), F.S., as created by HB 861, 2008 Regular Session; creating a public records exemption.

**Section 2.** Provides a statement of public necessity for the exemption.

**Section 3.** Provides that the bill is effective July 1, 2008, contingent upon HB 861 taking effect and becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There may be minimal costs of complying with the confidentiality and exemption requirements; however, these costs are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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

None provided.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its April 1, 2008 meeting, the Healthcare Council adopted a strike-all amendment to HB 863. In addition to conforming the bill to its Senate companion, the amendment also:

- Specifies that the public records exemption created also applies to portions of meetings of the DSO during which the identity of donors is discussed.

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

A bill to be entitled

An act relating to public records and meetings; amending s. 292.055, F.S.; providing an exemption from public records requirements for information concerning certain donors and prospective donors to the direct-support organization of the Department of Veterans' Affairs; providing an exemption from public meeting requirements for portions of meetings of the direct-support organization at which the identity of donors and prospective donors is discussed; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) is added to section 292.055, Florida Statutes, as created by HB 861, 2008 Regular Session, to read:

292.055 Direct-support organization.--

(9) CONFIDENTIALITY OF DONORS.--

(a) The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Portions of meetings of the direct-support

organization during which the identity of donors or prospective donors is discussed are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to exempt from public records requirements the identity of donors and prospective donors to the direct-support organization authorized to assist the Department of Veterans' Affairs in carrying out its function to serve the military veterans of this state. The ability to protect the identity of donors and prospective donors will enable the direct-support organization to effectively and efficiently administer the promotion and public-education efforts of the direct-support organization related to the goal of assisting veterans who return from recent conflicts. The purpose of the exemption is to honor the request for anonymity of donors or prospective donors to the not-for-profit corporation, thereby encouraging donations from individuals and entities that might otherwise decline to contribute. Without the exemption, potential donors may be dissuaded from contributing to the direct-support organization for fear of being harmed by the release of sensitive financial information. Difficulty in soliciting donations would hamper the ability of the direct-support organization to carry out its education and rehabilitation activities to promote and advance a veteran's reintegration into the community through both public-

sector and private-sector funding. Further, the Legislature finds that it is a public necessity to exempt from public meeting requirements that portion of a meeting of the direct-support organization at which the identity of a donor or prospective donor is discussed. The failure to close that portion of a meeting at which such information is discussed would defeat the purpose of the public records exemption and could result in the release of the identity of a donor or prospective donor, thus leading to a reduction in donations and the subsequent hindrance of the effective and efficient operation of this governmental program.

Section 3. This act shall take effect July 1, 2008, if House Bill 861, or similar legislation establishing a direct-support organization for the Department of Veterans' Affairs, is adopted in the same legislative session or an extension thereof and becomes law.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 903 Registration of Paid Petition Circulators

**SPONSOR(S):** Economic Expansion & Infrastructure, Dorworth & others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2340

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Ethics & Elections | 7 Y, 0 N | West | Mitchell |
| 2) Economic Expansion & Infrastructure Council | 9 Y, 4 N, As CS | West/Madsen | Tinker |
| 3) Policy & Budget Council | | Martin | Hansen |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

HB 903 addresses the process by which citizens may propose amendments to the state constitution, particularly the procedures involving signature-gathering by paid petition circulators. The bill requires that paid petition circulators satisfy certain requirements and that they register with the Department of State (Department).

The bill authorizes the adoption, by Department rule, of a fee to be charged to those registering as paid petition circulators to offset the cost of registration and regulation. The Department estimates a nonrecurring cost of up to $100,000 to create a database to permit the registration of paid petition circulators. While the bill authorizes the Department to collect fees to cover these costs, the bill does not provide an appropriation of additional trust funds to allow the agency to expend the fee revenue.

The bill is effective August 1, 2008.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government**

The bill creates regulations and requires registration of paid petition circulators.

**Ensure Lower taxes**

Under the bill, a fee may be charged to petition circulators. The fee is yet to be determined and is intended to cover the costs of registration and regulation by the Department.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Two pieces of legislation were enacted in 2007 that affect citizen initiatives. CS/SB 1920[1] permits an owner or lessee of private property to exclude persons who undertake activities supporting or opposing ballot initiatives. CS/HB 537[2] created a revocation process whereby a person signing a citizen initiative petition can revoke one's signature within 150 days of initially signing a petition. A number of additional reforms of the citizen initiative process were contained in HB 7009 in 2007. The bill passed all Council and Committee references, but was laid on the table May 1, 2007.

Some of the changes proposed in HB 903 reflect suggestions by the Ballot Initiative Strategy Center (BISC), a non-profit organization based in Washington, D.C. According to the BISC web site, the organization was "launched five years ago to reinvigorate the initiative process among state and national progressive organizations by providing education, training, and research so that a wide range of ideologically progressive groups can use the process more effectively to fight for social, environmental, and economic justice." Two notable BISC recommendations are:

1. **Circulators should be required to register with the Secretary of State, and the list of registrants should be accessible as public information.**

Because of the nature of the paid signature gathering industry, the field will likely always be fraught with mercenary or traveling petitioners. By requiring all signature gatherers to register with the Secretary of State, initiative watch dogs will be able to do multi-state research on petitioners. BISC recommends that, in addition to the information required in this bill, the Department should require disclosure of any arrests or convictions for sexual assaults or identity theft. These crimes are particularly sensitive to an unsuspecting public. It would be a service to voters to know that they are not providing their personal information to dangerous criminals or identity thieves.

[1] Chapter 2007-231, Laws of Fla.
[2] Chapter 2007-30, Laws of Fla.

2. **Prevent people who have been convicted of certain crimes from circulating petitions - convictions such as identity theft, sex offenses, other fraud.**

California prohibits felons who are currently on parole from circulating petitions. In Florida, all felons, including those guilty of sex offenses, identity theft, and fraud convictions are permitted to collect signatures. At the least, those offenses are considered germane to whether a person should be permitted to gather voters' personal information. It is only possible to prevent these people from circulating if there is some form of registration in the state, so that officials are aware of who is petitioning. BISC recommends that states should establish a system of registering each petitioner with the Secretary of State, and collecting the information necessary to run criminal background checks.

## Proposed Changes

### Definitions

HB 903 creates s. 100.372, F.S., to provide for the following definitions:

> "Petition circulator" means any person who, in the context of a direct face-to-face interaction, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.
>
> "Paid petition circulator" means a petition circulator who receives any compensation as a direct or indirect consequence of the activities described in the paragraph above, other than for the reimbursement of legitimate out-of-pocket expenses incurred by the petition circulator in the ordinary course of these activities, as specified by Department rule.
>
> "Registrant" means a person who is registered with the Department as a paid petition circulator.

### Prohibited Acts

HB 903 does the following:

- Prohibits a paid petition circulator from collecting petitions in Florida without first registering with the Department.
- Prohibits anyone from paying a petition circulator who is not registered with the Department.
- Prohibits registrants from circulating petition forms until the forms have been registered with the Department.

The bill's provisions would presumably be enforced by county supervisors of elections (supervisors) who would have to determine if a petition circulator had registered with the Department and satisfied all the requirements. It appears that some type of database would have to be developed by the Department to register and track paid petition circulators. This information would then have to be made available to supervisors.

**Registration Requirements for Paid Petition Circulators**

A person cannot be registered with the Department as a paid petition circulator unless the person is:

- a citizen of the United States for purposes of s. 97.041(1)(a)2., F.S.;
- a legal resident of this state for purposes of s. 97.041(1)(a)3., F.S.; and
- not a convicted felon ineligible to register to vote or to vote pursuant to s. 97.041(2)(b), F.S.

The bill provides that if a person no longer satisfies one or more of the above requirements, the registration is immediately rendered invalid by operation of law, the person is required to immediately notify the Department, and the person is required to immediately cease all petition gathering activities.

The bill does not specifically address how the Department might verify a person's registration information or whether it is required to do so. The Department could simply treat verification as a ministerial duty and accept each person's registration information as being true and accurate. Alternatively, the Department might conduct a background check of each applicant. Information about paid petition circulators will be accessible to the public. It is expected that the registration requirements will be "self-policing" in that firms employing paid petition circulators and opponents of initiatives will be checking for compliance with the bill's requirements.

The bill imposes a number of registration requirements on paid petition circulators. A person is required to provide to the Department:

- His or her full legal name;
- The street address at which the person legally resides;
- The person's telephone number;
- The person's date of birth;
- A copy of a valid government-issued, photo identification card;
- The name, street address, and telephone number of the person or entity from which the person will receive compensation as a direct or indirect consequence of his or her activities;
- Identification of the petition forms or petition-revocation forms that the person will be circulating;
- Any other information required by Department rule; and
- As a condition of registration, the registrant would be required to notify the Department of any change in the information submitted pursuant to this subsection within one business day after the change.

The bill gives authority to the Department to require, "...any other information required by Department rule" as a condition of registration.

**Petition Form**

The bill requires that the petition form that is circulated by the registrant:

- be registered with the Department.
- include the paid petition circulator's registration number.

**Verification Requirements**

The bill provides that petitions may not be verified by the supervisor, and may not be counted toward the number of valid signatures required for ballot placement if such signature was not gathered in full compliance with new s. 100.372, F.S.

Any signature gathered on a previously approved initiative petition form or petition-revocation form that is submitted for verification before August 1, 2008 (the bill's effective date), may be verified and counted if otherwise valid. However, any initiative petition form or petition-revocation form that is submitted for verification on or after August 1, 2008, may be verified and counted only if it complies with new s. 100.372, F.S.

The bill is effective August 1, 2008.

C. SECTION DIRECTORY:

**Section 1**. Creates s. 100.372, F.S., to require registration and regulation of paid petition circulators.

**Section 2**. Provides a severability clause.

**Section 3**. Provides an effective date of August 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill authorizes the adoption, by rule, of a fee to be charged to those registering as paid petition circulators to offset the cost of registration and regulation. This fee is to be deposited in the Grants and Donations Trust Fund of the Department of State.

2. Expenditures:

   The Department estimates a nonrecurring cost of up to $100,000 to create a database to permit the registration of paid petition circulators. While the bill authorizes the Department to collect

fees to cover these costs, the bill does not provide an appropriation of additional trust funds to allow the agency to expend the fee revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Supervisors would be required to dedicate staff time to verify that paid petition circulators met the requirements of the law before verifying each petition.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires that a fee be charged to paid petition circulators for registration with the Department. At this time, the amount of that fee is undetermined.

D. FISCAL COMMENTS:

The bill does not provide an appropriation of additional trust funds to allow the agency to expend the fee revenue that it is authorized to collecty under this bill.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Election laws are exempt from the mandates provisions of s. 18(a), Art. VII, Fla..Const.

2. Other:

B. RULE-MAKING AUTHORITY:

Provides rulemaking authority to the Department to register and regulate paid petition circulators, including the adoption of a new fee to cover the cost of the registration of the paid petition circulators.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not make clear how the paid petition circulators will register or how the information will be communicated to the supervisors. There is no provision for invalidating petitions that were gathered by paid petition circulators who violate the bill's requirements or whether a voter whose petition has been invalidated may sign a new petition (and not violate s. 104.185 (1), F.S., which prohibits knowingly signing a petition more than once).

D. STATEMENT OF THE SPONSOR

None provided.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 1, 2008, the Economic Expansion & Infrastructure Council adopted one amendment requiring that funds collected from the registration of paid petition circulators be deposited in the Grants and Donations Trust Fund of the Department.

A bill to be entitled

An act relating to the registration of paid petition circulators; creating s. 100.372, F.S.; providing definitions; requiring paid petition circulators to register with the Department of State; prohibiting compensation to petition circulators not registered with the department as paid petition circulators; providing registration qualifications and criteria; requiring a paid petition circulator's registration number on petition forms; providing for invalidity of certain petition signatures; providing for validity of forms submitted before a certain date; authorizing the department to adopt rules; authorizing adoption of a registration fee to be deposited in the Grants and Donations Trust Fund; providing for severability; providing an effective date.

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

Section 1. Section 100.372, Florida Statutes, is created to read:

100.372 Registration of paid petition circulators.--

(1) For purposes of this code:

(a) "Petition circulator" means any person who, in the context of a direct face-to-face interaction, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.

(b) "Paid petition circulator" means a petition circulator

who receives any compensation as a direct or indirect consequence of the activities described in paragraph (a), other than for the reimbursement of legitimate out-of-pocket expenses incurred by the petition circulator in the ordinary course of these activities, as specified by department rule.

(c) "Registrant" means a person who is registered with the department as a paid petition circulator.

(2) A person may not engage in any activities as a paid petition circulator in this state without first registering with the department. A person or entity may not provide compensation as a direct or indirect consequence of the activities described in paragraph (1)(a) to a petition circulator who is not registered with the department as a paid petition circulator.

(3) A person may not be registered as a paid petition circulator by the department unless the person is:

(a) A citizen of the United States for purposes of s. 97.041(1)(a)2.;

(b) A legal resident of this state for purposes of s. 97.041(1)(a)3.; and

(c) Not a convicted felon ineligible to register to vote or vote pursuant to s. 97.041(2)(b).

(4) If, at any time, a registrant no longer satisfies one or more of the requirements set forth in subsection (3), the registrant's registration shall be immediately rendered invalid by operation of law, the registrant shall immediately notify the department, and the registrant shall immediately halt all activities as a paid petition circulator.

(5) To register with the department as a paid petition

circulator, a person shall provide his or her full legal name; the street address at which the person legally resides; the person's telephone number; the person's date of birth; a copy of a valid government-issued photo identification card; the name, street address, and telephone number of the person or entity from which the person will receive compensation as a direct or indirect consequence of the activities described in paragraph (1)(a); identification of the petition forms or petition-revocation forms that the person will be circulating; and any other information required by department rule. As a condition of registration, the registrant shall notify the department of any change in the information submitted pursuant to this subsection within 1 business day after such change.

(6) A registrant shall not circulate any petition forms or petition-revocation forms as a paid petition circulator until the registrant has registered those forms with the department.

(7) Every petition form or petition-revocation form presented by a paid petition circulator to a person for his or her possible signature must contain that paid petition circulator's registration number, as issued by the department.

(8) A signature on a petition form or petition-revocation form regarding ballot placement for an initiative is invalid, may not be verified by the supervisor of elections, and may not be counted toward the number of valid signatures required for ballot placement if such signature was not gathered in full compliance with this section.

(9) Any signature gathered on a previously approved initiative petition form or petition-revocation form that has

been submitted for verification before August 1, 2008, may be verified and counted if otherwise valid. However, any initiative petition form or petition-revocation form that is submitted for verification on or after August 1, 2008, may be verified and counted only if it complies with this section.

(10) The Department of State may adopt rules in accordance with ss. 120.536(1) and 120.54 to carry out the provisions of this section, including the adoption of a registration fee not exceeding the amount necessary to cover the department's cost of registration and regulation. Funds collected from registrants shall be deposited in the Grants and Donations Trust Fund of the Department of State.

Section 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 3. This act shall take effect August 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No. **0903**

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 | _____ |

---

Council/Committee hearing bill: Policy & Budget Council

Representative Dorworth offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 100.371, Florida Statutes, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(3) Each signature shall be dated when made and shall be valid for a period of 2 ~~4~~ years following such date, provided all other requirements of law are met. The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The Secretary of State shall require certification of level 2 background screening, as provided in chapter 435, for employees or contractors of a sponsor who are in positions of trust due to regular contact with members of the general public for the purpose of obtaining signatures on petition forms. The supervisor shall promptly verify the signatures within 30 days of receipt of the petition forms and payment of the fee required by s. 99.097. The supervisor shall verify that the signature on

a form is valid only if the date the elector signed the form, as recorded by the elector, is no more than 60 days before the date the form is received by the supervisor. The supervisor shall promptly record in the statewide voter registration system, in the manner prescribed by the Secretary of State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid. The supervisor may verify that the signature on a form is valid only if:

(a) The form contains the original signature of the purported elector.

(b) The purported elector has accurately recorded on the form the date on which he or she signed the form.

(c) The form accurately sets forth the purported elector's name, street address, county, and voter registration number or date of birth.

(d) The purported elector is, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted.

The supervisor shall retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to obtain ballot position.

Section 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

---

**T I T L E  A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to initiatives; amending s. 100.371, F.S.; providing that petition signatures are valid for 2 years; requiring background screening for persons gathering signatures on initiative petitions; providing that supervisors shall verify signatures only if signed within a specified period; providing for severability; providing an effective date.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1163 & HB 757 Public School Physical Education

**SPONSOR(S):** Dorworth; Davis, D.

**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Schools & Learning Council | 14 Y, 2 N | Kutasi/Eggers | Cobb |
| 1) Policy & Budget Council | | Martin | Hansen |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

Florida law requires a district school board to provide 150 minutes of physical education (P.E.) each week for students in kindergarten through grade 5. The bill requires that, with regard to those 150 minutes, students must participate in at least 30 consecutive minutes of P.E. whenever they are participating in P.E.

The bill expands the 150 minute P.E. requirement to include students in grade 6 who are enrolled in a school that contains one or more elementary grades.

Beginning with the 2009-2010 school year, the bill requires that students in grade 6, who are enrolled in a school that does not contain an elementary grade, and students in grades 7 and 8 must take "one class period per day, or the equivalent, of P.E. for one semester of each school year." These students may be exempted from this requirement if:

- The parent requests, in writing and prior to the student's enrollment, an exemption from the P.E. requirement; or
- The schedule for the student's courses of study cannot be modified to provide adequate time for P.E. without interfering with the student's normal progression or enrollment in a remedial course.

The bill deletes language *encouraging* a district school board to provide 225 minutes of P.E. each week for students in grades 6 through 8.

The bill does not appear to have a fiscal impact on state government expenditures. However, for local school districts, according to the Department of Education, if each school district uses only certified P.E. teachers, 1,835 additional P.E. teachers would be required at a cost of $89,500,290 annually in salaries and benefits. However, the bill retains a school district's ability to use any instructional personnel to teach P.E. (not simply certified P.E. teachers), thereby minimizing costs. The costs to school districts is indeterminate.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Background:

Between 1976–1980 and 2003–2004, the percentage of overweight children increased from 5.0 percent to 13.9 percent for those aged 2–5 years, from 6.5 percent to 18.8 percent for those aged 6–11 years, and from 5.0 percent to 17.4 percent for those aged 12–19 years.[1] As a result, states are implementing various health policies and programs within schools, including revising physical education (P.E.) requirements. According to a national study using data from the 2006-2007 school year, 69.3 percent of elementary schools, 83.9 percent of middle schools, and 95.2 percent of high schools required P.E.[2] During that same school year, 3.8 percent of elementary schools, 7.9 percent of middle schools, and 2.1 percent of high schools provided daily P.E., or its equivalent, for the entire school year for students in all grades of the school.[3]

Present Situation:

Florida law requires a district school board to develop a P.E. program that stresses physical fitness and encourages healthful, active lifestyles.[4] P.E. must consist of physical activities of at least a moderate intensity level and for a duration sufficient to provide a significant health benefit to students, subject to the differing capabilities of students.[5] Each district school board must adopt a written P.E. policy detailing the school district's P.E. program and expected program outcomes.[6]

Florida law requires a district school board to provide 150 minutes of P.E. each week for students in kindergarten through grade 5.[7] Furthermore, a district school board is encouraged to provide 225 minutes of P.E. each week for students in grades 6 through 8.[8] As a part of Florida's general requirements for high school graduation, a student must receive one credit in P.E.[9]

P.E. instruction in kindergarten through grade 5 may be provided by any instructional personnel[10] regardless of certification, as designated by the school principal.[11]

---

[1] The Center for Disease Control and Prevention, *Physical Activity and Good Nutrition: Essential Elements to Prevent Chronic Disease and Obesity, available at* http://www.cdc.gov/nccdphp/publications/aag/dnpa.htm (last viewed Apr. 2, 2008).
[2] The Center for Disease Control and Prevention, *SHPPS 2006: School Health Policies and Programs Study-Physical Education, available at* http://www.cdc.gov/HealthyYouth/shpps/2006/factsheets/component_index.htm (last viewed Apr. 2, 2008).
[3] *Id.* (The equivalent of daily physical education is 150 minutes per week in elementary schools and 225 minutes per week in middle and high schools.)
[4] §1003.455(1), Fla. Stat.
[5] *Id.*
[6] §1003.455(2), Fla. Stat.
[7] §1003.455(3), Fla. Stat.
[8] *Id.*
[9] §1003.428(2)(a)(6), Fla. Stat.
[10] §1012.01(2), Fla. Stat., defines "instruction personnel" as classroom teachers, staff members responsible for student personnel services, librarians and media specialists, other instructional staff, and education paraprofessionals.
[11] §1003.455(3), Fla. Stat.

Effect of Proposed Changes:

This bill adds a requirement for a district school board's written P.E. policy to include "the benefits of physical education, and the availability of one-on-one counseling concerning the benefits of physical education."

The bill expands the 150 minute per week P.E. requirement for students from kindergarten through grade 5 to include "students in grade 6 who are enrolled in a school that contains one or more elementary grades." The bill requires that, with regard to those 150 minutes, students must participate in at least 30 consecutive minutes of P.E. whenever they are participating in P.E.

Additionally, beginning with the 2009-2010 school year, the bill requires a student in grade 6, enrolled in a school that does *not* contain an elementary grade, and students in grades 7 and 8 to take "one class period per day, or the equivalent, of physical education for one semester of each school year." The effective date of this provision allows school districts adequate time to establish teacher and student schedules in compliance with the new P.E. requirement.

The bill exempts students from P.E. in grade 6, who are enrolled in a school that does not contain an elementary grade, and students in grades 7 and 8 if:

- The parent requests in writing, prior to the student's enrollment, an exemption from the physical education requirement. The parent may make such a written request for each school year the student is in grades 6, 7, or 8; or
- The schedule for the student's courses of study cannot be modified to provide adequate time for the required minutes of physical education without interfering with the student's normal progression[12] or enrollment in a remedial course.[13]

The bill deletes the provision encouraging a district school board to provide 225 minutes of P.E. each week for students in grades 6 through 8.

The existing provisions of law allow instructional personnel, regardless of certification, to teach P.E. This same provision applies to the required P.E. instruction for students in grades 6, 7, 8.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 1003.455, adding requirements regarding a district school board's P.E. policy; requiring 30 consecutive minutes of P.E. on any day P.E. is provided for certain grades; expanding P.E. requirements to grades 6 through 8; and creating exceptions to the P.E. requirement.

**Section 2.** Provides an effective date of July 1, 2008.

---

[12] §1003.4156, Fla. Stat., provides that, beginning with students in grade 6 in the 2006-2007 school year, in order to be promoted to the ninth grade a student must complete the following: three middle school or higher courses in English (emphasizing literature, composition, and technical text); three middle school or higher courses in mathematics; three middle school or higher courses in social studies (one semester of which must include the study of state and federal government and civics education); three middle school or higher courses in science; and one semester-long course in career and education planning to be completed in seventh or eighth grade.

[13] §1003.4156, Fla. Stat., provides that in order to be promoted to the ninth grade, a student receiving a score at Level 1 on FCAT Reading must be enrolled in and complete an intensive reading course the following year. Students receiving a score at Level 2 on FCAT Reading must be placed in either an intensive reading course or a content area course in which reading strategies are delivered and determined by diagnosis of reading needs. The statute further provides that a student receiving a score at Level 1 or Level 2 on FCAT Mathematics must receive remediation the following year which may be integrated into the student's required mathematics course.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The bill requires one class period of P.E. per day for one semester of each year a student is enrolled in the sixth, seventh, and eighth grades. According to the Department of Education, if each school district uses only certified P.E. teachers, 1,835 additional P.E. teachers would be required at a cost of $89,500,290 annually in salaries and benefits. However, the bill retains a school district's ability to use *any* instructional personnel to teach P.E. (not simply certified P.E. teachers), thereby minimizing costs. Costs will also be reduced as a result of students not taking P.E. because of parental requests or because the students' courses of study cannot be modified to provide adequate time for P.E. without interfering with their normal progression or enrollment in remedial courses. Also, P.E. classes are not subject to class size maximum restrictions. The costs to school districts is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds. The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 8, 2008, the Schools and Learning Council adopted a council substitute for HB 1163 and HB 757.

House Bill 757 required 225 minutes of physical education each week for students in grades 6 through 8. Existing law only encourages a district school board to provide 225 minutes of P.E each week for students in grades 6 through 8.

In contrast, the council substitute requires, beginning with the 2009-2010 school year, that students in grade 6, who are enrolled in a school that does not contain an elementary grade, and students in grades 7 and 8 must take "one class period per day, or the equivalent, of P.E. for one semester of each school year." These students may be exempted from this requirement if:

- The parent requests, in writing and prior to the student's enrollment, an exemption from the P.E. requirement; or
- The schedule for the student's courses of study cannot be modified to provide adequate time for P.E. without interfering with the student's normal progression or enrollment in a remedial course.

The council substitute in addition amends the existing law that students in K to grade 5 receive 150 minutes of P.E., by including students in grade 6 who are enrolled in a school that contains one or more elementary grades. The council substitute also requires that, regarding the 150 minutes currently required by law, students must participate in at least 30 consecutive minutes of P.E. whenever they are participating in P.E.

Both HB 757 and the council substitute delete language *encouraging* a district school board to provide 225 minutes of P.E. each week for students in grades 6 through 8.

A bill to be entitled

An act relating to physical education; amending s. 1003.455, F.S.; adding requirements regarding a school district's physical education policy; adding a condition to existing physical education requirements; requiring physical education in grades 6 through 8; providing exceptions under certain circumstances; providing an effective date.

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

Section 1. Section 1003.455, Florida Statutes, is amended to read:

1003.455 Physical education; assessment.--

(1) It is the responsibility of each district school board to develop a physical education program that stresses physical fitness and encourages healthful, active lifestyles and to encourage all students in prekindergarten through grade 12 to participate in physical education. Physical education shall consist of physical activities of at least a moderate intensity level and for a duration sufficient to provide a significant health benefit to students, subject to the differing capabilities of students. All physical education programs and curricula must be reviewed by a certified physical education instructor.

(2) Each district school board shall adopt a written physical education policy that details the school district's physical education program, the ~~and~~ expected program outcomes,

the benefits of physical education, and the availability of one-on-one counseling concerning the benefits of physical education.

(3) Each district school board, except as otherwise permitted under subsection (4), shall provide:

(a) One hundred fifty ~~150~~ minutes of physical education each week, of which at least 30 consecutive minutes must be provided on any day that physical education is provided, for students in kindergarten through grade 5 and students in grade 6 who are enrolled in a school that contains one or more elementary grades; and

(b) Beginning with the 2009-2010 school year, one class period per day, or the equivalent, of physical education for one semester of each school year for students in grade 6 who are enrolled in a school that does not contain an elementary grade and for students in grades 7 and 8.

Students enrolled in such instruction shall be reported through the periodic student membership surveys, and records of such enrollment shall be audited under ~~pursuant to~~ s. 1010.305. Such instruction may be provided by any instructional personnel as defined in s. 1012.01(2), regardless of certification, who are designated by the school principal. ~~Each district school board is encouraged to provide 225 minutes of physical education each week for students in grades 6 through 8.~~

(4) A district school board is not required to provide physical education for a student in grade 6 who is enrolled in a school that does not contain an elementary grade and for students in grades 7 and 8 if:

(a) The parent requests, in writing, prior to the student's enrollment, an exemption from the physical education requirement for that school year. The parent may make such a written request for each school year the student is in grade 6, grade 7, or grade 8; or

(b) The schedule for the student's courses of study cannot be modified to provide adequate time for physical education without interfering with the student's normal progression or enrollment in a remedial course.

Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No. **1163**

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 | _____ |

---

Council/Committee hearing bill: Policy & Budget Council

Representative Dorworth offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "Don Davis Physical Education Act."

Section 2. Section 1003.455, Florida Statutes, is amended to read:

1003.455 Physical education; assessment.--

(1) It is the responsibility of each district school board to develop a physical education program that stresses physical fitness and encourages healthful, active lifestyles and to encourage all students in prekindergarten through grade 12 to participate in physical education. Physical education shall consist of physical activities of at least a moderate intensity level and for a duration sufficient to provide a significant health benefit to students, subject to the differing capabilities of students. All physical education programs and curricula must be reviewed by a certified physical education instructor.

(2) Each district school board shall adopt a written physical education policy that details the school district's physical education program, the ~~and~~ expected program outcomes, the benefits of physical education, and the availability of one-on-one counseling concerning the benefits of physical education.

(3) Each district school board shall provide 150 minutes of physical education each week for students in kindergarten through grade 5 and for students in grade 6 who are enrolled in a school that contains one or more elementary grades so that on any day during which physical education instruction is conducted there are at least 30 consecutive minutes per day. Beginning with the 2009-2010 school year, the equivalent of one class period per day of physical education for one semester of each year is required for students enrolled in grades 6 through 8. Students enrolled in such instruction shall be reported through the periodic student membership surveys, and records of such enrollment shall be audited pursuant to s. 1010.305. Such instruction may be provided by any instructional personnel as defined in s. 1012.01(2), regardless of certification, who are designated by the school principal. ~~Each district school board is encouraged to provide 225 minutes of physical education each week for students in grades 6 through 8.~~

(4) The requirement in subsection (3) shall be waived for a student who meets one of the following criteria:

(a) The student is enrolled or required to enroll in a remedial course.

(b) The student's parent indicates in writing to the school that:

1. The parent requests that the student enroll in another course from among those courses offered as options by the school district; or

2. The student is participating in physical activities outside the school day which are equal to or in excess of the mandated requirement.

(5) Each school district shall notify the student's parent of the options available under subsection (4) before scheduling the student to participate in physical education.

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

---

**T I T L E  A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to physical education; providing a short title; amending s. 1003.455, F.S.; requiring physical education in grades 6 through 8; providing for waivers under certain circumstances; requiring school districts to notify parents of the waiver options; providing an effective date.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1245 Regional Transportation Authorities
**SPONSOR(S):** Economic Expansion & Infrastructure & Galvano
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1512

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Infrastructure | 10 Y, 0 N | Creamer | Miller |
| 2) Economic Expansion & Infrastructure Council | 13 Y, 0 N, As CS | Creamer/Madsen | Tinker |
| 3) Policy & Budget Council | | Langston | Hansen |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

CS/HB 1245 provides that 80 percent of the rental car surcharge revenues collected in a county within the South Florida Regional Transportation Authority (SFRTA) shall be deposited into the accounts of the SFRTA. Additionally, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Area Regional Transportation Authority may request to receive rental car surcharge revenues in a similar manner. Currently the revenues are deposited in the State Transportation Trust Fund (STTF) to fund transportation projects in the district where collected.

The bill provides that regional transportation authorities created pursuant to chapter 343, F.S., are not included in the definition of "agency" under chapter 120, F.S., and thus not subject to the provisions of the Administrative Procedure Act.

Provisions in the bill also relieve the Department of Transportation's (DOT) funding obligations to certain RTAs that receive State Transportation Trust Funding in an amount equal to the local government contribution for intercity or commuter rail service development projects.

The bill also relieves Broward, Palm Beach, and Dade counties of their annual $45 million in funding obligations for capital, operating and maintenance expenses of the South Florida Regional Transportation Authority (SFRTA). Such obligations are required only when all three counties served by the SFRTA impose a local option funding source, which they have not done to date. These three counties are also relieved of their annual $2.67 million and $1.565 million funding obligation required to fund the operations of the SFRTA.

CS/HB 1245 has a negative recurring fiscal impact on the State Transportation Trust Fund of at least -$40.6 million in fiscal year 2008-09 which increases to -$44.0 million in fiscal year 2012-13. This results in an estimated -$211.5 million revenue reduction to the STTF over the five year work program period. If the Northwest Florida Transportation Corridor Authority and the Tampa Bay Area Regional Transportation Authority each choose to receive rental car surcharge revenues, the additional revenue reduction to the STTF in fiscal year 2008-09 would be approximately -$21.5 million, and -$112.1 million over the five year work program period. Under the bill, DOT will be relieved of funding obligations to SFRTA operations of $87 million over the five year work program for a maximum net negative impact of -$236.6 million to the STTF. This redirected revenue will be deposited in the accounts of the specified RTAs as a recurring funding source and will result in a net positive fiscal impact of $323.6 million to the specified RTAs over the five year work program period.

The bill takes effect July 1, 2008.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – CS/HB 1245 places additional administrative responsibilities on the Department of Revenue (DOR) to distribute the local-option surcharge.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

**Florida Administrative Procedure Act**

Chapter 120, F.S., the Administrative Procedure Act, provides the process by which agencies must adopt rules. These methods provide for public notice of agency intent to adopt a rule and for intervention by persons substantially affected by the decision to implement that rule. Chapter 120, F.S., also controls administrative dispute resolution procedures in cases when the effect on a person's substantial interests regarding the enforcement of an administrative decision or application of a rule must be determined.

For purposes of the Administrative Procedure Act, "Agency," as defined in s. 120.52, F.S., means:

- The Governor;
- State officers;
- Each department, authority, board, commission, regional planning agency, multicounty special district with a majority of its governing board composed of non-elected persons, educational unit, and entities described in chapters 163, 373, 380, and 582 and s. 186.504, F.S.; and
- Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

Certain entities are exempted from this definition, including such transportation related entities as any metropolitan planning organization created pursuant to s. 339.175, F.S., any separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member, an expressway authority pursuant to chapter 348, F.S., or transportation authority under chapter 349, F.S.

**Regional Transportation Authorities**

Currently, there are five regional transportation authorities created in chapter 343, F.S.; the South Florida Regional Transportation Authority; the Central Florida Regional Transportation Authority; the Tampa Bay Commuter Transit Authority; the Northwest Florida Regional Transportation Corridor Authority; and the Tampa Bay Area Regional Transportation Authority. These authorities have various membership structures, and powers and duties. All have some form of bond financing authority to carry out their individual transportation missions.

**South Florida Regional Transportation Authority (SFRTA)**

In an attempt to ease the disruptions created for commuters while it was widening I-95 in the mid-1980s, the Department of Transportation (DOT) purchased an 81-mile rail corridor from CSXT for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all

trains using the tracks--its own, Tri-Rail and Amtrak trains. In 1989, the Legislature passed the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., creating a commuter railroad to serve Miami-Dade, Broward and Palm Beach counties.

In 2003, the Legislature reconfigured the Tri-Rail Commuter Rail Authority as the SFRTA. The SFRTA is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous powers and responsibilities, including the power to acquire, sell, and lease property; to use eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The 2003 law also required each of the three counties served by the SFRTA to dedicate funding of $2.67 million annually, no later than October 31 of each fiscal year and a total of $45 million of a recurring funding source if the counties served by the Authority impose a local option funding source.

The potential sources of this dedicated funding include:

- Local-option fuel taxes;
- Each county's share of the local ninth-cent fuel tax; or
- Other non-federal funds.

In addition, each county must provide annual funding for operations of at least $1.565 million. These local funding requirements are repealed if the Authority does not obtain federal matching funds by December 31, 2015.

DOT is authorized by, s. 341.303, F.S., to fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project that is local in scope, not to exceed the local match. Approximately $18 million in annual funding is being provided for SFRTA rail operations from state transportation funds over the next five years.

**Rental-car Surcharge**

In 1989, the Legislature created s. 212.0606, F.S., to impose a statewide rental-car surcharge. The surcharge was initially levied at 50 cents per day upon the lease or rental of for-hire motor vehicles designed to carry fewer than nine passengers. The surcharge was increased to $2 per day in 1990.

The surcharge was used initially to fund children and adolescent substance abuse programs and law enforcement needs, but has been amended in subsequent years to remove the initial funding uses and replace them with funding the state's transportation needs, the state's tourism promotion and marketing efforts, and the state's international trade and promotion efforts. The actual distribution of the $2 per day surcharge is: $1.49 to the State Transportation Trust Fund; 29 cents to the Tourism Promotion Trust Fund; 8 cents to the Florida International Trade & Promotion Trust Fund; about 14 cents to the General Revenue Fund (7.3-percent service charge); and less than 1 cent to the Department of Revenue as an administrative charge.

The statewide surcharge is levied per day on the lease or rental of a motor vehicle licensed for hire and designed to carry fewer than nine passengers regardless of whether the motor vehicle is licensed in Florida. The surcharge applies only to the first 30 days of the term of any lease or rental. The surcharge does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

DOR is responsible for collecting and distributing monies collected under the rental car surcharge as well as enforcing its collection. According to DOR, the rental car surcharge is collected from 1,800 rental car dealers, of which 130 operate in more than one county.

The distribution of monies placed in the State Transportation Trust Fund was amended in 2002 to require that beginning in FY 2007-08, the proceeds deposited from the surcharge would be allocated on an annual basis in DOT's work program to each of the seven transportation districts, except the Turnpike Enterprise. The amount allocated to each district must be based on the amount of proceeds collected in the counties within each respective district.

The manner in which dealers reported surcharges was amended by the 2003 Legislature to authorize DOR to require dealers to report surcharge collections according to the county in which the surcharge was collected, in order to facilitate the allocation of surcharge revenues to each DOT district. This requirement was authorized to begin January 1, 2004. The change in law was intended to help DOT meet its statutory requirement that proceeds of the surcharge be allocated to each DOT district for projects, based on the amount of proceeds collected in the counties within each respective district.

Proposed Changes

Specifically, CS/HB 1245:

- Provides that regional transportation authorities created pursuant to chapter 343, F.S., are not included in the definition of "agency" under chapter 120, F.S., and are consequently not subject to the provisions of the Administrative Procedure Act.

- Directs that 80 percent of the rental car surcharge revenues collected in a county that is served by the South Florida Regional Transportation Authority, are to be deposited into account of the authority. Provides that the Northwest Florida Transportation Corridor Authority and the Tampa Bay Area Regional Transportation Authority established under chapter 343 may also receive distributions on a similar basis by providing DOR with 60 days notice of the authority's intent to have these collections deposited into their accounts;

- Requires that monthly distributions of rental car surcharge revenues to specified RTAs be based on the percentage of total proceeds attributable to each participating county as of September 1 of the preceding fiscal year.

- Abolishes the Tampa Bay Commuter Transit Authority;

- Amends DOT's obligation to fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project, by specifying DOT has no obligation to fund any regional transportation authority that receives a recurring dedicated funding source that provides 80 percent of rental-car surcharge proceeds collected in counties within the authority's service territory or an equivalent recurring funding source and after receipt of funds from such recurring dedicated funding source begins.

- Relieves Broward, Palm Beach, and Dade counties of their annual $45 million in funding obligations to the SFRTA for capital, operating and maintenance expenses, required only when all three counties served by the authority impose a local option funding source.

- Relieves Broward, Palm Beach, and Dade counties of their annual $2.67 million and $1.565 million funding obligations required to fund the operations of the South Florida Regional Transportation Authority when a dedicated recurring revenue source provides at least 80 percent of the amount of rental car surcharge revenues collected.

C. SECTION DIRECTORY:

Section 1. Amends s. 120.52, F.S.; revising a definition.

Section 2. Amends s. 212,0606, F.S.; providing for deposit of a certain percentage of rental car surcharge revenues into accounts of regional transportation authorities; and requiring that monthly distributions of rental car surcharge revenues to specified RTAs be based on the percentage of total proceeds attributable to each participating county as of September 1 of the preceding fiscal year.

Section 3. Amends s. 341.303, F.S.; relieving DOT's funding obligation to certain regional transportation authorities to conform; and revising DOT's obligation to fund certain regional transportation authorities under certain circumstances.

Section 4. Amends s. 343.58, F.S.; relieving certain counties of certain funding obligations to the SFRTA under certain circumstances to conform.

Section 5. Repeals ss 343.71, 343.72, 343.73, 343.74, 343.75, 343.76, and 343.77, F.S.

Section 6. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 12, 2008 the Revenue Impact Estimating Conference estimated that distributions of rental car surcharge collections to the South Florida Regional Transportation Authority (SFRTA) will reduce revenues to the State Transportation Trust Fund as follows:

| | SFRTA |
|---|---|
| 2008-09 | -$40.6 million |
| 2009-10 | -$41.4 million |
| 2010-11 | -$42.3 million |
| 2011-12 | -$43.2 million |
| 2012-13 | -$44.0 million |
| Total | -$211.5 million |

If the Northwest Florida Transportation Corridor Authority (NFTCA) and the Tampa Bay Area Regional Transportation Authority (TBARTA) choose to receive distributions of the rental car surcharge staff estimates further revenue reductions to the State Transportation Trust Fund as follows:

| | NFTCA | TBARTA | TOTAL |
|---|---|---|---|
| 2008-09 | -$5.0 million | -$16.5 million | -$21.5 million |
| 2009-10 | -$5.1 million | -$16.9 million | -$22.0 million |
| 2010-11 | -$5.2 million | -$17.2 million | -$22.4 million |
| 2011-12 | -$5.3 million | -$17.6 million | -$22.9 million |
| 2012-13 | -$5.4 million | -$17.9 million | -$23.3 million |
| Total | -$25.9 million | -$86.2 million | -$112.1 million |

2. Expenditures:

DOT will also be relieved of funding obligations to SFRTA rail operations of $87 million over the five year work program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On March 12, 2008 the Revenue Impact Estimating Conference estimated that the South Florida Regional Transportation Authority (SFRTA) would receive additional revenues as follows:

| | SFRTA |
|---|---|
| 2008-09 | $40.6 million |
| 2009-10 | $41.4 million |
| 2010-11 | $42.3 million |
| 2011-12 | $43.2 million |
| 2012-13 | $44.0 million |
| Total | $211.5 million |

If the Northwest Florida Transportation Corridor Authority (NFTCA) and the Tampa Bay Area Regional Transportation Authority (TBARTA) choose to receive distributions of the rental car surcharge staff estimates the additional revenues to these authorities will be as follows:

| | NFTCA | TBARTA | TOTAL |
|---|---|---|---|
| 2008-09 | $5.0 million | $16.5 million | $21.5 million |
| 2009-10 | $5.1 million | $16.9 million | $22.0 million |
| 2010-11 | $5.2 million | $17.2 million | $22.4 million |
| 2011-12 | $5.3 million | $17.6 million | $22.9 million |
| 2012-13 | $5.4 million | $17.9 million | $23.3 million |
| Total | $25.9 million | $86.2 million | $112.1 million |

2. Expenditures:

Section 2 of the bill relieves Broward, Palm Beach, and Dade counties of their annual $2.67 million and $1.565 million funding obligations required to fund the operations of the South Florida Regional Transportation Authority when a dedicated recurring revenue source provides at least 80 percent of the amount of rental car surcharge revenues collected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Although CS/HB 1245 relieves Broward, Palm Beach, and Dade counties of their annual $45 million in funding obligations to the South Florida Regional Transportation Authority (SFRTA) for capital, operating and maintenance expenses, none of these counties have currently dedicated this funding due to the fact that no local option funding source has been imposed.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HB 1245 was considered by the House Infrastructure Committee on March 20, 2008. The bill was reported favorably with three amendments:

- Amendment 1 relieved Broward, Palm Beach, and Dade counties of their $2.67 million annual funding obligation to the SFRTA by October 1 of each fiscal year, when a dedicated funding source equal to 80 percent of the rental-car surcharge revenues collected by these counties is identified by all three of the counties.

- Amendment 2 provided that, with the exception of the SFRTA, RTAs are required to provide 60 day written notification to DOR of their intent to receive 80 percent of the proceeds from rental-car surcharges collected in the counties served by the authority. The amendment also deleted the requirement for the DOR to provide the RTAs with annual surcharge revenue information by September 1$^{st}$ of each year fiscal year. Instead, the amount due to each regional transportation authority will be based on the percentage attributable to each participating county as determined on September 1 of the preceding fiscal year.

- Amendment 3 abolished the Tampa Bay Commuter Transit Authority, an inactive transportation authority. This will have the effect of increasing Tampa Bay Area Regional Transportation Authority's share of rental car surcharge revenue.

On April 1, 2008, one amendment to Amendment 2 was adopted by the Economic Expansion and Infrastructure Council to exclude the Central Florida Regional Transportation Authority from the eligible RTAs that may request a portion of the rental car surcharge revenues. The bill was reported favorably as a council substitute.

A bill to be entitled

An act relating to regional transportation authorities; amending s. 120.52, F.S.; revising a definition; amending s. 212.0606, F.S.; requiring deposit into an account of the South Florida Regional Transportation Authority certain proceeds subject to being deposited into the State Transportation Trust Fund and collected within certain counties within the service area of the authority; authorizing certain other regional transportation authorities to elect to receive certain proceeds subject to being deposited into the State Transportation Trust Fund and collected within certain counties within the service area of such authorities; requiring notice to the Department of Revenue of such election; providing an effective date for such election; providing a method for determining amounts due to such authorities; amending s. 341.303, F.S.; relieving the department's funding obligation to certain regional transportation authorities to conform; revising the department's obligation to fund certain regional transportation authorities under certain circumstances; amending s. 343.58, F.S.; relieving certain counties of certain funding obligations to the South Florida Regional Transportation Authority under certain circumstances to conform; repealing part III of chapter 343, F.S., relating to the Tampa Bay Commuter Transit Authority; providing an effective date.

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

Section 1. Subsection (1) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the constitution.

(b) Each:

1. State officer and state department, and each departmental unit described in s. 20.04.

2. Authority, including a regional water supply authority.

3. Board, including the Board of Governors of the State University System and a state university board of trustees when acting pursuant to statutory authority derived from the Legislature.

4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

5. Regional planning agency.

6. Multicounty special district with a majority of its governing board comprised of nonelected persons.

7. Educational units.

8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include any legal entity or agency created in whole or in part pursuant to chapter 361, part II, any metropolitan planning organization created pursuant to s. 339.175, any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, an expressway authority pursuant to chapter 348 or any transportation authority under chapter 343 or chapter 349, any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection, or any multicounty special district with a majority of its governing board comprised of elected persons; however, this definition shall include a regional water supply authority.

Section 2. Paragraph (a) of subsection (2) of section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.--

(2)(a) Notwithstanding the provisions of section 212.20, and less costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. Of the proceeds subject to be deposited into the State Transportation Trust Fund, in fiscal year 2008-2009 and each year thereafter, the proceeds collected within each county within the service territory of the South

Florida Regional Transportation Authority established under chapter 343 shall be deposited into an account of the authority. The Northwest Florida Transportation Corridor Authority and the Tampa Bay Area Regional Transportation Authority established under chapter 343 may receive the proceeds deposited into the State Transportation Trust Fund that are attributed to each county within the service territory of that authority, by notifying the department of such election in writing. The election shall not be effective until the first day of the month following 60 days after the department receives written notification from that authority. For the purposes of this subsection, "proceeds" of the surcharge means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year. Monthly proceeds due to each regional transportation authority under this paragraph shall be based upon the percentage attributable to each participating county as determined in this paragraph as of September 1 of the preceding fiscal year, which shall be used for the subsequent fiscal year.

Section 3. Paragraph (a) of subsection (4) of section 341.303, Florida Statutes, is amended to read:

341.303 Funding authorization and appropriations; eligibility and participation.--

(4) FUND PARTICIPATION; SERVICE DEVELOPMENT.--

(a) The department may ~~is authorized to~~ fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project that is local in scope, not to exceed the local match, except the department has no obligation to provide such funding to any regional transportation authority established pursuant to chapter 343 if such authority receives a recurring dedicated funding source that provides 80 percent of the amount of rental car surcharge proceeds collected pursuant to s. 212.0606(2)(c) in counties within the authority's service territory or an equivalent recurring funding source and after receipt of funds from such recurring dedicated funding source begins. If such receipt of funds begins in the middle of a fiscal year, the department's funding of any of the authority's operating costs pursuant to this paragraph shall be prorated. If the funding source is discontinued for any reason, the department shall have the same authorization to fund net operating costs of the authority as any other commuter rail service in the state.

Section 4. Section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.--

(1) Each county served by the South Florida Regional Transportation Authority must dedicate and transfer not less than $2.67 million to the authority annually. The recurring annual $2.67 million must be dedicated by the governing body of each county before October 31 of each fiscal year.

(2) If ~~At least $45 million of~~ a state-authorized~~, local option~~ recurring funding source is dedicated ~~available to Broward, Miami Dade, and Palm Beach counties is directed~~ to the authority to fund its capital, operating, and maintenance expenses, which source provides at least 80 percent of the amount of rental car surcharge revenues collected pursuant to s. 212.0606 in counties within the authority's service territory or is an equivalent recurring funding source, counties within the authority's service territory may be relieved of their funding obligation under subsections (1) and (3). ~~The funding source shall be dedicated to the authority only if Broward, Miami Dade, and Palm Beach counties impose the local option funding source.~~

(3) In addition, each county shall continue to annually fund the operations of the South Florida Regional Transportation Authority in an amount not less than $1.565 million. Revenue raised pursuant to this subsection shall also be considered a dedicated funding source.

(4) ~~The current funding obligations under subsections (1) and (3) shall cease upon commencement of the collection of funding from the funding source under subsection (2).~~ If the funding under subsection (2) is discontinued for any reason, the funding obligations under subsections (1) and (3) shall resume when collection from the funding source under subsection (2) ceases. If counties are relieved of any funding obligations under subsections (1) and (3):

(a) Payment by the counties shall be on a pro rata basis the first year following collection ~~cessation~~ of the funding under subsection (2).

(b) The authority shall refund a pro rata share of the payments for the current fiscal year made pursuant to the current funding obligations under subsections (1) and (3) as soon as reasonably practicable after it begins to receive funds under subsection (2).

If, by December 31, 2015, the South Florida Regional Transportation Authority has not received federal matching funds based upon the dedication of funds under subsection (1), subsection (1) shall be repealed.

Section 5. Sections 343.71, 343.72, 343.73, 343.74, 343.75, 343.76, and 343.77, Florida Statutes, are repealed.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HBs 1259 & 1301 PCSCB for HB 1259 & HB 1301 Education

**SPONSOR(S):** Schools & Learning Council; Flores and Legg

**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Schools & Learning Council | 12 Y, 2 N | White/Eggers | Cobb |
| 1) Policy & Budget Council | | Martin | Hansen |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

The Council Substitute for HBs 1259 and 1301 amends law relating to the Deferred Retirement Option Program (DROP). Under the bill, charter school instructional personnel and public school teachers for certain prekindergarten students, if authorized by their employer, may extend DROP participation up to 96 months.

The bill also amends law regulating charter schools and charter technical career centers (CTCCs) by:

- Requiring use of Department of Education (DOE)-developed applications and evaluation instruments by charter schools and CTCCs and requiring the DOE to develop CTCC applicant training.
- Providing that a grant or denial of district exclusivity to authorize charter schools lasts four fiscal years.
- Reducing the requirements for a 15-year charter renewal option.
- Allowing students to receive an interdistrict transfer to a charter school when good cause is shown.
- Providing parents and the public with greater student performance information when a charter school does not receive a school grade or a school improvement rating.
- Prohibiting nepotism in charter schools and CTCCs and establishing standards of conduct for governing board members, related to gifts, business transactions, and conflicting employment relationships.
- Providing indicators of risk for financial difficulty for charter schools and CTCCs, requiring implementation of corrective action plans when indicators exist, and requiring the Commissioner of Education to determine when charter schools or CTCCs are in a state of financial emergency.
- Revising provisions relating to the timing of state and federal funding payments to charter schools.
- Requiring each school board to determine an equitable amount of two-mill revenue for charter schools within its district and providing charter schools with certain class size reduction fixed capital outlay funding.

The Florida Retirement System will not experience a negative impact due to the increased DROP provisions of the bill. However, increasing the participation time for an additional three years will increase payroll costs to the employer, since the DROP payroll contribution rate is greater than the normal cost rate. The bill will also reduce the total amount of two-mill revenue and class size reduction fixed capital outlay funds available to traditional public schools within the school district, while increasing the amount of this revenue that is received by charter schools. The fiscal impact of this provision on districts and charter schools is indeterminate, however, as the amount that each school board will determine to be "equitable" is unknown. The administrative workload on DOE associated with the bill is expected to have an insignificant fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty--** The bill subjects charter school and charter technical career center employees to statutory provisions prohibiting nepotism and conflicts of interests by state officers and employees.

**Empower Families--** The bill requires charter schools that do not receive a school grade and charter alternative schools that do not receive a school improvement rating to report student performance comparison data to the parents of students enrolled in a charter school, the district in which the charter school is located, and the charter school governing board.

B. EFFECT OF PROPOSED CHANGES:

### Florida Retirement System & Public School Personnel

Chapter 121, F.S., establishes the Florida Retirement System (FRS). The FRS is administered by the Division of Retirement within the Department of Management Services,[1] and is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[2] It also has participating employees from 151 cities and 186 independent special districts.[3]

Public school instructional personnel[4] are classified as Regular Class members of the FRS.[5] The normal retirement date for a Regular Class member is attained when the employee completes at least six years of creditable service and reaches 62 years of age, or completes 30 years of creditable service, regardless of age.[6]

A charter school may elect to be either a private or public employer. If it is a public employer, it may participate in the FRS by applying for "covered group" status under s. 121.021(34), F.S. If approved, its employees are compulsory members of the FRS.[7]

***DROP:*** In 1997, the Legislature established the Deferred Retirement Option Program (DROP).[8] The DROP allows a retirement-eligible employee to continue working while the employee's monthly retirement benefit is placed in the System Trust Fund where it accumulates tax-deferred interest. Upon termination of employment, the participant receives the total DROP amount, and also begins to receive original normal retirement benefits.[9]

---

[1] Section 121.025, F.S.
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[3] *Id.*
[4] Current Florida law defines "instructional personnel" to include personnel such as (a) classroom teachers; (b) student personnel service staff such as guidance counselors, social workers, career specialists, and school psychologists; (c) librarians/media specialists; (d) other instructional staff members such as such as primary specialists, learning resource specialists, instructional trainers, and certain adjunct educators; and (e) education paraprofessionals. This definition encompasses personnel serving grades kindergarten through 12. Section 1012.01(2)(a)-(e), F.S
[5] Section 121.021(12), F.S.
[6] Section 121.021(29)(a), F.S.
[7] Section 1002.33(12)(i), F.S. (Section 1002.34(12)(e), F.S., provides similar authorization to charter technical career centers).
[8] Chapter 97-154, L.O.F.
[9] Section 121.091(13), F.S.

All state employees, including school district employees, who are eligible to retire, have the option of participating in the DROP.[10] The standard DROP period is a maximum of 60 calendar months; however, the following personnel may extend the DROP period to a maximum of 96 months:

- Instructional personnel of the Florida School for the Deaf and the Blind who are authorized to extend the DROP period by its Board of Trustees; and
- K-12 instructional personnel employed by a district school board who are classified as classroom teachers; student personnel service staff; librarians/media specialists; or other instructional staff and who are authorized to extend the DROP period by the district school superintendent.[11]

School district prekindergarten instructional personnel are eligible to participate in the DROP, but are not eligible for a DROP extension. Likewise, charter school employees are eligible to participate in the DROP, but are not eligible for a DROP extension.

*Effect of Bill:* The bill amends s. 121.091(13), F.S., to allow the following personnel to extend their participation in the DROP up to 96 months:

- Classroom teachers for prekindergarten students funded under s. 1011.62, F.S., which governs Florida Education Finance Program (FEFP) operating funds for public schools, if authorized by the district school superintendent.
- Instructional personnel and classroom teachers for prekindergarten students funded under s. 1011.62, F.S., who are employed by a charter school that participates in the FRS, if authorized by the governing board.

With regard to prekindergarten teachers, the bill's requirement that they be teachers of students funded under s. 1011.62, F.S., will result in only authorizing prekindergarten teacher of students with disabilities to participate in the DROP extension. Voluntary prekindergarten teachers in public or charter schools will not receive this authorization as their students are not funded under that section.

The bill also removes redundant and obsolete text in s. 121.091(13), F.S.

## Florida Charter Schools and Charter Technical Career Centers

*Charter Schools:* In 1996, the Legislature enacted s. 228.056, F.S., Florida's first charter school law.[12] Charter schools are nonsectarian, public schools that operate under a performance contract, referred to as a "charter," with its sponsor. The charter frees the school from many regulations applicable to traditional public schools in order to encourage the use of innovative learning methods, while holding the school accountable for academic and financial results.[13]

Charter schools currently in existence are sponsored by a district school board or, in the case of a charter lab school, by a state university.[14] In 2006, the Legislature created a new option for sponsorship with the establishment of the Florida Schools of Excellence Commission (FSEC).[15] In a district that has not been granted the exclusive authority to approve charter schools,[16] the FSEC may sponsor charter schools and approve municipalities, state postsecondary institutions, and regional educational consortia to act as charter school cosponsors.[17]

---

[10] Section 121.091(13)(a), F.S.
[11] *Id.*
[12] Chapter 96-186, L.O.F., *initially codified* as s. 228.056, F.S., *redesignated in 2002* as s. 1002.33, F.S.
[13] Section 1002.33(1), (2), (7), (9) (16), and (17), F.S.
[14] Section 1002.33(5)(a), F.S.
[15] Chapter 2006-302, L.O.F., *codified at* s. 1002.335, F.S. (providing that the FSEC is an independent state-level authorizer of charter schools, appointed by the State Board of Education based upon recommendations from the Governor, Senate President, and House Speaker).
[16] For Fiscal Year 2007-2008, the State Board of Education granted exclusivity to three districts: Orange, Polk, and Sarasota County School Boards.
[17] Section 1002.335(4)(a), F.S.

Since 1996, the number of charter schools in Florida has grown from five to 358 during the 2007-2008 school year. These schools are currently serving 104,319 students.[18] Charter schools are open to all students residing within the district. Enrollment preference may be given to siblings of current charter school students or children of a charter school employee or governing board member. A charter school may limit enrollment[19] in order to target specified student populations.[20]

*Charter Technical Career Centers:* A charter technical career center (CTCC) is a public school or a public technical center that is operated under a charter granted by a district school board, a community college board of trustees, or a combination of one or more of each of these entities. Like charter schools, CTCC operations are governed by a charter. Among other things, the charter must establish policies for measuring student performance, reporting of student data, and conflicts of interest. Three CTCCs have been established since the CTCC statute was enacted in 1999: (a) First Coast Technical Institute, St. John's County, 1999; (b) Flagler/Volusia Advanced Technology Center, Volusia County, 2001; and (c) Lake Technical Center, Lake County, 2004.[21]

***Application Process and Evaluation:*** An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law. The application must contain statutorily specified information and must be submitted by August 1st of each year, unless the sponsor chooses a later date.[22]

The Department of Education (DOE) is required to develop a model charter school application, charter agreement, and charter renewal document. Sponsors are encouraged, but not required to use these documents.[23] The DOE must also offer training and technical assistance to charter school applicants, which addresses business plan development, startup cost estimation, enrollment projection, and available state and federal funding.[24] [25] Applicants are not required to attend training.

Statute does not specify a process for evaluating charter school applications; however, the DOE has developed and posted an evaluation process on its website. It provides that each charter school application should be reviewed, and each applicant should be interviewed, by an evaluation team comprised of sponsor staff and/or external experts who collectively have education, business, non-profit, financial, legal, and organizational expertise. The team is to rate the applicant using the DOE Application Evaluation Instrument and to submit its recommendations to the sponsoring board.[26]

For CTCCs, statute provides that a district school board or community college board of trustees, or a consortium of one or more of each, may file a CTCC application which must address statutorily specified information.[27] Statute governing CTCCs does not require the DOE to develop a model application for a CTCC, training for CTCC applicants, or an evaluation instrument.

---

[18] Online Charter School Directory, DOE, January 2008, *available at:* http://www.floridaschoolchoice.org/information/charter_schools/files/fast_facts_charter_schools.pdf/

[19] Section 1002.33(10), F.S.

[20] Demographically, charter school student populations are very similar to traditional public school student populations, with the exception that traditional public schools serve a larger percentage of free or reduced price lunch eligible students (45.8 percent) than charter schools (35.2 percent). Data provided by the DOE based on Survey Two final data for the 2006-2007 school year.

[21] Section 1002.34, F.S

[22] Section 1002.33(3)(a) and (6)(a), F.S.

[23] Section 1002.33(21), F.S.

[24] Ch. 2006-190, s. 1, L.O.F., *codified at* s. 1002.33(6)(g) and (21), F.S.

[25] The DOE conducted a charter school applicant training most recently on July 17, 2007, for applicants wishing to start schools in the 2008-2009 school year. Such trainings are made accessible year round and statewide via the web and, according to DOE representatives, will be offered annually each summer. *See* DOE, Office of Independent Education and Parental Choice, Training Opportunities *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/ Additionally, some districts provide their own applicant training.

[26] *See* DOE, Office of Independent Education and Parental Choice, Overview of the Florida Charter School Application Process and Florida Charter School Application Evaluation Instrument *available at* http://www.floridaschoolchoice.org/Information/Charter_Schools/

[27] Section 1002.34(4), F.S.

*Effect of bill:* The bill adds requirements for: (a) charter school and CTCC applicants to use an application developed by the DOE; (b) the DOE to develop training and technical assistance for CTCC applicants; and (c) charter school and CTCC sponsors to evaluate applications using an evaluation instrument developed by the DOE.

***School District Sponsorship Exclusivity:*** On or before March 1st of each year, a district school board may present a written resolution to the SBE indicating that it wishes to retain the exclusive authority to sponsor charter schools within its boundaries.[28] If granted, the FSEC may not approve charter schools within the district.[29]

A party may challenge the SBE's *grant* of exclusive authority by filing a notice of challenge with the SBE that describes the reasons for the challenge within 30 days following the SBE's decision. The SBE's decision to *grant or deny* exclusivity is not subject to challenge under the Administrative Procedure Act; however, this decision is final action subject to review by the district court of appeal.[30]

Exclusivity may not be granted to a district that has never approved a charter school, unless it has never received an approvable application.[31] Exclusivity is to be granted if the SBE determines that the district has provided fair and equitable treatment to its charter schools during the past four years. To make this determination, the SBE is to consider input from charter schools within the district and a district resolution that addresses statutorily specified factors.[32] SBE rule provides that a grant of exclusivity lasts from July 1st of the year in which granted until June 30th of the next calendar year.[33]

For Fiscal Year (FY) 2007-2008, 41 school districts filed applications for exclusivity with the SBE. Three districts withdrew their applications prior to consideration[34] and the remaining 38 applications were considered by the SBE during its September and October 2007, meetings. The SBE granted exclusivity to three districts;[35] denied exclusivity to eight districts on grounds that they did not have a history of sponsoring charter schools;[36] and denied exclusivity to the remaining 27 districts on grounds that they had not satisfied 100 percent of the factors constituting fair and equitable treatment of charter schools.[37]

*Effect of Bill:* The bill eliminates the necessity for districts to annually apply for exclusivity. Instead, the bill provides that school districts may apply on March 1, 2008, to the SBE for exclusivity in FY 2008-2009. A grant or denial of exclusivity at that time will last for four FYs. Thereafter, applications for exclusivity may not be made again until the March 1st preceding FY 2012-2013, and every four FYs thereafter.

***Fifteen-Year Charter Renewal:*** In order to facilitate long-term financing for charter school construction, a sponsor:

1. *May* grant a 15-year charter renewal to a charter school that: (a) has operated for at least three years; and (b) demonstrates exemplary academic programming and fiscal management. Such a long-term charter is subject to annual review and may be terminated during its term.[38]

---

[28] Section 1002.335(5)(c), F.S.
[29] Section 1002.335(5)(i), F.S.
[30] Section 1002.335(5)(f), F.S.
[31] Section 1002.335(5)(g), F.S.
[32] Section 1002.335(5)(e), F.S.; Rule 6A-6.0783, F.A.C.
[33] Rule 6A-6.0783, F.A.C.
[34] Applications were withdrawn by the school districts in Brevard, Citrus, and Santa Rosa Counties.
[35] Orange, Polk, and Sarasota County School Boards.
[36] Baker, Charlotte, Clay, DeSoto, Gilchrist, Hardee, Jefferson, and Suwannee County School Boards.
[37] Bay, Broward, Collier, Duval, Escambia, Flagler, Gadsden, Hernando, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Martin, Miami-Dade, Monroe, Nassau, Osceola, Palm Beach, Pasco, Pinellas, St. Johns, St. Lucie, Sumter, Volusia, and Wakulla.
[38] Section 1002.33(7)(b)1., F.S.

2. *Must* grant a 15-year charter renewal to a charter school that meets the requirements expressed in Number 1. above, and that receives a school grade of "A" or "B" in three out of four years.[39] If granted, a long-term charter is subject to annual review and may be terminated for specified reasons under s. 1002.33(8), F.S., that include failure to participate in the state's education accountability system, failure to meet generally accepted standards of fiscal management, a violation of law, or other good cause.[40]

*Effect of bill:* The bill reduces the school grade requirements necessary to trigger the mandatory offering of a 15-year charter renewal option. Under the bill, such option must be offered to a charter school that: (a) has operated for at least three years; (b) has received a school grade of at least a "C" during the past three years; and (c) demonstrates exemplary fiscal management. The bill retains the provision that such a long-term charter renewal is subject to annual review and may be terminated for specified reasons under s. 1002.33(8), F.S., during its term.

***Annual Progress Reports:*** Current law requires the DOE to develop an online accountability report to be completed by charter schools. It must be easy to utilize and contain demographic information, student performance data, financial accountability information, facilities information, and personnel data. Statute prohibits the DOE from requiring a charter school to provide information that is duplicative and already in its possession.[41] This online report must be annually provided to the DOE.

*Effect of Bill:* The bill deletes the provision that prohibits the DOE from requiring a charter school to provide information that is duplicative or already in its possession. Further, the bill provides that the charter school must be able to directly access, complete, and correct school data and information in the online accountability report, and it requires the sponsor to review the report before its final submission to the DOE.

***Enrollment Eligibility:*** District school boards are statutorily authorized to enter into interdistrict agreements with adjoining districts to establish school attendance areas composed of territory lying within each district.[42] Charter schools are statutorily authorized to enroll students who reside in the school district where the school is located, as well students who are covered by an interdistrict agreement.[43] With regard to charter school students, statute further states that an ***eligible*** student shall be allowed an interdistrict transfer to a charter school based on good cause.[44]

*Effect of Bill:* The bill removes the authorization for students to attend a charter school pursuant to an interdistrict agreement; instead, it provides that ***any*** student, not only "eligible students" as in current law, shall be allowed an interdistrict transfer to attend a charter school based on "good cause." The term "good cause" is defined by the bill as including, but not limited to, geographic proximity to a charter school in a neighboring school district. Accordingly, under the bill, it appears that, regardless of the existence of an interdistrict agreement, any student evidencing "good cause" may receive an interdistrict transfer to attend a school in a district other than his/her district of residence.

***School Grades:*** Charter schools are subject to the same academic performance accountability requirements applicable to traditional public schools. Thus, charter school students must take the Florida Comprehensive Assessment Test (FCAT) and charter schools are graded annually.[45]

Florida's School Grading System requires the Commissioner of Education to prepare an annual performance report for each school and school district based primarily on student FCAT performance.[46]

---

[39] Section 1002.33(7)(b)2., F.S.
[40] *Id.*
[41] Section 1002.33(9)(l), F.S.
[42] Section 1001.42(4), F.S.
[43] Section 1002.33(10)(a), F.S.
[44] *Id.*
[45] Section 1002.33(9)(l)1., F.S.
[46] Section 1008.34(1) and (3), F.S.

A school's grade is determined based on student achievement scores, student learning gains, and improvement of the lowest quartile of students.[47] Schools are graded on a scale of "A" to "F."[48] Alternative schools[49] receive a school improvement rating, but may elect to receive a school grade.[50]

In order to receive a grade, a school must have at least 30 students with valid FCAT reading and math scores from the current and previous year.[51] Schools that do not meet these criteria do not receive a school grade. Further, a school that tests fewer than 90 percent of its students may receive a school grade of "I," or "incomplete," unless the DOE determines that its data accurately reflects that school's progress.[52] According to DOE representatives, these rules were established in order to ensure that a school's grade was based on a statistically valid sample size.[53]

*School Grades and School Improvement Ratings:* The bill provides reporting requirements for the DOE and each charter school that does not receive a school grade or a school improvement rating, to the extent that the information does not compromise a student's privacy.

The DOE must provide charter schools that are not graded or rated, but which serve at least ten students who participate in the statewide assessment, with student performance data, including student learning gains. Each charter school must report this data to the parents of a student enrolled in a charter school, the school district, and the governing board. Additionally, the DOE is required to compare the performance data of: (a) each charter school that is not graded or rated with that of traditional public schools in the district where the charter school is located and other charter schools in the state; and (b) each charter alternative school that is not graded or rated with all alternative schools in the state. The performance and comparison data must be made available by the charter school to the public.

***Nepotism and Conflicts of Interests:*** Florida's charter school statute does not regulate charter school governing board members or employees regarding conflicts of interest. Depending on the school's organizational structure, its governing board and/or employees may be subject to various state and federal laws governing conflicts of interest for public officers and employees or nonprofit organizations.

If the charter school is operated by a municipality, the Code of Ethics for Public Officers and Employees in ch. 112, F.S., governs. Under the Code, public officers, agency employees, and local government attorneys are prohibited from: using their position for private gain; purchasing, renting, or leasing any realty, goods or services for their agency from a business entity in which they have a material interest; and entering into business relationships with an entity that is regulated by or does business with the agency for which they serve.[54]

If the charter school is operated by a nonprofit entity, Florida law provides that transactions between a nonprofit corporation and one or more of its directors, or to entities controlled or influenced by a director, may be void or voidable unless: (a) the relationship or interest is disclosed or known to the board of directors; (b) the relationship or interest is disclosed or known to the members entitled to vote on the contract or transaction; or (c) the contract or transaction is fair and reasonable to the corporation at the time it is authorized.[55]

---

[47] Section 1008.34(3)(a), F.S.
[48] Section 1008.34(2), F.S.
[49] An alternative school provides dropout prevention and academic intervention under s. 1003.53, F.S.
[50] Section 1008.341, F.S.
[51] Rule 6A-1.09981(3)(c) and (4)(a) and (b), F.A.C.
[52] Rule 6A-1.09981(9)(b), F.A.C.
[53] Telephone conference with DOE representatives in July 2007.
[54] Section 112.313, F.S.
[55] Section 617.0832(1), F.S.

*Effect of Bill* – In order to more clearly and uniformly address nepotism and conflict of interest issues for charter schools and CTCCs, the bill amends provisions of charter school law to specifically identify prohibitions that will apply to all charter school and CTCC governing board members and personnel.

*Nepotism:* As a condition of receiving a charter, the bill requires charter school and CTCC applicants to disclose the names of relatives that will be employed by the charter school or CTCC. This requirement for full disclosure is also a part of the charter.

The bill prohibits personnel in charter schools and CTCCs that are operated by a private entity from supervising a relative, unless the governing board of the charter school unanimously waives this prohibition. Such waiver must be annually reported in by the governing board to the sponsor and reported in the school's annual report to the DOE. For purposes of this provision, the bill defines the terms:

- "Charter school personnel" as meaning a charter school owner, president, chair or member of the governing board, superintendent, principal, assistant principal, or any other personnel with the authority to appoint, employ, promote, or advance the school's employees.
- "Relative" to mean a father, mother, son, daughter, brother, sister, husband, wife, half brother, half sister, and specified in-law and step-relatives.
- "Supervise" to mean the appointment, employment, promotion, or advancement of an individual or recommendation of the appointment, employment, promotion, or advancement of an individual.

The nepotism prohibitions in s. 112.3135, F.S., apply to charter school personnel in schools operated by municipalities or other public entities. A violation of s. 112.3135, F.S., subjects these personnel to the penalties specified in s. 112.317, F.S.

*Conflicts of Interest:* Members of the governing board of a charter school or CTCC, including those operated by private entities, are subject to the same requirements that apply to public employees for the solicitation and acceptance of gifts, business transactions, and conflicting employment or contractual relationships in s. 112.313(2), (3) and (7), F.S. The bill also allows a board member, as current law allows a public employee or officer, to:

- Seek a waiver from the governing board, under s. 112.313(12), F.S., after providing full disclosure of a transaction or relationship, from the provisions for business transactions and conflict of interest.

- Be subject to the exemption in s. 112.313(15), F.S., which authorizes a public officer, under specified circumstances, to maintain an employment relationship with a tax exempt organization that does business with the officer's agency.

The bill also subjects board members for all charter schools and CTCCs to the voting conflict requirements in s. 112.3143, F.S. Additionally, board members of charter schools or CTCCs operated by public entities are also subjected to the requirements for public disclosure of financial interests in s. 112.3144, F.S. A violation of any of these provisions may result in subjecting board members to the penalties in s. 112.317, F.S., which include: fines; impeachment, removal, or suspension from office for officers; dismissal from employment; and reduction in, or forfeiture of, salary.

***Financial Emergencies Act:*** The Local Governmental Entity and District School Board Financial Emergencies Act contained in Part V of ch. 218, F.S., is designed to promote financial responsibility, provide assistance for meeting essential services without interruption, and improve local financial management procedures for local governmental entities, school boards, and charter schools.[56]

[56] Sections 218.50-218.504, F.S.

Under the Act, a local government entity, charter school, and district school board must notify the Legislative Auditing Committee, and as appropriate, the Governor, Commissioner of Education, or sponsor when any of the following conditions occur or will occur if action is not taken:

- Failure to pay certain debts when due, as a result of a lack of funds;
- Failure to transfer at the appropriate time due to lack of funds: employee income tax or employer and employee contributions for social security or benefit plans;
- Failure for one pay period to pay due to lack of funds: employee wages and salaries or retirement benefits; or
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial.[57]

Also, when one or more of the above conditions occur for:

- A local government entity or a district school board, the Governor or the Commissioner, as appropriate, must contact the entity to determine what actions have been taken to resolve the condition and whether state assistance is needed. If assistance is needed, the local government entity or district school board is considered to be in a state of financial emergency.
- A charter school, the sponsor must contact the governing body to determine what actions have been taken to resolve the condition. The sponsor ***may*** require a financial recovery plan to be prepared by the governing body, which plan must prescribe actions to eliminate the condition.[58]

The charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., adds that if an audit for a charter school reveals a state of financial emergency as defined in s. 218.503, F.S., it must be provided to the governing board within seven days and the sponsor and DOE must also be notified. The term "state of financial emergency," however, is not defined in s. 218.503, F.S. The charter school statute further states that when a charter school is found to be in a state of financial emergency by a CPA or auditor that the school must file a financial recovery plan with the sponsor.

Accordingly, it appears that statute requires the CPA or auditor to determine when a charter school is in a state of financial emergency, without specifically citing the criteria upon which the CPA or auditor is to make that determination. In contrast, there must be a finding by the Governor for a local government entity or by the Commissioner of Education for a district school board that the entity or board needs state financial assistance before it is deemed to be in a state of financial emergency.

The DOE is statutorily required to develop guidelines for the development of financial recovery plans.[59] These guidelines were published in March 2007.[60]

*Effect of Bill:* The bill adds CTCCs to the Financial Emergencies Act; thus, CTCCs will be subject to the Act's requirements in the same manner as local government entities, school boards, and charter schools.

Further, the bill strikes the conflicting language discussed above, which is contained in the charter school statute, s. 1002.33(7)(a)10. and (9)(g), F.S., and which references audit findings of an undefined state of financial emergency and requires financial recovery plans under imprecise circumstances. To better define a process for identifying charter schools and CTCCs that are experiencing financial difficulties, the bill creates s. 1002.345, F.S.

Under the new section, the following indicators of risk for financial difficulty are specified:

---

[57] Section 218.503(1), F.S.
[58] Section 218.503(3) and (4), F.S.
[59] Section 218.503(4) and 1002.33(7)(a)10., F.S.
[60] *See Technical Assistance Paper: Charter School Financial Recovery Plan,* DOE, No. 2007-12, March 2007.

- An end-of-year financial deficit greater than the school's combined cash and accounts receivable balances.
- A substantial decline, i.e., greater than 25 percent, in student enrollment without a commensurate reduction in expenses.
- An outstanding debt in excess of land, property, and equipment balances.
- Failure to meet specified statutory financial reporting requirements.[61]
- Inadequate financial controls or other adverse financial conditions not corrected in 120 days as identified through an annual audit.
- Negative financial findings in reports by the Auditor General or the Office of Program Policy Analysis and Government Accountability.

When one of these indicators occurs, a charter school or CTCC is subject to an expedited review by the sponsor and the sponsor and governing board must develop, and file with the Commissioner of Education and the FSEC, a corrective action plan. If the sponsor and board are unable to agree on the components or necessity of the plan, the State Board of Education (SBE) determines the plan.

The governing board is required to monitor the corrective action plan and annually report on its implementation status to the sponsor. If a governing board fails to implement the plan within one year, the SBE must prescribe steps for compliance. The chair of the governing board must appear before the SBE to report on the status of the plan and its effect on resolving the financial difficulties.

Further, the new section and s. 218.503(4), F.S., as amended by the bill, requires the Commissioner of Education to determine if a charter school or a CTCC needs a financial recovery plan when an audit reveals a financial emergency condition specified in s. 218.503(1), F.S., or a deficit fund balance or deficit net assets. If the Commissioner determines that a plan is needed, the charter school or CTCC is considered to be in a state of financial emergency. The governing board is responsible for annually reporting on the status of plan implementation to the sponsor.

The DOE is required to provide technical assistance to charter schools, CTCCs, governing boards, and sponsors in developing corrective action and financial recovery plans.

Finally, the bill specifies that a sponsor may choose to not renew or terminate a charter if the school or CTCC fails to correct the deficiencies in a corrective action plan within one year or if it exhibits one or more financial emergency condition specified in s. 218.503(1), F.S., for two consecutive years.

***State Funding for Charter Schools:*** Charter school students are required to be funded in the same manner as students in traditional public schools.[62] Operating funds for charter schools are provided via the FEFP including the district's gross state and local funds, discretionary lottery funds, and funds from the district's current operating discretionary tax levies. Each charter school must report its enrollment to its sponsor and the sponsor must include this enrollment in the district's report of student enrollment.[63] Annually, charter schools must complete and submit a Charter School Revenue Estimate Worksheet that is used to determine its share of FEFP funds.[64]

Section 1002.33(17)(d), F.S., states that operating funds from the FEFP are to distributed by the school district to the charter school. A school district may distribute funds for up to three months based on projected FTE student membership. Thereafter, FTE membership surveys must be used monthly to determine the amount of the charter school's funding distribution. Funding distributions must be made no later than 10 working days after the school district receives state funding. If a warrant for payment is not timely issued, the school district is required to pay interest to the charter school in the amount of

[61] The bill also adds a requirement in s. 1002.33(9)(g), F.S., for charter schools to provide monthly financial statements their sponsors.
[62] Section 1002.33(17), F.S.
[63] Section 1002.33(17)(a), F.S.
[64] *See* Charter School Revenue Estimate Worksheet and Instruction *available at* http://www.fldoe.org/fefp/chartinst.asp.

one percent per month calculated on a daily basis from the first day that the payment is late until the payment is made.[65]

*Effect of Bill:* The bill amends s. 1002.33(17)(b), F.S., to reiterate that state FEFP funds for a charter school must be distributed to the charter school by the district school board within 10 days after receipt from the state.

***Federal Funding for Charter Schools:*** A charter school is entitled to receive its proportionate share of funds for federally funded programs or services provided by the school. Florida school districts act as the local education agencies for purposes of receiving federal funds for programs under Title I, the Individuals with Disabilities Act (IDEA), and the No Child Left Behind Act.[66] Funds for federal entitlement programs are received by the school district, which distributes them to eligible charter schools within the district.

Section 1002.33(17)(c), F.S., currently provides that "all federal funding for which the [charter] school is otherwise eligible, including Title I funding" must be received from the school district not later than five months after the charter school first opens and within five months after any subsequent expansion of enrollment. Additionally in s. 1002.33(17)(d), F.S., it states that distributions are to be made no later than 10 working days after the school district receives federal funding. If a warrant for payment is not timely issued, the school district is required to pay the interest to the charter school in the amount of one percent per month calculated on a daily basis from the first day that the payment is late until the payment is made.

*Effect of Bill:* The bill amends s. 1002.33(17)(c), F.S., to state that "all federal funding for which the [charter] school is otherwise eligible, including Title I funding and *funding under the Individuals with Disabilities Education Act"* must be provided within the time frame currently specified in statute. The bill's addition of the IDEA as another example of federal funding to be received by charter schools does not appear to make any substantive change to current law.

***Facilities:*** Current law provides that school district facilities or property that is surplus, marked for disposal, or otherwise unused must be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving such property may not sell or dispose of it without written school district permission.

*Effect of bill:* The bill adds a provision requiring a school district that closes a public school to make the property and facilities available to charter schools within the district for lease or purchase within 60 days. It requires the property and facilities to be used by charter schools for educational purposes. This provision, thus, requires charter schools, as opposed to traditional public schools in the district, to be given the first opportunity for lease or purchase.

***Sponsor Services – Federal Lunch Program:*** In exchange for an up to five percent administrative fee, charter school sponsors are required to provide administrative and educational services that include: contract management; full-time equivalent (FTE) student and data reporting; exceptional student education administration; administration and reporting for federal programs; FCAT administration; processing of teacher certification data; and student information services.[67] With specific regard to the administration and reporting for federal programs, statute requires sponsors to provide, "services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school...."[68]

---

[65] Section1002.33(17)(d), F.S.
[66] *See* 20 U.S.C.A. 6312 (Title I); 20 U.S.C.A. 1411(IDEA); and 20 U.S.C.A. 7211a (NCLB).
[67] Sections 1002.33(20) and 1002.335(11)(b), F.S.
[68] Section 1002.33(20)(a), F.S.

*Effect of bill:* The bill adds a requirement that charter schools receive any funds due the school under the federal lunch program as soon as the charter school begins serving food under the program and that the charter school be paid at the same time and in the same manner under the program as other public schools serviced by the sponsor or school district.

***Two-Mill Funds:*** Each school district may levy up to two-mills,[69] in addition to the operating discretionary tax levies, for school purposes. Such revenues may be used for the following purposes:

- New construction and remodeling of educational facilities;
- Maintenance, renovation, and repair of school facilities to correct building code and fire safety deficiencies;
- The purchase, lease-purchase, or lease of school buses and equipment;
- Payments for educational facilities and sites;
- Payment of loans approved under ss. 1011.14 and 1011.15, F.S.;
- Payment of costs directly related to compliance with state and federal environmental laws;
- Lease payments for relocatable educational facilities;
- Payments for school buses when the district contracts with a private entity to provide student transportation; and
- Payment of the cost of the opening day collection for the library media center of a new school.[70]

In 2006, the Legislature authorized, but did not require, school districts to share two-mill funds with charter schools.[71] Data indicating which school districts share two-mill funds is not collected at the state-level. Twenty-six of Florida's 67 school districts do not have charter schools. Of the remaining 42 districts with charter schools, 31 districts completed applications for charter school authorization exclusivity, which were considered by the SBE in 2007. The applications requested each district to indicate whether it shares two-mill funds for purposes of charter school facilities. Of the 31 applications, six districts represented that they share two-mill funds with charter schools.[72]

*Effect of Bill:* The bill strikes the discretionary authority given to school districts under s. 1011.71(2), F.S., to share two-mill revenue with charter schools. Instead, the bill requires each school district to determine an equitable amount of two-mill revenue, which must be shared with charter schools within the district.

***Charter School Fixed Capital Outlay:*** Section 1013.62, F.S., provides for the distribution of capital outlay funds to charter schools. Eligibility for charter school capital outlay funding is based on the following criteria:

- The school has been in operation for at least 3 years, is created as part of a feeder pattern with an existing charter school in the district, or is accredited by the Southern Association of Colleges and Schools;
- The school demonstrates financial stability;
- The school achieves satisfactory student performance;
- The school receives final approval from its sponsor; and
- The school serves students in facilities not provided by the charter school sponsor.[73]

First priority for this funding is given to charter schools that received funding in 2005-2006. Charter schools that did not receive such funding may be eligible for an allocation subject to funds availability.

---

[69] To levy this millage, a school district must annually publish a notice of its intent, which specifies the projects such funds will be used for, and must hold a public hearing. Section 200.065(10), F.S.
[70] Section 1011.71(2)(a)-(j), F.S.
[71] *See* Chapter 2006-190, s. 9, L.O.F., *codified at* s. 1011.71(2), F.S.
[72] A summary of each application is available at: http://www.floridaschoolchoice.org/CSStandardReview/PublicDistrictOption.aspx
[73] Section 1013.62(1), F.S.

Any funds remaining after these distributions are made are allocated among all eligible charter schools. Each school's capital outlay allocation must not exceed 1/15th of the statutory cost per student station.[74]

During the past three fiscal years, the Legislature appropriated the following amounts for charter school capital outlay funds: (a) $27.7 million for FY 2005-2006;[75] (b) $53.1 million for 2006-2007;[76] and (c) $54 million for 2007-2008.[77]

Charter schools may use capital outlay funds for the purchase of real property; construction of school facilities; purchase, lease-purchase, or lease of permanent or portable school facilities; purchase of vehicles to transport students to and from the charter school; and renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.[78]

*Effect of bill:* The bill expands the authorized uses of charter school capital outlay funds to also include any purpose set forth in s. 1011.72(2), F.S., which specifies the authorized uses of two-mill funds by school districts. Thus, under the bill, charter school capital outlay may also be expended on: the purchase, lease-purchase, or lease of equipment; costs related to compliance with state and federal environmental laws; and cost of the opening day collection for the library media center of a new school.[79]

***Classrooms for Kids Program:*** Section 1013.735, F.S., creates the Classrooms for Kids Program, which authorizes fixed capital outlay dollars appropriated to the program to be distributed to districts based on a specified formula. The formula provides that: (a) 25 percent of the funds are to be prorated to districts based on each district's percentage of K-12 base capital FTE membership; (b) 65 percent of the funds are to be based on each district's percentage of K-12 growth capital outlay FTE membership as specified for the allocation of funds from the Public Education Capital Outlay and Debt Service Trust Fund by s. 1013.64(3), F.S.; and (c) 10 percent of funds are to be allocated among district school boards according to the allocation formula in s. 1013.64(1), F.S.

In order to increase capacity to reduce class size, districts may spend these funds on the construction, renovation, or repair of educational facilities, or the purchase of relocatables, which are in excess of projects or relocatables identified in the district's five-year work program adopted before March 15, 2003. For FYs 2003-2008, the Legislature appropriated a total of $2.5 billion in class size reduction FCO funds with $650 million of that amount most recently appropriated for FY 2007-2008.

Charter schools do not receive any funding under the Classrooms for Kids Program, although charter schools are required to comply with constitutional and statutory requirements for class size reduction.[80]

*Effect of bill:* The bill amends s. 1013.735, F.S., to provide that the 25 percent portion of the Classroom for Kids Program appropriation that is currently based on each district's K-12 base capital outlay FTE membership shall also include charter school FTE membership. The bill further provides that districts must provide charter schools with their proportionate share of these funds.

C. SECTION DIRECTORY:

**Section 1. --** Amending s. 11.45, F.S.; adding CTCCs to Auditor General reporting requirements; and requiring the Auditor General to adopt rules for CTCC financial reporting.

---

[74] *Id.*
[75] 2005-2006 General Appropriations Act, Specific Appropriation 17, Chapter 2005-70, L.O.F.
[76] 2006-2007 General Appropriations Act, Specific Appropriation 28, Chapter 2006-25, L.O.F.
[77] 2007-2008 General Appropriations Act, Specific Appropriation 24, Chapter 2007-72, L.O.F.
[78] Section 1013.62(2), F.S.
[79] Section 1011.71(2)(a)-(j), F.S.
[80] Section 1, Article IX of the Florida Constitution; s. 1003.03, F.S.

**Section 2.** – Amending s. 121.09, F.S.; authorizing specified charter school and public prekindergarten personnel to extend DROP participation from 60 to up to 96 months.

**Section 3.** – Amending s. 218.50, F.S.; adding CTCCs to the Financial Emergencies Act.

**Section 4.** – Amending s. 218.501, F.S.; adding CTCCs to the Financial Emergencies Act.

**Section 5.** – Amending s. 218.503, F.S.; adding CTCCs to the Financial Emergencies Act; and requiring the Commissioner of Education to determine whether a state of financial emergency exists.

**Section 6.** – Amending s. 218.504, F.S.; adding CTCCs to the Financial Emergencies Act.

**Section 7.** – Amending s. 1002.33, F.S., relating to charter schools; requiring use of specified documents developed by the DOE; revising requirements for a 15-year charter renewal; revising provisions relating to the online school accountability report; revising provisions relating to interdistrict transfers; revising provisions relating to the timing of state and federal fund payments to charter schools; requiring charter schools to receive the first opportunity to purchase or lease certain district property; revising provisions relating to a state of financial emergency; prohibiting nepotism and requiring compliance with specified conflict of interest regulations; requiring quarterly financial reporting; and revising student assessment data requirements.

**Section 8.** – Amending s. 1002.335, F.S., relating to the FSEC; revising district school board exclusivity provisions; prohibiting nepotism and requiring compliance with specified conflict of interest regulations; and revising student assessment data requirements.

**Section 9.** – Amending s. 1002.34, F.S., relating to CTCCs; requiring CTCC use of specified documents developed by the DOE; requiring the DOE to develop applicant training; revising provisions relating to a state of financial emergency; and prohibiting nepotism and requiring compliance with specified conflict of interest regulations.

**Section 10.** – Creating s. 1002.345, F.S.; specifying requirements for charter schools and CTCCs that are experiencing financial difficulty or that are found by the Commissioner of Education to be in a state of financial emergency.

**Section 11.** – Amending s. 1011.71, F.S.; requiring school districts to share two-mill revenues with charter schools.

**Section 12.** – Amending s. 1013.61, F.S.; expanding the authorized uses of charter school fixed capital outlay.

**Section 13.** – Amending s. 1013.735, F.S.; requiring charter schools to receive a specified portion of class size reduction fixed capital outlay.

**Section 14.** – Providing 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 a fiscal impact on state government revenues.

2. Expenditures:

   The bill requires the DOE to perform a number of tasks to assist charter schools and CTCCs, including offering or arranging training and specific technical assistance for applicants, assisting with the development and monitoring of financial recovery plans, and providing and comparing student performance information. The DOE already provides these types of services to districts and other schools. The administrative workload associated with the bill is expected to have an insignificant fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All charter schools, including those operated by private entities may receive more funding due to the bill's amendments to law governing school district discretionary two-mill levies and the Classroom for Kids Program. Please see "Fiscal Comments" below.

D. FISCAL COMMENTS:

***DROP:*** Reliable data regarding charter school teachers currently participating in the Florida Retirement System is not available; however, for each teacher eligible to participate in DROP, increasing the participation time from 60 months to 96 months, or an additional three years, will increase payroll costs to the employer, since the DROP payroll contribution rate is greater than the normal cost rate for active employees in the Regular Class. Since DROP employees are typically at the upper end of the salary scale, the cumulative effect will be to make these employees relatively more expensive to the payroll than their replacements.

According to the Department of Management Services actuarial analysis, the FRS system would not experience a negative impact to its funded status due to the increased DROP provisions of the bill.[81]

***Two-Mill Levy:*** The bill requires that the two-mill discretionary levy authorized under s. 1011.71(2), F.S., include charter schools and removes current law's discretionary authorization for school boards to share two-mill revenues with charter schools. Instead, under the bill, each school board must determine an equitable amount of its two-mill revenue, which it must share with the charter schools located within

[81] Department of Management Services Bill Analysis for HB 1259 dated March 13, 2008.

the district. This provision will reduce the total amount of two-mill revenue available to traditional public schools within the district, while increasing the amount of this revenue that is received by charter schools. The fiscal impact of this provision on districts and charter schools is indeterminate, however, as the amount that each school board will determine to be "equitable" is unknown.

***Classrooms for Kids Program:*** The bill requires charter schools to receive a portion of the statewide allocation for Class Size Reduction Fixed Capital Outlay. The 2007-08 appropriation for Class Size Reduction Fixed Capital Outlay is $650 million and is allocated based on the methodology provided in s.1013.735, F.S., which states that 25 percent shall be allocated based on the district's share of K-12 base capital outlay full-time equivalent student membership, 65 percent shall be allocated based on the district's share of growth capital outlay full-time equivalent student membership, and 10 percent shall be allocated for maintenance and repair of existing facilities according to the provisions of section 1013.64(1)(a), F.S. The bill adds charter schools to the distribution of the 25 percent portion based on the base capital outlay FTE and requires district school boards to provide charter schools within their district with the charter school's proportionate share of these funds. These provisions will reduce the amount of class size fixed capital outlay available to traditional public schools within the district, but will enable charter schools to begin receiving class size capital outlay funding.

## 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:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Auditor General to adopt rules for the financial audits of CTCCs. It also requires the SBE to adopt rules for the development of financial recovery and corrective action plans.

C. DRAFTING ISSUES OR OTHER COMMENTS:

***Facilities:*** The bill amends current law to require a school district that closes a public school to make the property and facilities available to charter schools within the district for lease or purchase within 60 days. School district representatives have indicated that mere closure of a public school does not necessarily mean that the district no longer wishes to utilize the property and facilities for some other educational purpose. Accordingly, consideration might be given to amending this provision of the bill so that the requirement of making the property and facilities available to charter schools is not triggered until the district school board has determined to that it no longer wishes to use the property and facilities for its own educational purposes.

***Two-Mill Revenue:*** The bill requires each school district to determine an "equitable amount" of two-mill revenue, which must be shared with charter schools within the district. This provision raises a number of issues, as follows, which may warrant clarification:

- The term "equitable" is undefined and could generate litigation as to its meaning.

- School districts are statutorily required to conduct long-range planning for facility needs over five-, ten-, and 20-year periods. Statute specifically requires a district's five-year plan to include a financially feasible district facilities work program. Two-mill revenues are used, and often committed by districts for long-term debts owed under certificates of participation, for facility needs.[82] Thus, it appears that statute should be amended to require district consideration of charter school facility needs when developing its long-range plans and to limit charter school use of two-mill revenues to those needs included in such plans.
- The bill does not expressly require reversion of charter school facilities financed with two-mill revenue to the school district when the charter school discontinues operations. Given such tax payer financing, it would appear desirable to amend the bill to require reversion.
- Unlike school district facilities built or renovated with two-mill revenues, charter school facilities are not required to meet School Requirements for Education Facilities (SREF).[83] If these facilities revert to district ownership due to a charter school closure, it would be necessary for the facilities to meet SREF standards to be utilized by the districts.

D. STATEMENT OF THE SPONSOR

None.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

[82] *See* ss. 163.3177(12), 1013.35, and 1013.64, and F.S.
[83] Section 1002.33(18), F.S.

A bill to be entitled

An act relating to education; amending s. 11.45, F.S., relating to audit reports and rules by the Auditor General; conforming provisions related to changes in the entities subject to a state of financial emergency; amending s. 121.091, F.S.; increasing the period of time during which certain charter school instructional personnel may participate in the Florida Retirement System Deferred Retirement Option Program; extending such participation to certain school district prekindergarten instructional personnel; deleting an obsolete provision; amending ss. 218.50 and 218.501, F.S.; conforming provisions related to changes in the entities subject to a state of financial emergency; amending ss. 218.503 and 218.504, F.S.; providing that charter technical career centers are subject to certain requirements in the event of a financial emergency; requiring that the sponsor and Legislative Auditing Committee be notified of certain conditions; providing that the Commissioner of Education may require a financial recovery plan if certain conditions exist for a charter school or charter technical career center; amending s. 1002.33, F.S.; providing for duties of charter school sponsors and governing boards when charter schools and charter technical career centers experience a material financial weakness or a financial emergency; specifying forms and evaluation instruments to be used by charter school applicants and sponsors; revising provisions relating to appeal of a charter school

application denial; deleting the auditing requirements and financial emergency provisions for charter schools; requiring charter schools to disclose the identity of relatives of charter school personnel; revising provisions relating to charter school renewal terms; requiring charter schools to provide quarterly financial statements; revising provisions relating to a charter school's annual report; revising provisions relating to student eligibility to attend a charter school; providing requirements for distribution of funds to charter schools; providing priority to charter schools for the lease or purchase of public school property and facilities; requiring a sponsor to provide additional services relating to school lunches under the federal lunch program; providing for the disclosure of the performance of charter schools that are not given a school grade or school improvement rating; providing reporting requirements; providing restrictions for the employment of relatives by charter school personnel; providing that members of a charter school governing board are subject to certain standards of conduct and financial disclosure; amending s. 1002.335, F.S., relating to the Florida Schools of Excellence Commission; revising provisions relating to exclusive authority to authorize charter schools; eliminating the requirement for district school boards to annually seek continued exclusivity from the State Board of Education; providing that a grant or denial of exclusivity shall be effective for 4 fiscal years;

specifying additional components of cosponsor agreements; providing for application of performance disclosure requirements for charter schools that are not graded or rated; providing for application of restrictions on the employment of relatives and certain standards of conduct and financial disclosure; amending s. 1002.34, F.S.; providing additional duties for charter technical career centers, applicants, sponsors, and governing boards; requiring the Department of Education to offer or arrange training and assistance to applicants for a charter technical career center; providing for application of restrictions on the employment of relatives and certain standards of conduct and financial disclosure; creating s. 1002.345, F.S.; establishing criteria and requirements for charter schools and charter technical career centers that have material financial weaknesses or are in a state of financial emergency; establishing requirements for charter schools, charter technical career centers, governing boards, and sponsors; requiring financial audits of charter schools and charter technical career centers; providing for corrective action and financial recovery plans; providing for duties of auditors, the Commissioner of Education, and the Department of Education; requiring the State Board of Education to adopt rules; providing grounds for termination or nonrenewal of a charter; amending s. 1011.71, F.S., relating to district school tax; providing that school boards must share an equitable amount of capital improvement millage with charter

schools; amending s. 1013.62, F.S.; authorizing additional uses for charter school capital outlay funds; amending s. 1013.735, F.S.; providing charter schools with a specified portion of the appropriation for the Classrooms for Kids Program; providing an effective date.

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

Section 1. Paragraph (e) of subsection (7) and subsection (8) of section 11.45, Florida Statutes, are amended to read:

11.45 Definitions; duties; authorities; reports; rules.--

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.--

(e) The Auditor General shall notify the Governor or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee of any audit report reviewed by the Auditor General pursuant to paragraph (b) which contains a statement that a local governmental entity, charter school, <u>charter technical career center,</u> or district school board has met one or more of the conditions specified in s. 218.503. If the Auditor General requests a clarification regarding information included in an audit report to determine whether a local governmental entity, charter school, <u>charter technical career center,</u> or district school board has met one or more of the conditions specified in s. 218.503, the requested clarification must be provided within 45 days after the date of the request. If the local governmental entity, charter school, <u>charter technical career center,</u> or district school board does not comply with the Auditor General's request, the Auditor General shall notify the

Legislative Auditing Committee. If, after obtaining the requested clarification, the Auditor General determines that the local governmental entity, charter school, charter technical career center, or district school board has met one or more of the conditions specified in s. 218.503, he or she shall notify the Governor or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee.

(8) RULES OF THE AUDITOR GENERAL.--The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all financial audits performed by independent certified public accountants pursuant to ss. 215.981, 218.39, 1001.453, 1004.28, and 1004.70. The rules for audits of local governmental entities, charter schools, charter technical career centers, and district school boards must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act as stated in s. 218.501.

Section 2. Paragraphs (a) and (b) of subsection (13) of section 121.091, Florida Statutes, are amended to read:

121.091 Benefits payable under the system.--Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the

member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(13) DEFERRED RETIREMENT OPTION PROGRAM.--In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the System Trust Fund on behalf of the participant, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in the DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(a) Eligibility of member to participate in the DROP.--All active Florida Retirement System members in a regularly established position, and all active members of ~~either~~ the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System

established in chapter 122, which ~~systems~~ are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in the DROP if ~~provided that~~:

1. The member is not a renewed member of the Florida Retirement System under s. 121.122, or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Except as provided in subparagraph 6., election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date ~~based on service~~ before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains 57, or age 52 for Special Risk Class members. ~~For a member who first reached normal retirement date or the deferred eligibility date described above prior to the effective date of this section, election to participate shall be made within 12 months after the effective date of this section.~~ A member who fails to make an election within the ~~such~~ 12-month limitation period shall forfeit all rights to participate in the DROP. The member shall advise his or her employer and the division in writing of the date on which the DROP shall begin. The ~~Such~~ beginning date may be subsequent to the 12-month election period~~,~~ but must be within the 60-month or~~, with respect to members who are instructional personnel employed by the Florida School for the~~

~~Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, or who are instructional personnel as defined in s. 1012.01(2)(a) (d) in grades K-12 and who have received authorization by the district school superintendent to participate in the DROP beyond 60 months, the~~ 96-month maximum participation ~~limitation~~ period as provided in subparagraph (b)1. When establishing eligibility of the member to participate in the DROP for the 60-month or~~, with respect to members who are instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, or who are instructional personnel as defined in s. 1012.01(2)(a) (d) in grades K-12 and who have received authorization by the district school superintendent to participate in the DROP beyond 60 months, the~~ 96-month maximum participation period, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member with dual normal retirement dates is ~~shall be~~ eligible to elect to participate in DROP within 12 months after attaining normal retirement date in either class.

3. The employer of a member electing to participate in the DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in the DROP begins and the date the member's employment and DROP participation will terminate.

4. Simultaneous employment of a participant by additional Florida Retirement System employers subsequent to the commencement of participation in the DROP is ~~shall be~~ permissible provided such employers acknowledge in writing a DROP termination date no later than the participant's existing termination date or the 60-month participation ~~limitation~~ period as provided in subparagraph (b)1.

5. A DROP participant may change employers while participating in the DROP, subject to the following:

a. A change of employment must take place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation shall cease unless the employer verifies a continuation of the employment relationship for such participant pursuant to s. 121.021(39)(b).

b. Such participant and new employer shall notify the division of the identity of the new employer on forms required by the division ~~as to the identity of the new employer~~.

c. The new employer shall acknowledge, in writing, the participant's DROP termination date, which may be extended but not beyond the original 60-month or~~, with respect to members who are instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, or who are instructional personnel as defined in s. 1012.01(2)(a) (d) in grades K-12 and who have received authorization by the district school superintendent to participate in the DROP beyond 60~~

~~months, the~~ 96-month maximum participation period provided in subparagraph (b)1., shall acknowledge liability for any additional retirement contributions and interest required if the participant fails to timely terminate employment, and shall be subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01~~(2)~~, election to participate in the DROP may ~~shall~~ be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or her employer and the division in writing of the date on which the DROP ~~Deferred Retirement Option Program~~ shall begin. When establishing eligibility of the member to participate in the DROP for the 60-month or~~, with respect to members who are instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, or who are instructional personnel as defined in s. 1012.01(2)(a) (d) in grades K-12 and who have received authorization by the district school superintendent to participate in the DROP beyond 60 months, the~~ 96-month maximum participation period, as provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member with dual normal retirement dates is ~~shall be~~ eligible to elect to participate in either class.

(b) Participation in the DROP.--

1. An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 calendar months or, with respect to members who are instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, ~~or~~ who are instructional personnel as defined in s. 1012.01(2)(a)-(d) in grades K-12 or classroom teachers for prekindergarten students funded under s. 1011.62 and who have received authorization by the district school superintendent to participate in the DROP beyond 60 calendar months, or who are instructional personnel as defined in s. 1012.01(2)(a)-(d) in grades K-12 or classroom teachers for prekindergarten students funded under s. 1011.62 and who are employed by a charter school and who have received authorization from the governing board of the charter school to participate in the DROP beyond 60 calendar months, 96 calendar months immediately following the date on which the member first reaches his or her normal retirement date or the date to which he or she is eligible to defer his or her election to participate as provided in subparagraph (a)2. However, a member who has reached normal retirement date prior to the effective date of the DROP is ~~shall be~~ eligible to participate in the DROP for up to ~~for a period of time not to exceed~~ 60 calendar months or~~, with respect to members who are instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, or who are~~

~~instructional personnel as defined in s. 1012.01(2)(a) (d) in grades K-12 and who have received authorization by the district school superintendent to participate in the DROP beyond 60 calendar months,~~ 96 calendar months, as appropriate, immediately following the effective date of the DROP, except that a member of the Special Risk Class who has reached normal retirement date prior to the effective date of the DROP and whose total accrued value exceeds 75 percent of average final compensation as of his or her effective date of retirement may ~~shall be eligible to~~ participate in the DROP for no more than 36 calendar months immediately following the effective date of the DROP.

2. Upon deciding to participate in the DROP, the member shall submit, on forms required by the division:

a. A written election to participate in the DROP;

b. Selection of the DROP participation and termination dates, which satisfy the limitations stated in paragraph (a) and subparagraph 1. The ~~Such~~ termination date must ~~shall~~ be in a binding letter of resignation to ~~with~~ the employer, establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of the ~~his or her~~ employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant shall be a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and 121.122. However, participation in the DROP does not alter

the participant's employment status and the member is ~~such employee shall~~ not ~~be~~ deemed retired from employment until his or her deferred resignation is effective and termination occurs as provided in s. 121.021(39).

4. Elected officers shall be eligible to participate in the DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election to participate in the DROP until the next succeeding term in that office. An ~~Such~~ elected officer who exercises this option may participate in the DROP for up to 60 calendar months or for a period of no longer than the ~~such~~ succeeding term of office, whichever is less.

b. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly, except that~~,~~ ~~however,~~ if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within the ~~such~~ 60-month limitation, the retirement and the participant's DROP shall be null and void as provided in sub-subparagraph (c)5.d.

c. An elected officer who is dually employed and elects to participate in DROP shall be required to satisfy the definition of termination within the 60-month or~~, with respect to members who are instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind to participate in the DROP beyond 60 months, or who are instructional personnel as defined in s. 1012.01(2)(a)-(d)~~

~~in grades K-12 and who have received authorization by the district school superintendent to participate in the DROP beyond 60 months, the~~ 96-month maximum participation ~~limitation~~ period as provided in subparagraph 1. for the nonelected position and may continue employment as an elected officer as provided in s. 121.053. The elected officer shall ~~will~~ be enrolled as a renewed member in the Elected Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.122, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

Section 3. Section 218.50, Florida Statutes, is amended to read:

218.50 Short title.--Sections 218.50-218.504 may be cited as the "Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act."

Section 4. Section 218.501, Florida Statutes, is amended to read:

218.501 Purposes.--The purposes of ss. 218.50-218.504 are:

(1) To promote the fiscal responsibility of local governmental entities, charter schools, charter technical career centers, and district school boards.

(2) To assist local governmental entities, charter schools, charter technical career centers, and district school boards in providing essential services without interruption and in meeting their financial obligations.

(3) To assist local governmental entities, charter

schools, charter technical career centers, and district school boards through the improvement of local financial management procedures.

Section 5. Subsections (1), (2), and (4) of section 218.503, Florida Statutes, are amended to read:

218.503 Determination of financial emergency.--

(1) Local governmental entities, charter schools, charter technical career centers, and district school boards shall be subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when any one of the following conditions occurs:

(a) Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of a lack of funds.

(b) Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of a lack of funds.

(c) Failure to transfer at the appropriate time, due to lack of funds:

1. Taxes withheld on the income of employees; or

2. Employer and employee contributions for:

a. Federal social security; or

b. Any pension, retirement, or benefit plan of an employee.

(d) Failure for one pay period to pay, due to lack of funds:

1. Wages and salaries owed to employees; or

2. Retirement benefits owed to former employees.

(e) An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, for which sufficient resources of the local governmental entity, as reported on the balance sheet or statement of net assets on the general purpose or fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Fixed or capital assets, the disposal of which would impair the ability of a local governmental entity to carry out its functions, are not considered resources available to cover reported deficits.

(2) A local governmental entity shall notify the Governor and the Legislative Auditing Committee, a charter school shall notify the charter school sponsor and the Legislative Auditing Committee, a charter technical career center shall notify the charter technical career center sponsor and the Legislative Auditing Committee, and a district school board shall notify the Commissioner of Education and the Legislative Auditing Committee, when one or more of the conditions specified in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board. In addition, any state agency must, within 30 days after a

determination that one or more of the conditions specified in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board, notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee.

(4)(a) Upon notification that one or more of the conditions in subsection (1) exist, the charter school sponsor or the sponsor's designee and the Commissioner of Education shall contact the charter school governing body to determine what actions have been taken by the charter school governing body to resolve the condition. The Commissioner of Education may ~~charter school sponsor has the authority to~~ require and approve a financial recovery plan, to be prepared by the charter school governing body, prescribing actions that will cause the charter school to no longer be subject to this section. ~~The Department of Education shall establish guidelines for developing such plans.~~

(b) Upon notification that one or more of the conditions in subsection (1) exist, the charter technical career center sponsor or the sponsor's designee and the Commissioner of Education shall contact the charter technical career center governing body to determine what actions have been taken by the charter technical career center governing body to resolve the condition. The Commissioner of Education may require and approve a financial recovery plan, to be prepared by the charter technical career center governing body, prescribing actions that

will cause the charter technical career center to no longer be subject to this section.

(c) The Commissioner of Education shall determine if the charter school or charter technical career center needs a financial recovery plan to resolve the condition. If the Commissioner of Education determines that a financial recovery plan is needed, the charter school or charter technical career center is considered to be in a state of financial emergency.

The Department of Education, with the involvement of sponsors, charter schools, and charter technical career centers, shall establish guidelines for developing such plans.

Section 6. Section 218.504, Florida Statutes, is amended to read:

218.504 Cessation of state action.--The Governor or the Commissioner of Education, as appropriate, has the authority to terminate all state actions pursuant to ss. 218.50-218.504. Cessation of state action must not occur until the Governor or the Commissioner of Education, as appropriate, has determined that:

(1) The local governmental entity, charter school, charter technical career center, or district school board:

(a) Has established and is operating an effective financial accounting and reporting system.

(b) Has resolved the conditions outlined in s. 218.503(1).

(2) None of the conditions outlined in s. 218.503(1) exists.

Section 7. Paragraph (b) of subsection (5), paragraphs

(a), (b), and (d) of subsection (6), paragraphs (a) and (b) of subsection (7), paragraphs (g) through (q) of subsection (9), paragraph (a) of subsection (10), paragraphs (b) and (c) of subsection (17), paragraph (e) of subsection (18), paragraph (a) of subsection (20), and subsections (21) and (23) of section 1002.33, Florida Statutes, are amended, present subsection (24) is renumbered as subsection (26), and new subsections (24) and (25) are added to that section, to read:

1002.33 Charter schools.--

(5) SPONSOR; DUTIES.--

(b) Sponsor duties.--

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided for in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has secured space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor's policies shall not apply to a charter school unless mutually agreed to by both the sponsor and the charter school.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school

participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. Nothing contained in this paragraph shall be considered a waiver of sovereign immunity by a district school board.

4. A community college may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. District school boards shall cooperate with and assist the community college on

the charter application. Community college applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Community colleges shall not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

(6) APPLICATION PROCESS AND REVIEW.--Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare and submit an application on a form developed by the Department of Education, which ~~that~~:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are

grounded in scientifically based reading research.

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

(b) A sponsor shall receive and review all applications for a charter school using an evaluation instrument developed by the Department of Education. Beginning with the 2007-2008 school year, a sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may receive applications later than this date if it chooses. A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of an application upon the promise of future payment of any kind.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter

school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3. A sponsor shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days, articulate in writing the specific reasons, based upon good cause, supporting its denial of the charter application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education supporting those reasons.

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of a charter application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. Upon approval of a charter application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted unless the sponsor allows a waiver of this provision for good cause.

(d) For charter school applications in school districts that have not been granted exclusive authority to sponsor charter schools pursuant to s. 1002.335(5), the right to appeal an application denial under paragraph (c) shall be contingent on the applicant having submitted the same or a substantially similar application to the district school board and the Florida Schools of Excellence Commission or one of its cosponsors. Any such applicant whose application is denied by the commission or one of its cosponsors and ~~subsequent to its denial~~ by the district school board may exercise its right to appeal the district school board's denial under paragraph (c) within 30 days after receipt of the commission's or cosponsor's denial or failure to act on the application. However, the applicant forfeits its right to appeal under paragraph (c) if it fails to submit its application to the commission or one of its cosponsors by August 1 of the school year immediately following the district school board's denial of the application.

(7) CHARTER.--The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing body of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address, and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Sunshine State Standards and grounded in scientifically based reading research.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description for each of the following:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. Included in the methods is a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.43.

6. A method for resolving conflicts between the governing body of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional

experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and which shall be compared with information provided in the annual report of the charter school. ~~The charter shall ensure that, if a charter school internal audit or annual financial audit reveals a state of financial emergency as defined in s. 218.503 or deficit financial position, the auditors are required to notify the charter school governing board, the sponsor, and the Department of Education. The internal auditor shall report such findings in the form of an exit interview to the principal or the principal administrator of the charter school and the chair of the governing board within 7 working days after finding the state of financial emergency or deficit position. A final report shall be provided to the entire governing board, the sponsor, and the Department of Education within 14 working days after the exit interview. When a charter school is in a state of financial emergency, the charter school shall file a detailed financial recovery plan with the sponsor. The department, with the~~

~~involvement of both sponsors and charter schools, shall establish guidelines for developing such plans.~~

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual

review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chair of the governing board of directors, superintendent, governing board member, principal,

assistant principal, or any other person employed by the charter school having equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) ~~1.~~ A charter may be renewed if ~~provided that~~ a program review demonstrates that the criteria in paragraph (a) have been successfully accomplished and that none of the grounds for nonrenewal established by paragraph (8)(a) has been documented. In order to facilitate long-term financing for charter school construction, a charter school that has operated ~~schools operating~~ for a minimum of 3 years, that has received a school grade of at least a "C" pursuant to s. 1008.34 during the previous 3 years, and that demonstrates ~~demonstrating~~ exemplary ~~academic programming and~~ fiscal management must be offered ~~are eligible for~~ a 15-year charter renewal. Such long-term charter is subject to annual review and may be terminated during the term of the charter pursuant to subsection (8).

~~2. The 15 year charter renewal that may be granted pursuant to subparagraph 1. shall be granted to a charter school that has received a school grade of "A" or "B" pursuant to s. 1008.34 in 3 of the past 4 years and is not in a state of financial emergency or deficit position as defined by this section. Such long term charter is subject to annual review and may be terminated during the term of the charter pursuant to~~

~~subsection (8).~~

(9) CHARTER SCHOOL REQUIREMENTS.--

~~(g) A charter school shall provide for an annual financial audit in accordance with s. 218.39. Financial audits that reveal a state of financial emergency as defined in s. 218.503 and are conducted by a certified public accountant or auditor in accordance with s. 218.39 shall be provided to the governing body of the charter school within 7 working days after finding that a state of financial emergency exists. When a charter school is found to be in a state of financial emergency by a certified public accountant or auditor, the charter school must file a detailed financial recovery plan with the sponsor within 30 days after receipt of the audit.~~

(g) ~~(h)~~ In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records which constitute their accounting system:

1. In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

2. At the discretion of the charter school governing board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

Charter schools shall provide annual financial report and

program cost report information in the state-required formats for inclusion in district reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph. A charter school shall provide quarterly financial statements to the sponsor.

(h) ~~(i)~~ The governing board of the charter school shall annually adopt and maintain an operating budget.

(i) ~~(j)~~ The governing body of the charter school shall exercise continuing oversight over charter school operations.

(j) ~~(k)~~ The governing body of the charter school shall be responsible for:

1. Ensuring that the charter school has retained the services of a certified public accountant or auditor for the annual financial audit, pursuant to s. 1002.345(2) ~~paragraph (g)~~, who shall submit the report to the governing body.

2. Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

3.a. Performing the duties provided for in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

4. Participating in governance training approved by the department that must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

(k) ~~(1)~~ The governing body of the charter school shall report its progress annually to its sponsor, which shall forward the report to the Commissioner of Education at the same time as other annual school accountability reports. The Department of Education shall develop a uniform, online annual accountability report format to be completed by charter schools. This report shall be easy to utilize and contain demographic information, student performance data, and financial accountability information. A charter school may directly access, complete, and correct school data and information in the online accountability report. The sponsor shall review the report before final submission to ~~shall not be required to provide information and data that is duplicative and already in the possession of~~ the department. The Department of Education shall include in its compilation a notation if a school failed to file its report by the deadline established by the department. The report shall include at least the following components:

1. Student achievement performance data, including the information required for the annual school report and the education accountability system governed by ss. 1008.31 and 1008.345. Charter schools are subject to the same accountability requirements as other public schools, including reports of student achievement information that links baseline student data to the school's performance projections identified in the charter. The charter school shall identify reasons for any difference between projected and actual student performance.

2. Financial status of the charter school which must include revenues and expenditures at a level of detail that

allows for analysis of the school's ability to meet financial obligations and timely repayment of debt.

3. Documentation of the facilities in current use and any planned facilities for use by the charter school for instruction of students, administrative functions, or investment purposes.

4. Descriptive information about the charter school's personnel, including salary and benefit levels of charter school employees, the proportion of instructional personnel who hold professional or temporary certificates, and the proportion of instructional personnel teaching in-field or out-of-field.

(l) ~~(m)~~ A charter school shall not levy taxes or issue bonds secured by tax revenues.

(m) ~~(n)~~ A charter school shall provide instruction for at least the number of days required by law for other public schools, and may provide instruction for additional days.

(n) ~~(o)~~ The director and a representative of the governing body of a charter school that has received a school grade of "D" under s. 1008.34(2) shall appear before the sponsor or the sponsor's staff at least once a year to present information concerning each contract component having noted deficiencies. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

(o) ~~(p)~~ Upon notification that a charter school receives a school grade of "D" for 2 consecutive years or a school grade of "F" under s. 1008.34(2), the charter school sponsor or the sponsor's staff shall require the director and a representative of the governing body to submit to the sponsor for approval a

school improvement plan to raise student achievement and to implement the plan. The sponsor has the authority to approve a school improvement plan that the charter school will implement in the following school year. The sponsor may also consider the State Board of Education's recommended action pursuant to s. 1008.33(1) as part of the school improvement plan. The Department of Education shall offer technical assistance and training to the charter school and its governing body and establish guidelines for developing, submitting, and approving such plans.

1. If the charter school fails to improve its student performance from the year immediately prior to the implementation of the school improvement plan, the sponsor shall place the charter school on probation and shall require the charter school governing body to take one of the following corrective actions:

a. Contract for the educational services of the charter school;

b. Reorganize the school at the end of the school year under a new director or principal who is authorized to hire new staff and implement a plan that addresses the causes of inadequate progress; or

c. Reconstitute the charter school.

2. A charter school that is placed on probation shall continue the corrective actions required under subparagraph 1. until the charter school improves its student performance from the year prior to the implementation of the school improvement plan.

3. Notwithstanding any provision of this paragraph, the sponsor may terminate the charter at any time pursuant to the provisions of subsection (8).

(p) ~~(q)~~ The director and a representative of the governing body of a graded charter school that has submitted a school improvement plan or has been placed on probation under paragraph (o) ~~(p)~~ shall appear before the sponsor or the sponsor's staff at least once a year to present information regarding the corrective strategies that are being implemented by the school pursuant to the school improvement plan. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

(10) ELIGIBLE STUDENTS.--

(a) A charter school shall be open to any student ~~covered in an interdistrict agreement or~~ residing in the school district in which the charter school is located; however, in the case of a charter lab school, the charter lab school shall be open to any student eligible to attend the lab school as provided in s. 1002.32 or who resides in the school district in which the charter lab school is located. Any ~~eligible~~ student shall be allowed interdistrict transfer to attend a charter school when based on good cause. Good cause shall include, but not be limited to, geographic proximity to a charter school in a neighboring school district.

(17) FUNDING.--Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students

enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(b) The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law shall be entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature, including transportation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education. Florida Education Finance Program funds for a charter school must be distributed to the charter school by the district school board within 10 days after receipt from the state.

(c) If the sponsor ~~district school board~~ is providing programs or services to students funded by federal funds, any eligible students enrolled in charter schools in the school

district shall be provided federal funds for the same level of service provided students in the schools operated by the district school board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding and funding under the Individuals with Disabilities Education Act, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment.

(18) FACILITIES.--

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. If a school district closes a public school, the property and facilities must first be made available within 60 days, for lease or purchase, to charter schools within the district to be used for educational purposes. A charter school receiving property from the school district may not sell or dispose of such property without written permission of the school district. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital

Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

(20) SERVICES.--

(a) A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school are provided by the school district at the request of the charter school, that any funds due the charter school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a

charter school in the same manner provided to other public schools in the district. A total administrative fee for the provision of such services shall be calculated based upon up to 5 percent of the available funds defined in paragraph (17)(b) for all students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 500 students. For charter schools with a population of 501 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld may only be used for capital outlay purposes specified in s. 1013.62(2). Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum 5-percent administrative fee withheld pursuant to this paragraph.

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.--

(a) The Department of Education shall provide information to the public, directly and through sponsors, both on how to form and operate a charter school and on how to enroll in charter schools once they are created. This information shall include a standard application format, charter format, evaluation instrument, and charter renewal format which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with ~~both~~ school districts, the Florida Schools of Excellence Commission, and charter schools before implementation. These formats shall be used ~~as guidelines~~ by charter school sponsors.

(b)1. The Department of Education shall report student

assessment data pursuant to s. 1008.34(3)(b) which is reported to schools that receive a school grade pursuant to s. 1008.34 or student assessment data pursuant to s. 1008.341(3) which is reported to alternative schools that receive a school improvement rating pursuant to s. 1008.341 to each charter school that:

a. Does not receive a school grade pursuant to s. 1008.34 or a school improvement rating pursuant to s. 1008.341; and

b. Serves at least 10 students who are tested on the statewide assessment test pursuant to s. 1008.22.

2. The charter school shall report the information in subparagraph 1. to each parent of a student at the charter school, the district in which the charter school is located, and the governing board of the charter school. This paragraph does not abrogate the provisions of s. 1002.22, relating to student records, and the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

3.a. Pursuant to this paragraph, the Department of Education shall compare the charter school student performance data for each charter school in subparagraph 1. with the student performance data in traditional public schools in the district in which the charter school is located and other charter schools in the state. For charter alternative schools, the department shall compare the student performance data described in this paragraph with all alternative schools in the state. The comparative data shall be provided by the following grade groupings:

(I) Grades 3 through 5.

(II) Grades 6 through 8.

(III) Grades 9 through 11.

b. Each charter school shall make the information in this paragraph available to the public.

(23) ANALYSIS OF CHARTER SCHOOL PERFORMANCE.--Upon receipt of the annual report required by paragraph (9)(k) ~~(9)(l)~~, the Department of Education shall provide to the State Board of Education, the Commissioner of Education, the Governor, the President of the Senate, and the Speaker of the House of Representatives an analysis and comparison of the overall performance of charter school students, to include all students whose scores are counted as part of the statewide assessment program, versus comparable public school students in the district as determined by the statewide assessment program currently administered in the school district, and other assessments administered pursuant to s. 1008.22(3).

(24) RESTRICTION ON EMPLOYMENT OF RELATIVES.--

(a) This subsection applies to charter school personnel in a charter school operated by a private entity. Charter school personnel in schools operated by a municipality or other public entity are subject to s. 112.3135.

(b) As used in this subsection, the term:

1. "Charter school personnel" means a charter school owner, president, chair of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school having equivalent decisionmaking authority and in whom is vested the authority, or to whom the authority has been delegated, to

appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in a charter school, including the authority as a member of a governing board of a charter school to vote on the appointment, employment, promotion, or advancement of individuals.

2. "Relative" means father, mother, son, daughter, brother, sister, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

3. "Supervise" means the appointment, employment, promotion, or advancement of an individual or recommendation of the appointment, employment, promotion, or advancement of an individual.

(c) Charter school personnel may not supervise a relative in the charter school in which the personnel serve unless the governing board of the charter school unanimously waives this provision. Such waiver shall be annually reported by the governing board to the charter school's sponsor and shall be included in the report under paragraph (9)(k).

(25) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.--

(a) A member of a governing board of a charter school, including a charter school operated by a private entity, is subject to the provisions of ss. 112.313(2), (3), (7), (12), and (15) and 112.3143(3).

(b) A member of a governing board of a charter school operated by a municipality or other public entity is subject to

the provisions of s. 112.3144, relating to the disclosure of financial interests.

Section 8. Subsection (5), paragraph (a) of subsection (7), and paragraph (a) of subsection (11) of section 1002.335, Florida Statutes, are amended to read:

1002.335 Florida Schools of Excellence Commission.--

(5) CHARTERING AUTHORITY.--

(a) A charter school applicant may submit an application to the commission only if the school district in which the FSE charter school is to be located has not retained exclusive authority to authorize charter schools as provided in paragraph (e). If a district school board has not retained exclusive authority to authorize charter schools as provided in paragraph (e), the district school board and the commission shall have concurrent authority to authorize charter schools and FSE charter schools, respectively, to be located within the geographic boundaries of the school district. The district school board shall monitor and oversee all charter schools authorized by the district school board pursuant to s. 1002.33. The commission shall monitor and oversee all FSE charter schools sponsored by the commission pursuant to subsection (4).

(b) Paragraph (e) may not be construed to eliminate the ability of a district school board to authorize charter schools pursuant to s. 1002.33. A district school board shall retain the authority to reauthorize and to oversee any charter school that it has authorized, except with respect to any charter school that is converted to an FSE charter school under this section.

(c) For fiscal year 2008-2009 and every 4 fiscal years

thereafter ~~2007-2008 and for each fiscal year thereafter~~, a district school board may seek ~~to retain~~ exclusive authority to authorize charter schools within the geographic boundaries of the school district by presenting to the State Board of Education, on or before March 1 of the fiscal year prior to that for which the exclusive authority is to apply, a written resolution adopted by the district school board indicating the intent to seek ~~retain~~ exclusive authority to authorize charter schools. ~~A district school board may seek to retain the exclusive authority to authorize charter schools by presenting to the state board the written resolution on or before a date 60 days after establishment of the commission.~~ The written resolution shall be accompanied by a written description addressing the elements described in paragraph (e). The district school board shall provide a complete copy of the resolution, including the description, to each charter school authorized by the district school board on or before the date it submits the resolution to the state board.

(d) A party may challenge the grant of exclusive authority made by the State Board of Education pursuant to paragraph (e) by filing with the state board a notice of challenge within 30 days after the state board grants exclusive authority. The notice shall be accompanied by a specific written description of the basis for the challenge. The challenging party, at the time of filing notice with the state board, shall provide a copy of the notice of challenge to the district school board that has been granted exclusive authority. The state board shall permit the district school board the opportunity to appear and respond

in writing to the challenge. The state board shall make a determination upon the challenge within 60 days after receiving the notice of challenge.

(e) The State Board of Education shall grant to a district school board exclusive authority to authorize charter schools within the geographic boundaries of the school district if the state board determines, after adequate notice, in a public hearing, and after receiving input from any charter school authorized by the district school board, that the district school board has provided fair and equitable treatment to its charter schools during the 4 years prior to the district school board's submission of the resolution described in paragraph (c). The state board's review of the resolution shall, at a minimum, include consideration of the following:

1. Compliance with the provisions of s. 1002.33.

2. Compliance with full and accurate accounting practices and charges for central administrative overhead costs.

3. Compliance with requirements allowing a charter school, at its discretion, to purchase certain services or a combination of services at actual cost to the district.

4. The absence of a district school board moratorium regarding charter schools or the absence of any districtwide charter school enrollment limits.

5. Compliance with valid orders of the state board.

6. The provision of assistance to charter schools to meet their facilities needs by including those needs in local bond issues or otherwise providing available land and facilities that are comparable to those provided to other public school students

in the same grade levels within the school district.

7. The distribution to charter schools authorized by the district school board of a pro rata share of federal and state grants received by the district school board, except for any grant received for a particular purpose which, by its express terms, is intended to benefit a student population not able to be served by, or a program not able to be offered at, a charter school that did not receive a proportionate share of such grant proceeds.

8. The provision of adequate staff and other resources to serve charter schools authorized by the district school board, which services are provided by the district school board at a cost to the charter schools that does not exceed their actual cost to the district school board.

9. The lack of a policy or practice of imposing individual charter school enrollment limits, except as otherwise provided by law.

10. The provision of an adequate number of educational choice programs to serve students exercising their rights to transfer pursuant to the "No Child Left Behind Act of 2001," Pub. L. No. 107-110, and a history of charter school approval that encourages chartering.

(f) The decision of the State Board of Education to grant or deny exclusive authority to a district school board pursuant to paragraph (e) shall be effective for 4 fiscal years, shall not be subject to the provisions of chapter 120, and shall be a final action subject to judicial review by the district court of appeal.

(g) For district school boards that have no discernible history of authorizing charter schools, the State Board of Education may not grant exclusive authority unless the district school board demonstrates that no approvable application has come before the district school board.

~~(h) A grant of exclusive authority by the State Board of Education shall continue so long as a district school board continues to comply with this section and has presented a written resolution to the state board as set forth in paragraph (c).~~

(h) ~~(i)~~ Notwithstanding any other provision of this section to the contrary, a district school board may permit the establishment of one or more FSE charter schools within the geographic boundaries of the school district by adopting a favorable resolution and submitting the resolution to the State Board of Education. The resolution shall be effective until it is rescinded by resolution of the district school board.

(7) COSPONSOR AGREEMENT.--

(a) Upon approval of a cosponsor, the commission and the cosponsor shall enter into an agreement that defines the cosponsor's rights and obligations and includes the following:

1. An explanation of the personnel, contractual and interagency relationships, and potential revenue sources referenced in the application as required in paragraph (6)(c).

2. Incorporation of the requirements of equal access for all students, including any plans to provide food service or transportation reasonably necessary to provide access to as many students as possible.

3. Incorporation of the requirement to serve low-income, low-performing, gifted, or underserved student populations.

4. An explanation of the academic and financial goals and expected outcomes for the cosponsor's charter schools and the method and plans by which they will be measured and achieved as referenced in the application.

5. The conflict-of-interest policies referenced in the application.

6. An explanation of the disposition of facilities and assets upon termination and dissolution of a charter school approved by the cosponsor.

7.a. A provision requiring the cosponsor to annually appear before the commission and provide a report as to the information provided pursuant to s. 1002.33(9)(k)~~(1)~~ for each of its charter schools.

b. A provision requiring the cosponsor to perform the duties provided for in s. 1002.345.

c. A provision requiring the governing board to perform the duties provided for in s. 1002.345, including monitoring the corrective action plan.

8. A provision requiring that the cosponsor report the student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.

9. A provision requiring that the cosponsor work with the commission to provide the necessary reports to the State Board of Education.

10. Any other reasonable terms deemed appropriate by the

commission given the unique characteristics of the cosponsor.

(11) APPLICATION OF CHARTER SCHOOL STATUTE.--

(a) The provisions of s. 1002.33(7)-(12), (14), ~~and~~ (16)-(19), (21)(b), (24), and (25) ~~shall~~ apply to the commission and the cosponsors and charter schools approved pursuant to this section.

Section 9. Subsections (4) and (5), paragraphs (d) and (f) of subsection (6), paragraph (c) of subsection (10), and subsection (13) of section 1002.34, Florida Statutes, are amended to read:

1002.34 Charter technical career centers.--

(4) CHARTER.--A sponsor may designate centers as provided in this section. An application to establish a center may be submitted by a sponsor or another organization that is determined, by rule of the State Board of Education, to be appropriate. However, an independent school is not eligible for status as a center. The charter must be signed by the governing body of the center and the sponsor, and must be approved by the district school board and community college board of trustees in whose geographic region the facility is located. If a charter technical career center is established by the conversion to charter status of a public technical center formerly governed by a district school board, the charter status of that center takes precedence in any question of governance. The governance of the center or of any program within the center remains with its board of directors unless the board agrees to a change in governance or its charter is revoked as provided in subsection (15). Such a conversion charter technical career center is not

affected by a change in the governance of public technical centers or of programs within other centers that are or have been governed by district school boards. A charter technical career center, or any program within such a center, that was governed by a district school board and transferred to a community college prior to the effective date of this act is not affected by this provision. An applicant who wishes to establish a center must submit to the district school board or community college board of trustees, or a consortium of one or more of each, an application on a form developed by the Department of Education that includes:

(a) The name of the proposed center.

(b) The proposed structure of the center, including a list of proposed members of the board of directors or a description of the qualifications for and method of their appointment or election.

(c) The workforce development goals of the center, the curriculum to be offered, and the outcomes and the methods of assessing the extent to which the outcomes are met.

(d) The admissions policy and criteria for evaluating the admission of students.

(e) A description of the staff responsibilities and the proposed qualifications of the teaching staff.

(f) A description of the procedures to be implemented to ensure significant involvement of representatives of business and industry in the operation of the center.

(g) A method for determining whether a student has satisfied the requirements for graduation specified in s.

1003.43 and for completion of a postsecondary certificate or degree.

(h) A method for granting secondary and postsecondary diplomas, certificates, and degrees.

(i) A description of and address for the physical facility in which the center will be located.

(j) A method of resolving conflicts between the governing body of the center and the sponsor and between consortium members, if applicable.

(k) A method for reporting student data as required by law and rule.

(l) The identity of all relatives employed by the charter technical career center who are related to the center owner, president, chair of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the center who has equivalent decisionmaking authority. As used in this paragraph, the term "relative" means father, mother, son, daughter, brother, sister, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(m) ~~(l)~~ Other information required by the district school board or community college board of trustees.

Students at a center must meet the same testing and academic performance standards as those established by law and rule for students at public schools and public technical centers. The

students must also meet any additional assessment indicators that are included within the charter approved by the district school board or community college board of trustees.

(5) APPLICATION.--An application to establish a center must be submitted by February 1 of the year preceding the school year in which the center will begin operation. The sponsor must review the application using an evaluation instrument developed by the Department of Education and make a final decision on whether to approve the application and grant the charter by March 1, and may condition the granting of a charter on the center's taking certain actions or maintaining certain conditions. Such actions and conditions must be provided to the applicant in writing. The district school board or community college board of trustees is not required to issue a charter to any person.

(6) SPONSOR.--A district school board or community college board of trustees or a consortium of one or more of each may sponsor a center in the county in which the board has jurisdiction.

(d) The Department of Education shall offer or arrange for training and technical assistance to applicants in developing business plans and estimating costs and income. This assistance shall address estimating startup costs, projecting enrollment, and identifying the types and amounts of state and federal financial assistance the center will be eligible to receive. The training shall include instruction in accurate financial planning and good business practices ~~may provide technical assistance to an applicant upon written request~~.

(f) The sponsor shall monitor and review the center's progress toward charter goals and shall monitor the center's revenues and expenditures. The sponsor shall perform the duties provided for in s. 1002.345.

(10) EXEMPTION FROM STATUTES.--

(c) A center must comply with the antidiscrimination provisions of s. 1000.05 and the provisions of s. 1002.33(24) relating to the employment of relatives.

(13) BOARD OF DIRECTORS AUTHORITY.--The board of directors of a center may decide matters relating to the operation of the school, including budgeting, curriculum, and operating procedures, subject to the center's charter. The board of directors is responsible for performing the duties provided for in s. 1002.345, including monitoring the corrective action plan. The board of directors must comply with the provisions of s. 1002.33(24) and (25).

Section 10. Section 1002.345, Florida Statutes, is created to read:

1002.345 Determination of material financial weaknesses and financial emergencies for charter schools and charter technical career centers.--This section applies to charter schools operating pursuant to ss. 1002.33 and 1002.335 and to charter technical career centers operating pursuant to s. 1002.34.

(1) MATERIAL FINANCIAL WEAKNESS; REQUIREMENTS.--

(a) A charter school and a charter technical career center shall be subject to an expedited review by the sponsor when any one of the following conditions occurs:

1. An end-of-year financial deficit greater than the school's combined cash and accounts receivable balances.

2. A substantial decline in student enrollment without a commensurate percentage reduction in expenses. A substantial decline is a decline of greater than 25 percent.

3. An outstanding debt in excess of the land, property, and equipment balances.

4. Failure to meet financial reporting requirements pursuant to s. 1002.33(9), s. 1002.335(7)(a)7., or s. 1002.34(14).

5. Inadequate financial controls or other adverse financial conditions not corrected in 120 days as identified through an annual audit conducted pursuant to s. 218.39.

6. Negative financial findings cited in reports by the Auditor General or the Office of Program Policy Analysis and Government Accountability.

(b) A sponsor shall notify the governing board within 7 working days when one or more of the conditions specified in paragraph (a) occur.

(c) The governing board and the sponsor shall develop a corrective action plan and file the plan with the Commissioner of Education and the Florida Schools of Excellence Commission within 30 working days. If the governing board and the sponsor are unable to agree on a corrective action plan, the State Board of Education shall determine the components of the plan. The governing board shall implement the plan.

(d) The governing board shall include the corrective action plan and the status of its implementation in the annual

progress report to the sponsor that is required under s. 1002.33(9)(k), s. 1002.335(7)(a)7., or s. 1002.34(14).

(e) If the governing board fails to implement the corrective action plan within 1 year, the State Board of Education shall prescribe any steps necessary for the charter school or the charter technical career center to comply with state requirements.

(f) The chair of the governing board shall annually appear before the State Board of Education and report on the implementation of the State Board of Education's requirements.

(2) FINANCIAL EMERGENCY; DEFICIT FUND BALANCE; DEFICIT NET ASSETS; REQUIREMENTS.--

(a) A charter school and a charter technical career center shall provide for a certified public accountant or auditor to conduct an annual financial audit in accordance with s. 218.39.

(b) The charter shall ensure that, if an annual financial audit of a charter school or charter technical career center reveals that one or more of the conditions in s. 218.503(1) have occurred or will occur if action is not taken or if a charter school or charter technical career center has a deficit fund balance or deficit net assets, the auditor must notify the governing board of the charter school or charter technical career center, as appropriate, the sponsor, and the Commissioner of Education.

(c) When a financial audit conducted by a certified public accountant in accordance with s. 218.39 reveals that one or more of the conditions in s. 218.503(1) have occurred or will occur if action is not taken or when a deficit fund balance or deficit

net assets exist, the auditor shall notify and provide the financial audit to the governing board of the charter school or charter technical career center, as appropriate, the sponsor, and the Commissioner of Education within 7 working days after the finding is made.

(3) REPORT.--The Commissioner of Education shall annually report to the State Board of Education each charter school and charter technical career center that is subject to a financial recovery plan or a corrective action plan under this section.

(4) RULES.--The State Board of Education shall adopt rules for developing financial recovery and corrective action plans.

(5) TECHNICAL ASSISTANCE.--The Department of Education shall provide technical assistance to charter schools, charter technical career centers, governing boards, and sponsors in developing financial recovery and corrective action plans.

(6) FAILURE TO CORRECT DEFICIENCIES.--The sponsor may choose not to renew or may terminate a charter if the charter school or charter technical career center fails to correct the deficiencies noted in the corrective action plan within 1 year or exhibits one or more financial emergency conditions as provided in s. 218.503 for 2 consecutive years.

Section 11. Subsection (2) of section 1011.71, Florida Statutes, is amended to read:

1011.71 District school tax.--

(2) In addition to the maximum millage levy as provided in subsection (1), each school board may levy not more than 2 mills against the taxable value for school purposes for district schools, including charter schools. Each school board shall

determine an equitable amount of revenue generated under this subsection which shall be shared with the charter schools located within its district. Revenue under this subsection may be used ~~at the discretion of the school board,~~ to fund:

(a) New construction and remodeling projects, as set forth in s. 1013.64(3)(b) and (6)(b) and included in the district's educational plant survey pursuant to s. 1013.31, without regard to prioritization, sites and site improvement or expansion to new sites, existing sites, auxiliary facilities, athletic facilities, or ancillary facilities.

(b) Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies pursuant to s. 1013.15(2).

(c) The purchase, lease-purchase, or lease of school buses.

(d) The purchase, lease-purchase, or lease of new and replacement equipment.

(e) Payments for educational facilities and sites due under a lease-purchase agreement entered into by a district school board pursuant to s. 1003.02(1)(f) or s. 1013.15(2), not exceeding, in the aggregate, an amount equal to three-fourths of the proceeds from the millage levied by a district school board pursuant to this subsection.

(f) Payment of loans approved pursuant to ss. 1011.14 and 1011.15.

(g) Payment of costs directly related to complying with state and federal environmental statutes, rules, and regulations governing school facilities.

(h) Payment of costs of leasing relocatable educational facilities, of renting or leasing educational facilities and sites pursuant to s. 1013.15(2), or of renting or leasing buildings or space within existing buildings pursuant to s. 1013.15(4).

(i) Payment of the cost of school buses when a school district contracts with a private entity to provide student transportation services if the district meets the requirements of this paragraph.

1. The district's contract must require that the private entity purchase, lease-purchase, or lease, and operate and maintain, one or more school buses of a specific type and size that meet the requirements of s. 1006.25.

2. Each such school bus must be used for the daily transportation of public school students in the manner required by the school district.

3. Annual payment for each such school bus may not exceed 10 percent of the purchase price of the state pool bid.

4. The proposed expenditure of the funds for this purpose must have been included in the district school board's notice of proposed tax for school capital outlay as provided in s. 200.065(10).

(j) Payment of the cost of the opening day collection for the library media center of a new school.

Section 12. Paragraph (f) is added to subsection (2) of section 1013.62, Florida Statutes, to read:

1013.62 Charter schools capital outlay funding.--

(2) A charter school's governing body may use charter

school capital outlay funds for the following purposes:

(f) Any of the purposes set forth in s. 1011.71(2).

Conversion charter schools may use capital outlay funds received through the reduction in the administrative fee provided in s. 1002.33(20) for renovation, repair, and maintenance of school facilities that are owned by the sponsor.

Section 13. Subsection (1) of section 1013.735, Florida Statutes, is amended to read:

1013.735 Classrooms for Kids Program.--

(1) ALLOCATION.--The department shall allocate funds appropriated for the Classrooms for Kids Program. It is the intent of the Legislature that this program be administered as nearly as practicable in the same manner as the capital outlay program authorized under s. 9(a), Art. XII of the State Constitution. Each district school board's share of the annual appropriation for the Classrooms for Kids Program must be calculated according to the following formula:

(a) Twenty-five percent of the appropriation shall be prorated to the districts based on each district's percentage of K-12 base capital outlay full-time equivalent membership, including charter school full-time equivalent membership. Each district shall provide each charter school within the district with its proportionate share of funds under this paragraph.

(b) Sixty-five ~~and 65~~ percent of the appropriation shall be based on each district's percentage of K-12 growth capital outlay full-time equivalent membership as specified for the allocation of funds from the Public Education Capital Outlay and

Debt Service Trust Fund by s. 1013.64(3).

(c) ~~(b)~~ Ten percent of the appropriation must be allocated among district school boards according to the allocation formula in s. 1013.64(1)(a), excluding adult vocational technical facilities.

Section 14. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment (01)

Bill No. **CS/HB 1259 & 1301**

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 | _____ |

---

Council/Committee hearing bill: Policy and Budget Council

Representative(s) Flores offered the following:

**Amendment (with directory and title amendments)**

Between line(s) 1005-1006 insert:

(h) The capacity of the charter school shall be determined annually by the governing board, in conjunction with the sponsor, of the charter school in consideration of the factors identified in this subsection. The calculation under s. 1003.03 for class size compliance for charter schools shall be the average for the applicable grade grouping at the school level established at the October student membership survey of the district in which the charter school is operated.

---

**D I R E C T O R Y  A M E N D M E N T**

Remove line 507 and insert:

paragraphs (a) and (h) of subsection (10), paragraphs (b) and (c) of

---

**T I T L E  A M E N D M E N T**

After the ";" on line 37 insert:

Amendment (01)

revising the calculation requirements for class size compliance by charter schools;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment (02)

Bill No. **CS/HB 1259 & 1301**

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 | _____ |

---

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

**Amendment (with directory and title amendments)**

Between line(s) 1488-1489 and insert:

(8) ELIGIBLE STUDENTS.—

(a) A center must be open to all students as space is available and may not discriminate in admissions policies or practices on the basis of an individual's physical disability or proficiency in English or on any other basis that would be unlawful if practiced by a public school or a community college. A center may establish reasonable criteria by which to evaluate prospective students, which criteria must be outlined in the charter.

(b) The calculation under s. 1003.03 for class size compliance for a center shall be the average for the applicable grade grouping at the school level established at the October student membership survey of the district in which the center is operated.

---

Amendment (02)

**D I R E C T O R Y A M E N D M E N T**

Remove line 1380 and insert:

of subsection (6), subsection (8), paragraph (c) of subsection (10), and

---

**T I T L E A M E N D M E N T**

After the ";" on line 69, insert:

revising the calculation requirements for class size compliance by charter technical career centers;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment (03)

Bill No. **CS/HB 1259 & 1301**

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 | _____ |

Council/Committee hearing bill: Policy and Budget Council

Representative(s) Flores offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 1599-1648 and insert:

located within its district that operate under ss. 1002.33 and 1002.335. In determining an equitable amount, the school board is not required to include revenue necessary to pay amounts due under paragraphs (e) or (f) for obligations incurred prior to July 1, 2008. The equitable amount determined shall be distributed among charter schools within the district based on each charter school's proportionate share of the total charter school student population within the district. Revenue under this subsection may be used ~~at the discretion of the school board,~~ to fund:

(a) New construction and remodeling projects, as set forth in s. 1013.64(3)(b) and (6)(b) and included in the district's educational plant survey pursuant to s. 1013.31, without regard to prioritization, sites and site improvement or expansion to new sites, existing sites, auxiliary facilities, athletic facilities, or ancillary facilities.

(b) Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies pursuant to s. 1013.15(2).

(c) The purchase, lease-purchase, or lease of school buses.

(d) The purchase, lease-purchase, or lease of new and replacement equipment.

(e) Payments for educational facilities and sites due under a lease-purchase agreement entered into by a district school board pursuant to s. 1003.02(1)(f) or s. 1013.15(2), not exceeding, in the aggregate, an amount equal to three-fourths of the proceeds from the millage levied by a district school board pursuant to this subsection.

(f) Payment of loans approved pursuant to ss. 1011.14 and 1011.15.

(g) Payment of costs directly related to complying with state and federal environmental statutes, rules, and regulations governing school facilities.

(h) Payment of costs of leasing relocatable educational facilities, of renting or leasing educational facilities and sites pursuant to s. 1013.15(2), or of renting or leasing buildings or space within existing buildings pursuant to s. 1013.15(4).

(i) Payment of the cost of school buses when a school district contracts with a private entity to provide student transportation services if the district meets the requirements of this paragraph.

1. The district's contract must require that the private entity purchase, lease-purchase, or lease, and operate and

maintain, one or more school buses of a specific type and size that meet the requirements of s. 1006.25.

2. Each such school bus must be used for the daily transportation of public school students in the manner required by the school district.

3. Annual payment for each such school bus may not exceed 10 percent of the purchase price of the state pool bid.

4. The proposed expenditure of the funds for this purpose must have been included in the district school board's notice of proposed tax for school capital outlay as provided in s. 200.065(10).

(j) Payment of the cost of the opening day collection for the library media center of a new school.

(8) Funds received by a charter school under subsection (2) and used for remodeling, renovation, maintenance, or repair for a leased facility may only be expended, during any lease period, in an amount up to 2 percent of the current construction cost per square foot as established in s. 1013.64(6)(b), multiplied by the gross square feet of the leased facility, multiplied by the number of years of the lease.

---

**D I R E C T O R Y  A M E N D M E N T**

Remove lines 1590-1591 and insert:

Section 11. Subsection (2) of section 1011.71, Florida Statutes, is amended, and a new subsection (8) is added to said section, to read:

Amendment (03)

---

**T I T L E  A M E N D M E N T**

Remove line 84 and insert:

amount of specified capital improvement millage with charter schools; providing for proportionate distribution of equitable amount among charter schools; limiting amounts that may be expended by charter schools on leased facilities; amending s. 1013.62, F.S.; authorizing additional

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1373 Qualified Defense Contractor Tax Refund Program

**SPONSOR(S):** Economic Expansion & Infrastructure, Altman & others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2666

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Economic Development | 7 Y, 0 N | West | Croom |
| 2) Economic Expansion & Infrastructure Council | 14 Y, 0 N, As CS | West/Madsen | Tinker |
| 3) Policy & Budget Council | | Martin | Hansen |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

HB 1373 expands s. 288.1045, F.S., relating to the Qualified Defense Contractor tax refund program (QDC), administered by the Office of Tourism, Trade and Economic Development (OTTED) within the Executive Office of the Governor, to allow for space flight businesses or entities with space flight contracts to qualify for QDC tax refunds.

The bill provides definitions for the terms "space flight business," "space flight business contract," "new space flight contract," and "consolidation of space flight contract."

The bill also amends the amount of tax refund available to qualified applicants to match the tiered system used to award tax refunds under the Qualified Targeted Industry Tax Refund Program, raising the maximum tax refund per job created from $5,000 to as high as $8,000 per job if the project is in a rural county or enterprise zone and the average wage per job is 200 percent of the average private sector wage in the area.

The bill further amends the QDC statute by:

- Allowing local governments to use donated or discounted land and buildings to qualify as local match;
- Simplifying the application process;
- Removing the annual report requirement from s. 288.1045, F.S.; and
- Delaying the sunset provision from 2010 to 2014.

The bill does not have a direct fiscal impact on the state since QDC funds are provided as authorized in the General Appropriations Act each year, and since the statutory cap of $35 million for both the QDC and QTI programs remains unchanged. However, expanding eligibility for the QDC tax refunds and increasing the amount that can be awarded per job created will likely increase the amount of funds requested by OTTED each year for the QDC program by an indeterminate amount. In Fiscal Year 2007-2008, QDC awards were paid with $95,000 from General Revenue Fund and $23,750 in matching funds provided by local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

*Provide Limited Government* – The bill may increase the workload of the Office of Tourism, Trade, and Economic Development and Enterprise Florida, Inc., with respect to administering the QDC program by including space flight businesses as industry types eligible for QDC tax refunds.

*Ensure Lower Taxes* – The bill will provide QDC tax refunds to space flight businesses or entities with space flight contracts that qualify for QDC tax refunds.

B. EFFECT OF PROPOSED CHANGES:

**Background**

The Qualified Defense Contractor tax refund program[1] was created in 1993 by Executive Order No. 93-118, signed by Governor Chiles on April 13, 1993. The order found at the time that:

- The federal government was in the midst of major post-Cold War cuts in the nation's defense industry;
- By 1997, the federal defense budget was projected to decline by more than 42 percent, in real terms, from 1985 levels; and
- The federal cuts included a 30 percent reduction in military personnel, base closures, and elimination of numerous defense contracts for goods and services, with employment losses in Florida of up to 55,000 by 1997.

The QDC program targets the following types of projects:

- Projects involving the consolidation of a Department of Defense (DOD) contract for manufacturing, assembling, fabricating, research, development or design with a duration of 2 or more years, including homeland security contracts, where one or more of the qualified business's facilities from inside or outside Florida are consolidated into one or more facilities in Florida;
- Projects involving the conversion of defense production jobs to nondefense production jobs; and
- Projects involving the reuse of defense-related facilities for manufacturing, assembling, fabricating, research, development or design with a duration of 2 or more years where the project is located in a port or a facility occupied by a business that had a DOD contract or was occupied by any branch of the Armed Forces within 1 year of the contract for reuse of the facility being executed.

In order to qualify for certification as a qualified defense contractor, applicants must establish, in a written agreement, that the jobs created will pay an estimated annual average wage of 115 percent of the average wage in the area where the project is located. If the project is the consolidation of a DOD contract, then the project must result in a net increase of at least 25 percent in the number of jobs at the facility in Florida or the addition of at least 80 jobs at the applicant's facilities in Florida. If converting defense production jobs to nondefense production jobs, the applicant must show a net increase in

[1] s. 288.1045, F.S.

nondefense employment at the facilities in Florida. The reuse of a defense-related facility must result in the creation of at least 100 jobs at the Florida based facility.

The DOD contract cannot allow the business to include costs of relocation or retooling in its base as allowable costs under a cost-plus, or similar contract. A business unit of the applicant must have derived at least 60 percent of its gross receipts in Florida from DOD contracts in the last fiscal year, and must have derived an average of at least 60 percent of its gross receipts in Florida from DOD contracts over the five years preceding the date an application is submitted.

To qualify for an award, a project must receive a 20 percent match of the total award from the local government. An exemption for the 20 percent local match is available to applicants that have projects located in a county designated by the Rural Economic Development Initiative, however, projects that forego the 20 percent match will only receive 80 percent of the total refund.

After determining that the applicant meets the requirements of the program, the Office of Tourism, Trade, and Economic Development (OTTED) will review each application based on expected contributions to the state; the economic benefits of the jobs created or retained by the project; the amount of capital investment to be made by the applicant in the state; the local commitment and support for the applicant and project; the impact of the project on the local community; the dependence of the local community on the defense industry; the impact of any tax refunds granted as a result of the project; and the length of the project or the long-term commitment to the state resulting from the project.

A qualified applicant may claim refunds from one or more of the taxes they pay, including sales and use, documentary stamp, emergency excise, ad valorem, corporate income, insurance premium, and intangible personal property taxes.

A qualified applicant may receive a refund of up to $5,000 times the number of jobs created or retained under the terms of the refund agreement entered into with OTTED. Recently, OTTED and Enterprise Florida, Inc. (EFI), have issued awards similar to the way QTI awards are issued. A qualified applicant receives $3,000 per job created that pays 115 percent of the average private sector wage, $4,000 per job created that pays 150 percent of the average private sector wage, and $5,000 per job created that pays 200 percent of the average private sector wage. A business may only receive 25 percent of the total refunds authorized in the refund agreement in any fiscal year or no more than $2.5 million. In total, no more than $7.5 million in tax refunds may be provided to a single project.

If the business does not meet its job creation objectives, it may still receive a prorated share of the refund minus a five percent penalty if it creates at least 80 percent of the jobs and pays at least 90 percent of the wages and meets the other requirements of its performance agreement.

**Effect of Proposed Changes**

The bill expands the QDC statute to allow for space flight businesses or entities with space flight contracts to qualify for QDC awards. Section 288.1045(1), F.S., is amended to expand the definition of "applicant" to include space flight businesses or entities with space flight business contracts and the definition of "project" is expanded to include space flight business contracts.

Tax Refund Amounts

The bill changes the amount of tax refund available to qualified applicants to match the tiered system used to award tax refunds for the Qualified Targeted Industry tax refund program (QTI). The language that allowed for qualified QDC applicants to receive up to $5,000 per job specified in the tax refund agreement is deleted and replaced with the following:

- Qualified applicants will receive $3,000 per job specified in the QDC contract;

- Projects in rural counties or enterprise zones will qualify for $6,000 per job specified in the QDC contract;
- An additional $1,000 per job bonus is available when jobs pay 150 percent of the average private sector wage in the area; and
- An additional $2,000 per job bonus is available when jobs pay 200 percent of the average private sector wage in the area.

Tax refunds may be used to reduce liabilities relating to corporate income taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, excise taxes paid on documents, ad valorem taxes, and state communication services taxes.

The bill removes two requirements relating to the application process: (1) removes the provision requiring a notarized signature on the application form; and (2) removes the provision requiring an applicant to estimate the amount of tax refunds claimed for each year. The QDC program is the only program to require a notarized signature on forms. Estimating tax credits claimed for each year can be confusing and difficult to calculate. Removing these requirements will simplify the application process.

The bill provides that the new space flight business contract or the consolidation of a space flight business contract must result in net increases in space flight business employment at the applicant's facility in this state.

The bill allows the Department of Revenue to share confidential refund information with OTTED relating to Chapter 202, communication service taxes.

The bill amends the QDC statute to allow local governments to use donated or discounted land and buildings to count against the 20 percent local match requirement.

The bill removes the requirement from s. 288.1045, F.S., that OTTED submit an annual report relating to the QDC program. OTTED is required to submit an annual report on incentives pursuant to s. 288.095, F.S., so the reporting language in s. 288.1045, F.S. was duplicative in nature.

The bill delays the sunset provision of the QDC program from June 30, 2010 to June 30, 2014.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 288.1045, F.S., to allow for space flight businesses to qualify for QDC awards.

**Section 2:** Amends s. 14.2015, F.S., relating to the powers and duties of OTTED, to include space flight business contractors for the QDC program.

**Section 3:** Amends s. 213.053, F.S., to include a confidentiality provision for space flight business contractors utilizing the QDC program.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have a positive fiscal impact to local governments with jurisdiction over the area where space flight businesses attracted to the state are located.

2. Expenditures:

   To receive an award, local governments must support the project by paying 20 percent of the total award or providing an equivalent value in land and buildings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Space flight businesses that qualify will receive a tax refund based on the number of jobs created. Tax refunds can qualify against corporate income taxes, sales and use taxes, intangible personal property taxes, excise taxes paid on documents, ad valorem taxes, and state communication services taxes.

D. FISCAL COMMENTS:

There is no appropriation in this bill. Section 288.095(3), F.S., provides that OTTED can award tax credits, up to $35 million in a fiscal year, for contracts under QDC or the Qualified Targeted Industry (QTI) programs. Historically, not all businesses scheduled to receive a payment in a fiscal year meet the necessary performance requirements. Therefore, funding levels are typically well below the award amount and consequently the $35 million cap. In Fiscal Year 2007-2008, QDC was funded at $118,750; this amount includes $23,750 in matching funds provided by local governments and $95,000 from General Revenue Fund. In Fiscal Year 2007-2008, QTI was funded at $14.7 million. If the businesses that qualify under this legislation are more likely to meet contractual obligations and performance requirements, then there may be a fiscal impact to the state. However, the statutory cap will continue to apply and the program will continue to be subject to annual legislative appropriations.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Thursday March 20, 2008, the Committee on Economic Development reported the bill favorably with two technical amendments.

Amendment 1:

- Replaced the term, "qualified defense contractor" with "qualified applicant" so that space flight businesses and entities with space flight contracts can participate in the QDC program.

Amendment 2:

- Added chapter 202 and deleted chapter 221, F.S., from the requirement of DOR to share payment information with OTTED.

On Tuesday April 8, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably with a strike-all amendment as a Council Substitute. The bill:

- Changed the timeframe for when space flight contracts may qualify for a QDC award to mirror the effective date of the bill, preventing the bill from allowing applications to be certified retroactively;
- Reinserted language relating to emergency excise taxes that was removed by the original bill; and
- Inserted language that allows the Department of Revenue to share confidential refund information with OTTED relating to Chapter 202, communication service taxes.

A bill to be entitled

An act relating to the qualified defense contractor tax refund program; amending s. 288.1045, F.S.; revising definitions to include space flight businesses and space flight contracts; specifying a methodology and amounts for tax refund payments to qualified defense contractor businesses; revising provisions authorizing qualified applicants to receive refunds of certain taxes; revising application process requirements to include space flight businesses and contracts; revising information requirements for applications for certain qualified applicant certifications; providing employment requirements for space flight business contracts; specifying required information for applications for certification under space flight business contracts; including space flight businesses under provisions authorizing annual claims for refund; revising limitations on payments of tax refunds; revising certain required reductions of amounts of tax refunds; deleting a reporting requirement of tax refunds paid and use of appropriations expended; extending an expiration date; amending ss. 14.2015 and 213.053, F.S.; conforming program references; providing an effective date.

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

Section 1. Subsection (1), paragraphs (b) and (f) of subsection (2), subsections (3), (4), and (5), paragraphs (d)

and (e) of subsection (6), and subsection (8) of section 288.1045, Florida Statutes, are amended to read:

288.1045 Qualified defense contractor and space flight business tax refund program.--

(1) DEFINITIONS.--As used in this section:

(a) ~~(e)~~ "Applicant" means any business entity that holds a valid Department of Defense contract or space flight business contract, ~~or~~ any business entity that is a subcontractor under a valid Department of Defense contract or space flight business contract, or any business entity that holds a valid contract for the reuse of a defense-related facility, including all members of an affiliated group of corporations as defined in s. 220.03(1)(b).

(b) "Average wage in the area" means the average of all wages and salaries in the state, the county, or in the standard metropolitan area in which the business unit is located.

(c) ~~(n)~~ "Business unit" means an employing unit, as defined in s. 443.036, that is registered with the Agency for Workforce Innovation for unemployment compensation purposes or means a subcategory or division of an employing unit that is accepted by the Agency for Workforce Innovation as a reporting unit.

(d) ~~(a)~~ "Consolidation of a Department of Defense contract" means the consolidation of one or more of an applicant's facilities under one or more Department of Defense contracts, ~~either~~ from outside this state or from inside and outside this state, into one or more of the applicant's facilities inside this state.

(e) "Consolidation of a space flight business contract"

means the consolidation of one or more of an applicant's facilities under one or more space flight business contracts, from outside this state or from inside and outside this state, into one or more of the applicant's facilities inside this state.

(f) ~~(p)~~ "Contract for reuse of a defense-related facility" means a contract with a duration of 2 or more years for the use of a facility for manufacturing, assembling, fabricating, research, development, or design of tangible personal property, but excluding any contract to provide goods, improvements to real or tangible property, or services directly to or for any particular military base or installation in this state. Such facility must be located within a port, as defined in s. 313.21, and have been occupied by a business entity that held a valid Department of Defense contract or occupied by any branch of the Armed Forces of the United States, within 1 year of any contract being executed for the reuse of such facility. A contract for reuse of a defense-related facility may not include any contract for reuse of such facility for any Department of Defense contract for manufacturing, assembling, fabricating, research, development, or design.

(g) ~~(e)~~ "Department of Defense contract" means a competitively bid Department of Defense contract or subcontract or a competitively bid federal agency contract or subcontract issued on behalf of the Department of Defense for manufacturing, assembling, fabricating, research, development, or design with a duration of 2 or more years, but excluding any contract or subcontract to provide goods, improvements to real or tangible

property, or services directly to or for any particular military base or installation in this state. The term includes contracts or subcontracts for products or services for military use or homeland security which contracts or subcontracts are approved by the United States Department of Defense, the United States Department of State, or the United States Department of Homeland Security.

(h) ~~(k)~~ "Director" means the director of the Office of Tourism, Trade, and Economic Development.

(i) ~~(m)~~ "Fiscal year" means the fiscal year of the state.

(j) ~~(g)~~ "Jobs" means full-time equivalent positions, consistent with the use of such terms by the Agency for Workforce Innovation for the purpose of unemployment compensation tax, created or retained as a direct result of a project in this state. This number does not include temporary construction jobs involved with the construction of facilities for the project.

(k) ~~(o)~~ "Local financial support" means funding from local sources, public or private, which is paid to the Economic Development Trust Fund and which is equal to 20 percent of the annual tax refund for a qualified applicant. Local financial support may include excess payments made to a utility company under a designated program to allow decreases in service by the utility company under conditions, regardless of when application is made. A qualified applicant may not provide, directly or indirectly, more than 5 percent of such funding in any fiscal year. The sources of such funding may not include, directly or indirectly, state funds appropriated from the General Revenue

Fund or any state trust fund, excluding tax revenues shared with local governments pursuant to law.

(l) ~~(q)~~ "Local financial support exemption option" means the option to exercise an exemption from the local financial support requirement available to any applicant whose project is located in a county designated by the Rural Economic Development Initiative, if the county commissioners of the county in which the project will be located adopt a resolution requesting that the applicant's project be exempt from the local financial support requirement. Any applicant that exercises this option is not eligible for more than 80 percent of the total tax refunds allowed such applicant under this section.

(m) ~~(f)~~ "New Department of Defense contract" means a Department of Defense contract entered into after the date application for certification as a qualified applicant is made and after January 1, 1994.

(n) "New space flight business contract" means a space flight business contract entered into after an application for certification as a qualified applicant is made after July 1, 2008.

(o) ~~(h)~~ "Nondefense production jobs" means employment exclusively for activities that, directly or indirectly, are unrelated to the Department of Defense.

(p) ~~(d)~~ "Office" means the Office of Tourism, Trade, and Economic Development.

(q) ~~(i)~~ "Project" means any business undertaking in this state under a new Department of Defense contract, consolidation of a Department of Defense contract, new space flight business

contract, consolidation of a space flight business contract, or conversion of defense production jobs over to nondefense production jobs or reuse of defense-related facilities.

(r) ~~(j)~~ "Qualified applicant" means an applicant that has been approved by the director to be eligible for tax refunds pursuant to this section.

(s) "Space flight business" means the manufacturing, processing, or assembly of space flight technology products, space flight facilities, space flight propulsion systems, or space vehicles, satellites, or stations of any kind possessing the capability for space flight, as defined by s. 212.02(23), or components thereof, and includes, in supporting space flight, vehicle launch activities, flight operations, ground control or ground support, and all administrative activities directly related to such activities. The term does not include products that are designed or manufactured for general commercial aviation or other uses even if those products may also serve an incidental use in space flight applications.

(t) "Space flight business contract" means a competitively bid federal agency contract, federal agency subcontract, an awarded commercial contract, or an awarded commercial subcontract for space flight business with a duration of 2 or more years.

(u) ~~(l)~~ "Taxable year" means the same as in s. 220.03(1)(y).

(2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.--

(b) Upon approval by the director, a qualified applicant shall be allowed tax refund payments equal to $3,000 times the

number of jobs specified in the tax refund agreement under subparagraph (4)(a)1. or equal to $6,000 times the number of jobs if the project is located in a rural county or an enterprise zone. Further, a qualified applicant shall be allowed additional tax refund payments equal to $1,000 times the number of jobs specified in the tax refund agreement under subparagraph (4)(a)1. if such jobs pay an annual average wage of at least 150 percent of the average private sector wage in the area or equal to $2,000 times the number of jobs if such jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area. ~~A qualified applicant may not be qualified for any project to receive more than $5,000 times the number of jobs provided in the tax refund agreement pursuant to subparagraph (4)(a)1.~~ A qualified applicant may not receive refunds of more than 25 percent of the total tax refunds provided in the tax refund agreement pursuant to subparagraph (4)(a)1. in any fiscal year, provided that no qualified applicant may receive more than $2.5 million in tax refunds pursuant to this section in any fiscal year.

(f) After entering into a tax refund agreement pursuant to subsection (4), a qualified applicant may:

1. Receive refunds from the account for corporate income taxes due and paid pursuant to chapter 220 by that business beginning with the first taxable year of the business which begins after entering into the agreement.

2. Receive refunds from the account ~~Economic Development Trust Fund~~ for the following taxes due and paid by that business

~~the qualified applicant beginning with the applicant's first taxable year that begins~~ after entering into the agreement:

a.~~1.~~ Taxes on sales, use, and other transactions paid pursuant to chapter 212.

~~2. Corporate income taxes paid pursuant to chapter 220.~~

b.~~3.~~ Intangible personal property taxes paid pursuant to chapter 199.

c.~~4.~~ Emergency excise taxes paid pursuant to chapter 221.

d.~~5.~~ Excise taxes paid on documents pursuant to chapter 201.

e.~~6.~~ Ad valorem taxes paid, as defined in s. 220.03(1)(a) on June 1, 1996.

f.~~7.~~ State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

However, a qualified applicant may not receive a tax refund pursuant to this section for any amount of credit, refund, or exemption granted such contractor for any of such taxes. If a refund for such taxes is provided by the office, which taxes are subsequently adjusted by the application of any credit, refund, or exemption granted to the qualified applicant other than that provided in this section, the qualified applicant shall reimburse the Economic Development Trust Fund for the amount of such credit, refund, or exemption. A qualified applicant must notify and tender payment to the office within 20 days after

receiving a credit, refund, or exemption, other than that provided in this section. The addition of communications services taxes administered under chapter 202 is remedial in nature and retroactive to October 1, 2001. The office may make supplemental tax refund payments to allow for tax refunds for communications services taxes paid by an eligible qualified defense contractor after October 1, 2001.

(3) APPLICATION PROCESS; REQUIREMENTS; AGENCY DETERMINATION.--

(a) To apply for certification as a qualified applicant pursuant to this section, an applicant must file an application with the office which satisfies the requirements of paragraphs (b) and (e), paragraphs (c) and (e), ~~or~~ paragraphs (d) and (e), or paragraphs (e) and (k). An applicant may not apply for certification pursuant to this section after a proposal has been submitted for a new Department of Defense contract, after the applicant has made the decision to consolidate an existing Department of Defense contract in this state for which such applicant is seeking certification, after a proposal has been submitted for a new space flight business contract in this state, after the applicant has made the decision to consolidate an existing space flight business contract in this state for which such applicant is seeking certification, or after the applicant has made the decision to convert defense production jobs to nondefense production jobs for which such applicant is seeking certification.

(b) Applications for certification based on the consolidation of a Department of Defense contract or a new

Department of Defense contract must be submitted to the office as prescribed by the office and must include, but are not limited to, the following information:

1. The applicant's federal employer identification number, the applicant's Florida sales tax registration number, and a ~~notarized~~ signature of an officer of the applicant.

2. The permanent location of the manufacturing, assembling, fabricating, research, development, or design facility in this state at which the project is or is to be located.

3. The Department of Defense contract numbers of the contract to be consolidated, the new Department of Defense contract number, or the "RFP" number of a proposed Department of Defense contract.

4. The date the contract was executed or is expected to be executed, and the date the contract is due to expire or is expected to expire.

5. The commencement date for project operations under the contract in this state.

6. The number of net new full-time equivalent Florida jobs included in the project as of December 31 of each year and the average wage of such jobs.

7. The total number of full-time equivalent employees employed by the applicant in this state.

8. The percentage of the applicant's gross receipts derived from Department of Defense contracts during the 5 taxable years immediately preceding the date the application is submitted.

9. The number of full-time equivalent jobs in this state to be retained by the project.

~~10. The estimated amount of tax refunds to be claimed for each fiscal year.~~

10.~~11.~~ A brief statement concerning the applicant's need for tax refunds, and the proposed uses of such refunds by the applicant.

11.~~12.~~ A resolution adopted by the governing board ~~county commissioners~~ of the county or municipality in which the project will be located, which recommends the applicant be approved as a qualified applicant, and which indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

12.~~13.~~ Any additional information requested by the office.

(c) Applications for certification based on the conversion of defense production jobs to nondefense production jobs must be submitted to the office as prescribed by the office and must include, but are not limited to, the following information:

1. The applicant's federal employer identification number, the applicant's Florida sales tax registration number, and a ~~notarized~~ signature of an officer of the applicant.

2. The permanent location of the manufacturing, assembling, fabricating, research, development, or design facility in this state at which the project is or is to be located.

3. The Department of Defense contract numbers of the contract under which the defense production jobs will be converted to nondefense production jobs.

4. The date the contract was executed, and the date the contract is due to expire or is expected to expire, or was canceled.

5. The commencement date for the nondefense production operations in this state.

6. The number of net new full-time equivalent Florida jobs included in the nondefense production project as of December 31 of each year and the average wage of such jobs.

7. The total number of full-time equivalent employees employed by the applicant in this state.

8. The percentage of the applicant's gross receipts derived from Department of Defense contracts during the 5 taxable years immediately preceding the date the application is submitted.

9. The number of full-time equivalent jobs in this state to be retained by the project.

~~10. The estimated amount of tax refunds to be claimed for each fiscal year.~~

10.~~11.~~ A brief statement concerning the applicant's need for tax refunds, and the proposed uses of such refunds by the applicant.

11.~~12.~~ A resolution adopted by the governing board ~~county commissioners~~ of the county or municipality in which the project will be located, which recommends the applicant be approved as a qualified applicant, and which indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

12.~~13.~~ Any additional information requested by the office.

(d) Applications for certification based on a contract for reuse of a defense-related facility must be submitted to the office as prescribed by the office and must include, but are not limited to, the following information:

1. The applicant's Florida sales tax registration number and a ~~notarized~~ signature of an officer of the applicant.

2. The permanent location of the manufacturing, assembling, fabricating, research, development, or design facility in this state at which the project is or is to be located.

3. The business entity holding a valid Department of Defense contract or branch of the Armed Forces of the United States that previously occupied the facility, and the date such entity last occupied the facility.

4. A copy of the contract to reuse the facility, or such alternative proof as may be prescribed by the office that the applicant is seeking to contract for the reuse of such facility.

5. The date the contract to reuse the facility was executed or is expected to be executed, and the date the contract is due to expire or is expected to expire.

6. The commencement date for project operations under the contract in this state.

7. The number of net new full-time equivalent Florida jobs included in the project as of December 31 of each year and the average wage of such jobs.

8. The total number of full-time equivalent employees employed by the applicant in this state.

9. The number of full-time equivalent jobs in this state to be retained by the project.

~~10. The estimated amount of tax refunds to be claimed for each fiscal year.~~

10.~~11.~~ A brief statement concerning the applicant's need for tax refunds, and the proposed uses of such refunds by the applicant.

11.~~12.~~ A resolution adopted by the governing board ~~county commissioners~~ of the county or municipality in which the project will be located, which recommends the applicant be approved as a qualified applicant, and which indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local

financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

12.~~13.~~ Any additional information requested by the office.

(e) To qualify for review by the office, the application of an applicant must, at a minimum, establish the following to the satisfaction of the office:

1. The jobs proposed to be provided under the application, pursuant to subparagraph (b)6., ~~or~~ subparagraph (c)6., or subparagraph (k)6., must pay an estimated annual average wage equaling at least 115 percent of the average wage in the area where the project is to be located.

2. The consolidation of a Department of Defense contract must result in a net increase of at least 25 percent in the number of jobs at the applicant's facilities in this state or the addition of at least 80 jobs at the applicant's facilities in this state.

3. The conversion of defense production jobs to nondefense production jobs must result in net increases in nondefense employment at the applicant's facilities in this state.

4. The Department of Defense contract or the space flight business contract cannot allow the business to include the costs of relocation or retooling in its base as allowable costs under a cost-plus, or similar, contract.

5. A business unit of the applicant must have derived not less than 60 percent of its gross receipts in this state from

Department of Defense contracts or space flight business contracts over the applicant's last fiscal year, and must have derived not less than an average of 60 percent of its gross receipts in this state from Department of Defense contracts over the 5 years preceding the date an application is submitted pursuant to this section. This subparagraph does not apply to any application for certification based on a contract for reuse of a defense-related facility.

6. The reuse of a defense-related facility must result in the creation of at least 100 jobs at such facility.

7. A new space flight business contract or the consolidation of a space flight business contract must result in net increases in space flight business employment at the applicant's facilities in this state.

(f) Each application meeting the requirements of paragraphs (b) and (e), paragraphs (c) and (e), ~~or~~ paragraphs (d) and (e), or paragraphs (e) and (k) must be submitted to the office for a determination of eligibility. The office shall review and~~,~~ evaluate~~, and score~~ each application based on, but not limited to, the following criteria:

1. Expected contributions to the state strategic economic development plan adopted by Enterprise Florida, Inc., taking into account the extent to which the project contributes to the state's high-technology base, and the long-term impact of the project and the applicant on the state's economy.

2. The economic benefit of the jobs created or retained by the project in this state, taking into account the cost and

average wage of each job created or retained, and the potential risk to existing jobs.

3. The amount of capital investment to be made by the applicant in this state.

4. The local commitment and support for the project and applicant.

5. The impact of the project on the local community, taking into account the unemployment rate for the county where the project will be located.

6. The dependence of the local community on the defense industry or space flight business.

7. The impact of any tax refunds granted pursuant to this section on the viability of the project and the probability that the project will occur in this state if such tax refunds are granted to the applicant, taking into account the expected long-term commitment of the applicant to economic growth and employment in this state.

8. The length of the project, or the expected long-term commitment to this state resulting from the project.

(g) The office shall forward its written findings and evaluation on each application meeting the requirements of paragraphs (b) and (e), paragraphs (c) and (e), ~~or~~ paragraphs (d) and (e), or paragraphs (e) and (k) to the director within 60 calendar days after receipt of a complete application. The office shall notify each applicant when its application is complete, and when the 60-day period begins. In its written report to the director, the office shall specifically address each of the factors specified in paragraph (f), and shall make a

specific assessment with respect to the minimum requirements established in paragraph (e). The office shall include in its report projections of the tax refunds the applicant would be eligible to receive in each fiscal year based on the creation and maintenance of the net new Florida jobs specified in subparagraph (b)6., subparagraph (c)6., ~~or~~ subparagraph (d)7., or subparagraph (k)6. as of December 31 of the preceding state fiscal year.

(h) Within 30 days after receipt of the office's findings and evaluation, the director shall issue a letter of certification which either approves or disapproves an application. The decision must be in writing and provide the justifications for either approval or disapproval. If appropriate, the director shall enter into a written agreement with the qualified applicant pursuant to subsection (4).

(i) The director may not certify any applicant as a qualified applicant when the value of tax refunds to be included in that letter of certification exceeds the available amount of authority to certify new businesses as determined in s. 288.095(3). A letter of certification that approves an application must specify the maximum amount of a tax refund that is to be available to the contractor for each fiscal year and the total amount of tax refunds for all fiscal years.

(j) This section does not create a presumption that an applicant should receive any tax refunds under this section.

(k) Applications for certification based upon a new space flight business contract or the consolidation of a space flight business contract must be submitted to the office as prescribed

by the office and must include, but are not limited to, the following information:

1. The applicant's federal employer identification number, the applicant's Florida sales tax registration number, and a signature of an officer of the applicant.

2. The permanent location of the space flight business facility in this state where the project is or will be located.

3. The new space flight business contract number, the space flight business contract numbers of the contract to be consolidated, or the request-for-proposal number of a proposed space flight business contract.

4. The date the contract was executed and the date the contract is due to expire, is expected to expire, or was canceled.

5. The commencement date for project operations under the contract in this state.

6. The number of net new full-time equivalent Florida jobs included in the project as of December 31 of each year and the average wage of such jobs.

7. The total number of full-time equivalent employees employed by the applicant in this state.

8. The percentage of the applicant's gross receipts derived from space flight business contracts during the 5 taxable years immediately preceding the date the application is submitted.

9. The number of full-time equivalent jobs in this state to be retained by the project.

10. A brief statement concerning the applicant's need for tax refunds and the proposed uses of such refunds by the applicant.

11. A resolution adopted by the governing board of the county or municipality in which the project will be located which recommends the applicant be approved as a qualified applicant and indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

12. Any additional information requested by the office.

(4) QUALIFIED APPLICANT ~~DEFENSE CONTRACTOR~~ TAX REFUND AGREEMENT.--

(a) A qualified applicant shall enter into a written agreement with the office containing, but not limited to, the following:

1. The total number of full-time equivalent jobs in this state that are or will be dedicated to the qualified applicant's project, the average wage of such jobs, the definitions that will apply for measuring the achievement of these terms during the pendency of the agreement, and a time schedule or plan for when such jobs will be in place and active in this state.

2. The maximum amount of a refund that the qualified applicant is eligible to receive for each fiscal year, based on the job creation or retention and maintenance schedule specified in subparagraph 1.

3. An agreement with the office allowing the office to review and verify the financial and personnel records of the qualified applicant to ascertain whether the qualified applicant is complying with the requirements of this section.

4. The date by which, in each fiscal year, the qualified applicant may file a claim pursuant to subsection (5) to be considered to receive a tax refund in the following fiscal year.

5. That local financial support shall be annually available and will be paid to the Economic Development Trust Fund.

(b) Compliance with the terms and conditions of the agreement is a condition precedent for receipt of tax refunds each year. The failure to comply with the terms and conditions of the agreement shall result in the loss of eligibility for receipt of all tax refunds previously authorized pursuant to this section, and the revocation of the certification as a qualified applicant by the director, unless the qualified applicant is eligible to receive and elects to accept a prorated refund under paragraph (5)(g) or the office grants the qualified applicant an economic-stimulus exemption.

1. A qualified applicant may submit, in writing, a request to the office for an economic-stimulus exemption. The request must provide quantitative evidence demonstrating how negative economic conditions in the qualified applicant's industry, the

effects of the impact of a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified applicant have prevented the qualified applicant from complying with the terms and conditions of its tax refund agreement.

2. Upon receipt of a request under subparagraph 1., the director shall have 45 days to notify the requesting qualified applicant, in writing, if its exemption has been granted or denied. In determining if an exemption should be granted, the director shall consider the extent to which negative economic conditions in the requesting qualified applicant's industry, the effects of the impact of a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified applicant have prevented the qualified applicant from complying with the terms and conditions of its tax refund agreement.

3. As a condition for receiving a prorated refund under paragraph (5)(g) or an economic-stimulus exemption under this paragraph, a qualified applicant must agree to renegotiate its tax refund agreement with the office to, at a minimum, ensure that the terms of the agreement comply with current law and office procedures governing application for and award of tax refunds. Upon approving the award of a prorated refund or granting an economic-stimulus exemption, the office shall renegotiate the tax refund agreement with the qualified applicant as required by this subparagraph. When amending the agreement of a qualified applicant receiving an economic-stimulus exemption, the office may extend the duration of the agreement for a period not to exceed 2 years.

4. A qualified applicant may submit a request for an economic-stimulus exemption to the office in lieu of any tax refund claim scheduled to be submitted after January 1, 2005, but before July 1, 2006.

5. A qualified applicant that receives an economic-stimulus exemption may not receive a tax refund for the period covered by the exemption.

(c) The agreement shall be signed by the director and the authorized officer of the qualified applicant.

(d) The agreement must contain the following legend, clearly printed on its face in bold type of not less than 10 points:

"This agreement is neither a general obligation of the State of Florida, nor is it backed by the full faith and credit of the State of Florida. Payment of tax refunds are conditioned on and subject to specific annual appropriations by the Florida Legislature of funds sufficient to pay amounts authorized in s. 288.1045, Florida Statutes."

(5) ANNUAL CLAIM FOR REFUND ~~FROM A QUALIFIED DEFENSE CONTRACTOR~~.--

(a) To be eligible to claim any scheduled tax refund, qualified applicants who have entered into a written agreement with the office pursuant to subsection (4) and who have entered into a valid new Department of Defense contract, entered into a valid new space flight business contract, commenced the consolidation of a space flight business contract, commenced the consolidation of a Department of Defense contract, commenced the

conversion of defense production jobs to nondefense production jobs, or entered into a valid contract for reuse of a defense-related facility must apply by January 31 of each fiscal year to the office for tax refunds scheduled to be paid from the appropriation for the fiscal year that begins on July 1 following the January 31 claims-submission date. The office may, upon written request, grant a 30-day extension of the filing date. The application must include a notarized signature of an officer of the applicant.

(b) The claim for refund by the qualified applicant must include a copy of all receipts pertaining to the payment of taxes for which a refund is sought, and data related to achieving each performance item contained in the tax refund agreement pursuant to subsection (4). The amount requested as a tax refund may not exceed the amount for the relevant fiscal year in the written agreement entered pursuant to subsection (4).

(c) A tax refund may not be approved for any qualified applicant unless local financial support has been paid to the Economic Development Trust Fund for that refund. If the local financial support is less than 20 percent of the approved tax refund, the tax refund shall be reduced. The tax refund paid may not exceed 5 times the local financial support received. Funding from local sources includes tax abatement under s. 196.1995 or the appraised market value of municipal or county land, including any improvements or structures, conveyed or provided at a discount through a sale or lease to that applicant ~~provided to a qualified applicant~~. The amount of any tax refund for an

applicant approved under this section shall be reduced by the amount of any such tax abatement granted or the value of the land granted, including the value of any improvements or structures;~~,~~ and the limitations in subsection (2) and paragraph (3)(h) shall be reduced by the amount of any such tax abatement or the value of the land granted, including any improvements or structures. A report listing all sources of the local financial support shall be provided to the office when such support is paid to the Economic Development Trust Fund.

(d) The director, with assistance from the office, the Department of Revenue, and the Agency for Workforce Innovation, shall, by June 30 following the scheduled date for submitting the tax refund claim, specify by written order the approval or disapproval of the tax refund claim and, if approved, the amount of the tax refund that is authorized to be paid to the qualified applicant for the annual tax refund. The office may grant an extension of this date upon the request of the qualified applicant for the purpose of filing additional information in support of the claim.

(e) The total amount of tax refunds approved by the director under this section in any fiscal year may not exceed the amount authorized under s. 288.095(3).

(f) Upon approval of the tax refund pursuant to paragraphs (c) and (d), the Chief Financial Officer shall issue a warrant for the amount included in the written order. In the event of any appeal of the written order, the Chief Financial Officer may not issue a warrant for a refund to the qualified applicant until the conclusion of all appeals of the written order.

(g) A prorated tax refund, less a 5 percent penalty, shall be approved for a qualified applicant provided all other applicable requirements have been satisfied and the applicant proves to the satisfaction of the director that it has achieved at least 80 percent of its projected employment and that the average wage paid by the qualified applicant is at least 90 percent of the average wage specified in the tax refund agreement, but in no case less than 115 percent of the average private sector wage in the area available at the time of certification. The prorated tax refund shall be calculated by multiplying the tax refund amount for which the qualified applicant would have been eligible, if all applicable requirements had been satisfied, by the percentage of the average employment specified in the tax refund agreement which was achieved, and by the percentage of the average wages specified in the tax refund agreement which was achieved.

(h) This section does not create a presumption that a tax refund claim will be approved and paid.

(6) ADMINISTRATION.--

~~(d) By December 1 of each year, the office shall submit a complete and detailed report to the Governor, the President of the Senate, and the Speaker of the House of Representatives of all tax refunds paid under this section, including analyses of benefits and costs, types of projects supported, employment and investment created, geographic distribution of tax refunds granted, and minority business participation. The report must indicate whether the moneys appropriated by the Legislature to~~

~~the qualified applicant tax refund program were expended in a prudent, fiducially sound manner.~~

(d) ~~(e)~~ Funds specifically appropriated for the tax refund program under this section may not be used for any purpose other than the payment of tax refunds authorized by this section.

(8) EXPIRATION.--An applicant may not be certified as qualified under this section after June 30, 2014 ~~2010~~. A tax refund agreement existing on that date shall continue in effect in accordance with its terms.

Section 2. Paragraph (f) of subsection (2) of section 14.2015, Florida Statutes, is amended to read:

14.2015 Office of Tourism, Trade, and Economic Development; creation; powers and duties.--

(2) The purpose of the Office of Tourism, Trade, and Economic Development is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to provide economic opportunities for all Floridians. To accomplish such purposes, the Office of Tourism, Trade, and Economic Development shall:

(f)1. Administer the Florida Enterprise Zone Act under ss. 290.001-290.016, the community contribution tax credit program under ss. 220.183 and 624.5105, the tax refund program for qualified target industry businesses under s. 288.106, the tax-refund program for qualified defense contractors and space flight business contractors under s. 288.1045, contracts for transportation projects under s. 288.063, the sports franchise

facility program under s. 288.1162, the professional golf hall of fame facility program under s. 288.1168, the expedited permitting process under s. 403.973, the Rural Community Development Revolving Loan Fund under s. 288.065, the Regional Rural Development Grants Program under s. 288.018, the Certified Capital Company Act under s. 288.99, the Florida State Rural Development Council, the Rural Economic Development Initiative, and other programs that are specifically assigned to the office by law, by the appropriations process, or by the Governor. Notwithstanding any other provisions of law, the office may expend interest earned from the investment of program funds deposited in the Grants and Donations Trust Fund to contract for the administration of the programs, or portions of the programs, enumerated in this paragraph or assigned to the office by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

2. The office may enter into contracts in connection with the fulfillment of its duties concerning the Florida First Business Bond Pool under chapter 159, tax incentives under chapters 212 and 220, tax incentives under the Certified Capital Company Act in chapter 288, foreign offices under chapter 288, the Enterprise Zone program under chapter 290, the Seaport Employment Training program under chapter 311, the Florida Professional Sports Team License Plates under chapter 320, Spaceport Florida under chapter 331, Expedited Permitting under chapter 403, and in carrying out other functions that are specifically assigned to the office by law, by the appropriations process, or by the Governor.

Section 3. Paragraph (k) of subsection (8) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.--

(8) Notwithstanding any other provision of this section, the department may provide:

(k)1. Payment information relative to chapters 199, 201, 202, 212, 220, 221, and 624 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration of the tax refund program for qualified defense contractors and space flight business contractors authorized by s. 288.1045 and the tax refund program for qualified target industry businesses authorized by s. 288.106.

2. Information relative to tax credits taken by a business under s. 220.191 and exemptions or tax refunds received by a business under s. 212.08(5)(j) to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191 and the semiconductor, defense, and space tax exemption program authorized in s. 212.08(5)(j).

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a

misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1379 Tax on Sales, Use, and Other Transactions
**SPONSOR(S):** Economic Expansion & Infrastructure & Poppell
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Committee on Economic Development | 9 Y, 0 N | West | Croom |
| 2) Economic Expansion & Infrastructure Council | 14 Y, 0 N, As CS | West/Madsen | Tinker |
| 3) Policy & Budget Council | | Jacobik BSJ | Hansen MPH |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

CS/HB 1379 creates paragraph (ggg) in subsection (7) of s. 212.08, F.S. to provide that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase. The temporary use of the aircraft and subsequent removal from the state may be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers or similar documentation.

The bill is estimated to reduce state revenues by $0.8 million and local revenues by $0.2 million.

The bill is provides an effective date of July 1, 2008.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

*Ensure lower taxes* - This bill removes provisions that require nonresidents to pay sales and use tax for aircraft purchased in the last six months that enter and remain in the state for less than a total of 21 days.

B. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of an aircraft if the purchaser removes the aircraft from the state within 10 days after the date of purchase, or when the aircraft is repaired or altered, within 20 days after completion of the repairs or alterations. A purchaser must provide proof to the Department of Revenue (DOR) that the aircraft has been removed from the state within 10 days of purchase to maintain their tax exempt status.

If a purchaser fails to remove the aircraft within 10 days of purchase, fails to remove the aircraft within 20 days of repair, returns to Florida within six months after purchase, or does not submit correct information to the DOR, the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable. The 100 percent penalty cannot be waived by DOR. Any purchaser who submits fraudulent information to avoid tax liability is subject to payment of the tax due, a mandatory penalty of 200 percent of the tax, and a fine of up to $5,000 and imprisonment for up to five years.

Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

Section 212.06(5)(a)1., F.S., provides that aircraft exported outside of the continental U.S. is tax exempt when the purchaser provides a validated U.S. customs declaration and the cancelled U.S. registry of the aircraft.

Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft dealer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the six percent imposed by Florida. This partial exemption applies only if the purchaser is a resident of another state who will not use the aircraft in Florida, a purchaser who is a resident of another state and uses the aircraft in interstate or foreign commerce, or if the purchaser is a resident of a foreign country.

A number of sales and use tax exemptions related to aviation exist in s. 212.08, F.S.:

- Aircraft repair and maintenance labor charges – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.

- Equipment used in aircraft repair and maintenance – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.

- Aircraft sales and leases – For qualified aircraft and for aircraft of more than 15,000 pounds maximum certified takeoff weight used by a common carrier, as defined by federal regulations.

- Aircraft that is purchased in Florida, but will not be used or stored in this state, qualifies for either a full or partial sales tax exemption, depending on the circumstances.

**Effects of Proposed Change**

CS/HB 1379 creates paragraph (ggg) in subsection (7) of s. 212.08, F.S. to provide that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase. The temporary use of the aircraft and subsequent removal from the state may be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers or similar documentation.

C. SECTION DIRECTORY:

**Section 1:** Creates paragraph (ggg) in subsection (7) of s. 212.08, F.S. to provide that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase.

**Section 2:** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference determined this bill will have a recurring negative impact to the state of $800,000 annually.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference determined this bill will have a recurring negative impact to local governments of $200,000 annually.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This legislation has the potential to positively impact the private sector by reducing the potential use tax liability incurred by nonresidents on aircraft temporarily in the state. In addition, the CS may increase tourism and visitors to the state.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that municipalities or counties have to raise revenue; however, an exemption applies because the amount is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

The state of Florida has a very peculiar application of the use tax regulations as they relate to the purchase of aircraft. If an individual purchases an aircraft outside the state of Florida and then brings the aircraft into the state within the first six months of purchase, he or she is penalized by having to pay a 6 percent use tax. This is in addition to sales tax already paid in the state of purchase. The only exception to this scenario would be a routine fuel stop or some similar activity. The aircraft cannot be purchased elsewhere and brought into Florida for at least six months without resulting in undue penalization of the owner of that aircraft.

Part of the reason individuals travel outside of the state of Florida to purchase an aircraft is because the sales tax in our neighboring states averages approximately 3 percent. Passage of House Bill 1379 would not only eliminate the strange application of the use tax regulations and the six-month provision, but it would also reduce the sales tax on aircraft to 3 percent, thereby rendering Florida a worthy competitor with our surrounding states with regard to the sale of aircraft.

It is important to note that several major manufacturers and dealers of aircraft are actually advising their customers to avoid Florida altogether because of the use tax regulations as they are currently written. In addition, because of the current use tax situation, a significant pilot training facility for purchasers of both Piper and Pilatus aircraft is directing its trainees to utilize training facilities in Scottsdale, Arizona, while training facilities exist in both Orlando and Vero Beach. It is apparent that the Florida use tax as it relates to aircraft is counterproductive. Instead of generating revenues for the state, it diverts revenues to other states. This will continue to occur if the current use tax regulations that pertain to aircraft remain in place.

Passage of House Bill 1379 is essential because it will actually help to generate revenue for the state. Aircraft owners will no longer have to be concerned with whether they are going to be "caught" bringing their aircraft into the state before six months has elapsed. Individuals that purchase aircraft employ people and generate a lot of revenue in our state. In addition, the bill's passage will eliminate the

stigma associated with our use tax regulations and the avoidance of Florida by purchasers of aircraft. Such caveats are widespread in national aviation magazines.

I appreciate your support of this legislation.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Tuesday April 8, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably with a strike-all amendment as a Council Substitute. The CS:

- Deleted language that lowered the sales tax rate on aircraft from 6 percent to 3 percent;
- Deleted language that provided a use tax exemption during the 6 months after purchase of an aircraft for those aircraft that will be domiciled outside of Florida; and
- Provided that aircraft owned by a non-resident is exempt from Florida use tax if it enters and remains in Florida for less than 21 days and provides proof that the aircraft has left the state before the conclusion of the 21 days.

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.08, F.S.; providing an exemption from the use tax for an aircraft that temporarily enters the state; providing criteria for proof; providing an effective date.

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

Section 1. Paragraph (ggg) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as

required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ggg) Aircraft temporarily in state.--Notwithstanding s. 212.06(8)(a), an aircraft owned by a nonresident is exempt from the use tax under this chapter if the aircraft enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase. The temporary use of the aircraft and subsequent removal from this state may be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers or similar documentation.

Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (01)

Bill No. **CS/HB 1379**

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 | _____ |

---

Policy and Budget Council

Representative Poppell offered the following:

**Amendment**

Remove lines 36-43 and insert:

(ggg) Aircraft temporarily in the state.--An aircraft owned by a nonresident is exempt from the use tax under this chapter if the aircraft enters and remains in the state for less than a total of 21 days during the 6-month period after the date of purchase. The temporary use of the aircraft and subsequent removal from the state may be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers or similar documentation which clearly and specifically identifies the aircraft. The exemption created by this paragraph shall be allowed in addition to the provisions contained in section 212.05(1)(a).

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7021 PCB JEC 08-01 Florida Hurricane Catastrophe Fund Risk Reduction
**SPONSOR(S):** Jobs & Entrepreneurship Council
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Jobs & Entrepreneurship Council | 10 Y, 0 N | Callaway/Topp | Thorn |
| 1) Policy & Budget Council | | Martin | Hansen |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (FHCF or fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.

The FHCF is administered by the State Board of Administration (SBA) and is headed by a senior officer who reports directly to the Executive Director of the SBA. The bill changes the oversight of the FHCF. It makes the FHCF a division of the SBA reporting directly to the Governor and Cabinet, rather than to the SBA Executive Director. Similarly, the FHCF will be headed by an executive director that reports directly to the Governor and Cabinet rather than to the SBA Executive Director. Most of the functions that are currently carried out by the SBA are transferred to the control of the Division of the FHCF.

House Bill 1A (Ch. 2007-1, L.O.F.) enacted during the January 2007 Special Session allowed insurers to purchase additional coverage from the FHCF above the maximum limits of the mandatory coverage. This option is referred to as Temporary Increase in Coverage Limits ("TICL"), and is available only until May 31, 2010. The TICL options allow an insurer to purchase additional coverage for its share of up to $12 billion, in $1 billion increments, above the mandatory coverage limit.

The bill reduces the TICL additional coverage from $12 billion to $9 billion that will be offered in addition to the mandatory fund coverage. This reduces the Fund's risk and exposure by $3 billion annually and reduces the potential assessments Floridians would pay if the FHCF paid the maximum possible to reimburse hurricane insurance claims paid by insurance companies. Maximum Floridian assessments possible under the bill would decrease from 4.77 percent of premiums to 4.2 percent. (Or, for a family with hypothetical $4,000 in annual premiums, the maximum possible assessment would decrease from $191 to $168 per year for 30 years.) However, it is also likely to cause rates for residential property insurance to increase anywhere from 1.6 percent to 3.6 percent on average in the short-term because insurers will be required to pay higher premiums for replacement coverage from private reinsurers.

The bill also sets the Fund's reimbursement at 70 percent of the insurer's losses. Under current law, insurance companies can choose the percentage of losses they absorb (55, 25, or 10 percent) as the law allows the Fund to reimburse insurers 45, 75, or 90 percent of their losses.

The bill does not change the deficit financing or assessment provisions for the FHCF. However, the bill sets the interest owed for delinquent assessment payments by surplus lines agents and policyholders at 9 percent per year, compounded annually and sets penalties for delinquent assessment payment at $500 per day. Under current law, the interest on delinquent assessment payments by surplus lines agents and policyholders is the interest income of the FHCF plus 5 percent.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government:** The bill reduces the exposure and risk the state has incurred through the Florida Hurricane Catastrophe Fund.

**Ensure Lower Taxes:** By reducing the state's risk in the FHCF, this bill reduces the potential assessments Floridians would pay if the FHCF's maximum obligations were utilized to reimburse hurricane insurance claims paid by insurance companies.

**Promote Personal Responsibility:** Insurance companies that purchase 90 percent or 75 percent FHCF coverage are required to retain more of the risk for part of the FHCF exposure than under current law.

B. EFFECT OF PROPOSED CHANGES:

### The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt trust fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers (s. 215.555, F.S.). All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.

The FHCF is administered by the State Board of Administration (SBA)[1] and is headed by a senior officer who reports directly to the Executive Director of the SBA. The bill changes the oversight of the FHCF. It makes the FHCF a division of the SBA reporting directly to the Governor and Cabinet, rather than to the SBA Executive Director. Similarly, the FHCF will be headed by an executive director that reports directly to the Governor and Cabinet rather than to the SBA Executive Director. This proposed organization is modeled on the current Division of Bond Finance, which is housed within the SBA, but reports directly to the Governor and Cabinet. Most of the functions that are currently carried out by the SBA are transferred to control of the Division of the FHCF.

The FHCF is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). It provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market; enabling insurers to generally write more residential property insurance in the state than would otherwise be written. The FHCF has historically provided reinsurance at a cost of about 20 to 33 percent of the cost of private reinsurance. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers must first pay hurricane losses up to their "retention" for each hurricane, similar to a deductible, before being reimbursed by the FHCF coverage. In 2005, legislation addressed multiple storm seasons

[1] Article IV, Section 4(e) of the Florida Constitution established the State Board of Administration as consisting of the Governor (as Chair), the Chief Financial Officer, and the Attorney General who serve as the Board of Trustees for the SBA. Pursuant to s. 19-3.016, F.A.C., the Board of Trustees selects an Executive Director of the SBA, who serves as the chief administrative officer of the SBA. The Board of Trustees delegates authority to the Executive Director to manage the financial affairs of the SBA.

by providing that the retention is reduced to one-third of the regular retention for a third hurricane and each additional hurricane. The full retention is applied to the two hurricanes causing the greatest losses to the insurer. The fund's retention is adjusted annually based on the FHCF's exposure. For the 2007 hurricane season the retention is approximately $6.1 billion for all insurers combined. A retention is calculated for each insurer based on its share of fund premiums.

For the 2007 hurricane season the FHCF will be liable to pay a maximum of $15.85 billion for mandatory coverage. This amount may be adjusted annually based on the percentage growth in fund exposure, but cannot exceed the dollar growth in the cash balance of the fund. The maximum coverage amount for each insurer is based on that insurer's share of the total premiums paid to the fund.

**Temporary Increase in Coverage Limits**

House Bill 1A enacted during the January 2007 Special Session allowed insurers to purchase additional coverage from the FHCF above the maximum limits of the mandatory coverage.[2] This option is referred to as Temporary Increase in Coverage Limits ("TICL"), and is available only for the 2007, 2008, and 2009 contract years (until May 31, 2010). The TICL options allow an insurer to purchase additional coverage for its share of up to $12 billion, in $1 billion increments, above the mandatory coverage limit (i.e., increasing maximum limits from $15.85 billion to $27.85 billion in 2007). The law authorized the SBA to further increase the limits by an additional $4 billion, but the SBA did not approve this increase for 2007.

The bill reduces the TICL additional coverage from $12 billion to $9 billion by eliminating the $10 billion, $11 billion, and $12 billion coverage options. Thus, a maximum of $9 billion in TICL coverage will be offered in addition to the mandatory fund coverage. This reduces the Fund's risk and exposure by $3 billion annually and reduces the potential assessments Floridians would pay if the FHCF'S maximum obligations were utilized to reimburse hurricane insurance claims paid by insurance companies. The bill also sets the Fund's reimbursement at 70 percent of the insurer's losses. Under current law, insurance companies can choose the percentage of losses they absorb (55, 25, or 10 percent) as the law allows the Fund to reimburse insurers 45, 75, or 90 percent of their losses. The bill does not changes the expiration of the TICL coverage options and does not change the premium calculation for TICL coverage.

Insurers must pay a premium for the optional TICL coverage. The premium for the TICL options is established by the SBA under the same method it uses for determining "actuarially indicated" premiums for the mandatory FHCF coverage.[3] As historically applied by the SBA, the actuarially indicated premium is the premium that is equal to the estimated average annual loss for the coverage purchased, based on a weighted average of the four hurricane loss models approved by the Florida Commission on Hurricane Loss Projection Methodology, plus the SBA's costs of administration. For the TICL coverage options, the premium is 2.2 percent of the coverage amount, for an insurer electing to buy its full share of the $12 billion TICL limit. This 2.2 percent "rate-on-line" is much less expensive than the premiums charged by private reinsurers, which range from about 10 to 20 percent for this level of coverage. In 2007, insurers took nearly full advantage of the TICL options, purchasing about $11.43 billion of the $12 billion offered, in exchange for a total premium of $242 million.

**Debt Financing and Assessments**

If a hurricane occurs and the cash balance of the FHCF from premiums charged to insurance companies for their FHCF coverage, plus investment income, is not sufficient to cover fund obligations, the FHCF must borrow funds by issuing bonds. To finance the bonds, the SBA must impose emergency assessments on all property and casualty insurance policies (property, auto, liability, etc.), including surplus lines insurance, but excluding workers' compensation, accident and health, medical

[2] s. 215.555(17), F.S. (2007).
[3] s. 215.555(17)(f), F.S., which references s. 215.555(5), F.S.

malpractice, and federal flood insurance. The assessments are collected as equal percentage surcharges to each policyholder's premium for as many years as are necessary to retire the bonds, up to 30 years. The law limits the amount of the assessments to 6 percent of premium annually to finance FHCF losses arising from a single year (i.e., one year's hurricanes), and to 10 percent of premium annually in the aggregate to finance FHCF losses arising from all years. The assessment base for the FHCF was approximately $35 billion for premiums written at year end 2006.

The hurricanes of 2004 and 2005 resulted in $8.45 billion in losses to the FHCF, requiring it to use its entire $7.1 billion in cash reserves and to issue $1.35 billion in bonds for the shortfall. The bonds are currently being financed by a 1 percent of premium assessment, which began January 1, 2007, and is estimated to be levied for six years (through 2012).

The bill does not change the deficit financing or assessment provisions in current law. However, the bill sets the interest owed for delinquent assessment payments by surplus lines agents and policyholders at 9 percent per year, compounded annually and sets penalties for delinquent assessment payment at $500 per day. Under current law, the interest on delinquent assessment payments by surplus lines agents and policyholders is the interest income of the FHCF plus 5 percent. Setting the interest owed at 9 percent will create certainty for surplus lines agents and policyholders as to the amount of interest due.

**Current Financial Status of the FHCF**

The Florida Hurricane Catastrophe Fund has potential reimbursement obligations to insurers of $27.85 billion for the 2007 hurricane season. This amount consists of:

- $15.85 billion of mandatory FHCF coverage, (subject to a growth factor each year);
- $11.43 billion of TICL coverage selected by insurers (of the optional $12 billion offered only for 2007, 2008, and 2009); and
- $557 million selected by insurers eligible to purchase up to $10 million additional coverage (offered only for 2007).

To fully meet the potential $27.85 billion obligation for 2007, the FHCF is relying on:

- $2.08 billion estimated year-end cash balance;
- $6.3 billion in proceeds from pre-event notes that have already been issued (for short-term liquidity needs);
- Up to $25.75 billion in bonds to be issued after a hurricane (which could be used to retire the pre-event notes).

The estimated $2.08 billion cash balance of the FHCF for 2007 is derived from reimbursement premiums collected from insurers for the 2006 and 2007 contract years, for which no hurricane losses have occurred. The year-end cash balance represents the non-debt, cash resources available to pay potential 2007 claims. This balance includes the 2007 FHCF premiums of $1.3 billion, paid by insurers in installments on August 1, October 1, and December 1. The pre-event notes provide additional liquidity of $6.3 billion, which gives the FHCF immediate access to a total of $8.3 billion for paying claims for the 2007 contract year.

If the maximum $25.75 billion of post-event bonds is required, an annual assessment of about 5 percent of premiums would be imposed for 30 years on most property and casualty insurance policies, given current interest levels. In contrast, the bonding required to support the mandatory coverage obligations of $15.85 billion would require an estimated 2.7 percent assessment over 30 years, and a slightly higher assessment of 2.86 percent for 30 years for a subsequent season loss of the same magnitude, both of which are within the assessment cap limits of the FHCF.

The probability of a full $27.85 billion loss (requiring a $25.75 billion bond issue) occurring in any given year is relatively low and would require a hurricane resulting in about $36 billion of insured residential hurricane losses. The probability of this occurring is estimated to be 1.6 percent, or stated differently, a

hurricane that occurs about once every 65 years. By comparison, the probability of loss for the full $15.85 billion mandatory coverage is estimated to be 3 percent, or once every 33 years. The probability of any loss at all to the Fund is 13.33 percent, or once every 7.5 years.

Even if the FHCF is required to pay its full 2007 obligations, it will again be liable for its obligations in 2008 and each year thereafter. The mandatory coverage and TICL options in 2008 and 2009 are likely to expose the FHCF to about $27-28 billion in additional obligations for a subsequent season, subject to the limitations of the fund's actual claims-paying (bonding) capacity.

The FHCF estimates its total multiple-years claims paying capacity, as follows:

- $27.83 billion initial season claims paying capacity, consisting of:
  - $2.08 billion cash balance and
  - $25.75 billion bond proceeds.
- $26.37 billion subsequent season claims paying capacity, consisting of:
  - $1.16 billion cash balance,
  - $25.21 billion bond proceeds, and
  - $1.25 billion in reimbursement premiums following the subsequent season.
- Total multiple years claims paying capacity = $55.45 billion.

Paying the total $55.45 billion over multiple seasons would require the maximum allowable 10 percent of premium assessment for 30 years, which also accounts for the 1 percent assessment currently being levied through 2012. The estimated $55.45 billion claims paying capacity is slightly below the maximum obligations of the FHCF for both the initial and subsequent seasons. If the FHCF commits substantially all of its assessment authority to fund bonds, it will thereafter be unable to provide additional reinsurance.

C. SECTION DIRECTORY:

Section 1: Amends s. 215.555 relating to the Florida Hurricane Catastrophe Fund.

Section 2: Amends s. 215.557 relating to the reports of insured values.

Section 3: Amends s. 215.5586 relating to the My Safe Florida Home Program.

Section 4: Makes a conforming cross reference change to s. 215.559 relating to the Hurricane Loss Mitigation Program.

Section 5: Amends s. 215.5595 relating to the Insurance Capital Build-Up Incentive Program.

Section 6: Amends s. 627.0628 relating to the Florida Commission on Hurricane Loss Projection Methodology.

Section 7: Makes a conforming cross-reference change to s. 624.424.

Section 8: Makes a conforming cross-reference change to s. 627.351.

Section 9: Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments below.

2. Expenditures:

   See Fiscal Comments below. The change in the oversight of the Florida Hurricane Catastrophe Fund is not expected to have a fiscal impact on the FHCF or the State Board of Administration.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of the top $3 billion of TICL coverage options and the institution of a 70 percent reimbursement level for TICL coverage reduces the risk of loss to the FHCF and, therefore, the risk of assessments to property and casualty insurance policyholders. However, it is also likely to cause rates for residential property insurance to increase in the short-term because insurers will be required to pay higher premiums for replacement coverage from private reinsurers. Representatives from the Department of Financial Services, which supports the legislation, estimate that the premium increase on residential policies would range from 1.5 percent to 2.0 percent, on average. The Office of Insurance Regulation estimates that the premium increase on residential policies would range from 1.6 percent to 3.6 percent, on average.

The DFS representatives estimate that the reduction in risk of loss to the FHCF, due to the reduction in TICL coverage, would potentially save Floridians from paying $184 million in annual assessments, or a total of $5.5 billion over a 30-year period. In terms of assessment percentages, reducing the $12 billion TICL option to $9 billion (which would reduce the amount of bonds potentially required for one year's storms from about $26 billion to $23 billion) would reduce the annual assessment percentage from about 4.77 percent to 4.2 percent for thirty years.

Changing the reimbursement under TICL to 70 percent of hurricane losses, rather than the 90 percent option that most insurers select, further reduces the liability of the FHCF and potential assessments, depending on the magnitude of losses. The state would still be liable for up to $9 billion of reimbursement obligations under TICL, but greater total losses would be required to reach this limit due to the change in the reimbursement percentage.

The $3 billion reduction in the amount of bonds that may be required to fund FHCF obligations increases the ability of the FHCF to issue sufficient bonds to cover its maximum potential liability and to reimburse insurers in a timely manner. This would lessen the need or desire for insurers to purchase private reinsurance to cover the FHCF "credit risk" as estimated by certain insurance rating organizations. This could have a favorable rate impact, depending on the extent to which OIR approves rates that include such expense.

D. FISCAL COMMENTS:

The potential liability of the FHCF is reduced by $3 billion due to the reduction in the optional TICL coverage by this amount. Changing the reimbursement to 70 percent of hurricane losses, rather than the 90 percent option that most insurers select, further reduces the state's obligation, depending on the magnitude of losses. See Direct Economic Impact on Private Sector above. The reductions in coverage

will also reduce the premium collected by the FHCF for TICL coverage. The FHCF collected $242 million in additional premium for the entire TICL layer in 2007.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The July 1, 2008 effective date would need to be amended to June 1, 2008, or earlier, in order to make the changes effective for the 2008 contract year of the FHCF, which begins on June 1 of each year.

D. STATEMENT OF THE SPONSOR

Not applicable as this is a proposed council bill.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 21, 2008, the Jobs & Entrepreneurship Council heard the bill and reported the bill favorably without amendment.

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising legislative findings and purpose; revising and providing definitions; creating the Division of the Florida Hurricane Catastrophe Fund within the State Board of Administration; transferring the powers, duties, and responsibilities of administration of the fund from the State Board of Administration to the division; requiring the State Board of Administration to appoint a director; revising provisions to conform; providing penalties and interest for failing to collect and remit certain assessments; increasing the membership of the board of directors of the Florida Hurricane Catastrophe Fund Finance Corporation; revising the methodology for calculating TICL coverage multiples for purposes of reducing an insurer's fund coverage limit; increasing the percentage of reimbursement of an insurer's TICL coverage under the TICL options addendum; amending ss. 215.557, 215.5586, and 215.5595, F.S.; revising provisions to conform; amending s. 627.0628, F.S.; assigning the Florida Commission on Hurricane Loss Projection Methodology to the division; revising provisions to conform; amending ss. 215.559, 624.424, and 627.351, F.S.; correcting cross-references; providing an effective date.

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

Section 1. Section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(1) FINDINGS AND PURPOSE.--The Legislature finds and declares as follows:

(a) There is a compelling state interest in maintaining a viable and orderly private sector market for property insurance in this state. To the extent that the private sector is unable to maintain a viable and orderly market for property insurance in this state, state actions to maintain such a viable and orderly market are valid and necessary exercises of the police power.

(b) As a result of unprecedented levels of catastrophic insured losses in recent years, and especially as a result of Hurricane Andrew, numerous insurers have determined that in order to protect their solvency, it is necessary for them to reduce their exposure to hurricane losses. Also as a result of these events, world reinsurance capacity has significantly contracted, increasing the pressure on insurers to reduce their catastrophic exposures.

(c) Mortgages require reliable property insurance, and the unavailability of reliable property insurance would therefore make most real estate transactions impossible. In addition, the public health, safety, and welfare demand that structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible. Therefore, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable residents of this state to obtain

property insurance coverage in the private sector endangers the economy of the state and endangers the public health, safety, and welfare. Accordingly, state action to correct for this inability of the private sector constitutes a valid and necessary public and governmental purpose.

(d) The insolvencies and financial impairments resulting from Hurricane Andrew demonstrate that many property insurers are unable or unwilling to maintain reserves, surplus, and reinsurance sufficient to enable the insurers to pay all claims in full in the event of a catastrophe. State action is therefore necessary to protect the public from an insurer's unwillingness or inability to maintain sufficient reserves, surplus, and reinsurance.

(e) A state program to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses will create additional insurance capacity sufficient to ameliorate the current dangers to the state's economy and to the public health, safety, and welfare.

(f) It is essential to the functioning of a state program to increase insurance capacity that revenues received be exempt from federal taxation. It is therefore the intent of the Legislature that this program be structured as a state trust fund under the direction and control of the Division of the Florida Hurricane Catastrophe Fund within the State Board of Administration and operate exclusively for the purpose of protecting and advancing the state's interest in maintaining insurance capacity in this state.

(g) Hurricane Andrew, which caused insured and uninsured losses in excess of $20 billion, will likely not be the last major windstorm to strike Florida. Recognizing that a future wind catastrophe could cause damages in excess of $60 billion, especially if a major urban area or series of urban areas were hit, it is the intent of the Legislature to balance equitably its concerns about mitigation of hurricane impact, insurance affordability and availability, and the risk of insurer and joint underwriting association insolvency, as well as assessment and bonding limitations.

(2) DEFINITIONS.--As used in this section:

(a) ~~(m)~~ "Actual claims-paying capacity" means the sum of the balance of the fund as of December 31 of a contract year, plus any reinsurance purchased by the fund, plus the amount the board is able to raise through the issuance of revenue bonds under subsection (7) ~~(6)~~.

(b) ~~(a)~~ "Actuarially indicated" means, with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to pay debt service on revenue bonds issued under this section and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under subsection (7) ~~(6)~~, and determined according to principles of actuarial science to reflect each insurer's relative exposure to hurricane losses.

(c) "Board" means the governing board of the division,

which shall be composed of the Governor and Cabinet. The Governor shall be chair of the governing board of the division, the Attorney General shall be the secretary of the board, and the Chief Financial Officer shall be treasurer of the board.

(d) ~~(g)~~ "Bond" means any bond, debenture, note, or other evidence of financial indebtedness issued under this section.

(e) ~~(n)~~ "Corporation" means the Florida Hurricane Catastrophe Fund Finance Corporation created in paragraph (7) ~~(6)~~ (d).

(f) ~~(b)~~ "Covered event" means any one storm declared to be a hurricane by the National Hurricane Center, which storm causes insured losses in this state.

(g) ~~(e)~~ "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy can be accurately reported as required in

subsection (6) ~~(5)~~. Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the division ~~board~~ within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

(h) "Debt service" means the amount required in any fiscal year to pay the principal of, redemption premium, if any, and

interest on revenue bonds and any amounts required by the terms of documents authorizing, securing, or providing liquidity for revenue bonds necessary to maintain in effect any such liquidity or security arrangements.

(i) "Debt service coverage" means the amount, if any, required by the documents under which revenue bonds are issued, which amount is to be received in any fiscal year in excess of the amount required to pay debt service for such fiscal year.

(j) "Director" means the chief administrator of the division, who shall act on behalf of the division as authorized by the board.

(k) "Division" means the Division of the Florida Hurricane Catastrophe Fund.

(l) "Estimated claims-paying capacity" means the sum of the projected year-end balance of the fund as of December 31 of a contract year, plus any reinsurance purchased by the fund, plus the division's ~~board's~~ estimate of the board's borrowing capacity.

(m) "Fund" or "FHCF" means the Florida Hurricane Catastrophe Fund.

(n) ~~(j)~~ "Local government" means a unit of general purpose local government as defined in s. 218.31(2).

(o) ~~(d)~~ "Losses" means direct incurred losses under covered policies, which shall include losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and shall exclude loss adjustment expenses. "Losses" does not include losses for fair

rental value, loss of rent or rental income, or business interruption losses.

(p) ~~(k)~~ "Pledged revenues" means all or any portion of revenues to be derived from reimbursement premiums under subsection (6) ~~(5)~~ or from emergency assessments under paragraph (7) ~~(6)~~(b), as determined by the board.

(q) ~~(e)~~ "Retention" means the amount of losses below which an insurer is not entitled to reimbursement from the fund. An insurer's retention shall be calculated as follows:

1. The division ~~board~~ shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning June 1, 2005, the retention multiple shall be equal to $4.5 billion divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to $4.5 billion, adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2004, divided by the total estimated reimbursement premium for the contract year. Total reimbursement premium for purposes of the calculation under this subparagraph shall be estimated using the assumption that all insurers have selected the 90-percent coverage level.

2. The retention multiple as determined under subparagraph 1. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under subparagraph 1. For insurers electing the 75-percent coverage level, the retention multiple is 120

percent of the amount determined under subparagraph 1. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under subparagraph 1.

3. An insurer shall determine its provisional retention by multiplying its provisional reimbursement premium by the applicable adjusted retention multiple and shall determine its actual retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple.

4. For insurers who experience multiple covered events causing loss during the contract year, beginning June 1, 2005, each insurer's full retention shall be applied to each of the covered events causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention shall be reduced to one-third of the full retention. The reimbursement contract shall provide for the reimbursement of losses for each covered event based on the full retention with adjustments made to reflect the reduced retentions after January 1 of the contract year provided the insurer reports its losses as specified in the reimbursement contract.

(r) ~~(f)~~ "Workers' compensation" includes both workers' compensation and excess workers' compensation insurance.

(3) DIVISION OF THE FLORIDA HURRICANE CATASTROPHE FUND CREATED.--The Division of the Florida Hurricane Catastrophe Fund is created within the State Board of Administration for the purpose of administering the Florida Hurricane Catastrophe Fund. For purposes of this section, the board of the division shall consist of the Governor and Cabinet.

(4) ~~(3)~~ FLORIDA HURRICANE CATASTROPHE FUND CREATED.--There is created the Florida Hurricane Catastrophe Fund within ~~to be administered by~~ the State Board of Administration. Moneys in the fund may not be expended, loaned, or appropriated except to pay obligations of the fund arising out of reimbursement contracts entered into under subsection (5) ~~(4)~~, payment of debt service on revenue bonds issued under subsection (7) ~~(6)~~, costs of the mitigation program under subsection (8) ~~(7)~~, costs of procuring reinsurance, and costs of administration of the fund. The State Board of Administration shall invest the moneys in the fund pursuant to ss. 215.44-215.52. Except as otherwise provided in this section, earnings from all investments shall be retained in the fund. The State Board of Administration shall appoint a director of the division who shall be responsible for the administration of the fund. The appointment of the division director shall be subject to approval by a majority vote of the board. The division ~~board~~ may employ or contract with such staff and professionals as the division ~~board~~ deems necessary for the administration of the fund. The board may adopt such rules as are reasonable and necessary to implement this section and shall specify interest due on any delinquent remittances, which interest may not exceed the fund's rate of return plus 5 percent. Such rules must conform to the Legislature's specific intent in establishing the fund as expressed in subsection (1), must enhance the fund's potential ability to respond to claims for covered events, must contain general provisions so that the rules can be applied with reasonable flexibility so as to accommodate insurers in situations of an unusual nature or where

undue hardship may result, except that such flexibility may not in any way impair, override, supersede, or constrain the public purpose of the fund, and must be consistent with sound insurance practices. The board may, by rule, provide for the exemption from subsections (5) ~~(4)~~ and (6) ~~(5)~~ of insurers writing covered policies with less than $10 million in aggregate exposure for covered policies if the exemption does not affect the actuarial soundness of the fund. The division may sue and be sued in the name of the division.

(5)~~(4)~~ REIMBURSEMENT CONTRACTS.--

(a) The division ~~board~~ shall enter into a contract with each insurer writing covered policies in this state to provide to the insurer the reimbursement described in paragraphs (b) and (d)~~,~~ in exchange for the reimbursement premium paid into the fund under subsection (6) ~~(5)~~. As a condition of doing business in this state, each such insurer shall enter into such a contract.

(b)1. The contract shall contain a promise by the division ~~board~~ to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (7) ~~(6)~~ after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are

outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. Notwithstanding any other provision contained in this section, the board shall make available to insurers that purchased coverage provided by this subparagraph in 2006, insurers qualifying as limited apportionment companies under s. 627.351(6)(c), and insurers that were approved to participate in 2006 or that are approved in 2007 for the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595, a contract or contract addendum that provides an additional amount of reimbursement coverage of up to $10 million. The premium to be charged for this additional reimbursement coverage shall be 50 percent of the additional reimbursement coverage provided, which shall include one prepaid reinstatement. The minimum retention level that an eligible participating insurer must retain associated with this additional coverage layer is 30 percent of the insurer's surplus as of December 31, 2006. This coverage shall be in addition to all other coverage that may be provided under this section. The coverage provided by the fund under this subparagraph shall be in addition to the claims-paying capacity as defined in subparagraph (c)1., but only with respect to those insurers that select the additional coverage option and meet the requirements of this subparagraph. The claims-paying capacity

with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium's proportionate share of the actual claims-paying capacity otherwise defined in subparagraph (c)1. and as provided for under the terms of the reimbursement contract. Coverage provided in the reimbursement contract will not be affected by the additional premiums paid by participating insurers exercising the additional coverage option allowed in this subparagraph. This subparagraph expires on May 31, 2008.

(c)1. The contract shall also provide that the obligation of the division ~~board~~ with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of $15 billion for that contract year adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2003, provided the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the balance of the fund as of December 31, less any premiums or interest attributable to optional coverage, as defined by rule which occurred over the prior calendar year.

2. In May before the start of the upcoming contract year and in October during the contract year, the division ~~board~~ shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity and the projected balance of the fund as of December 31. After the end of each calendar year, the division ~~board~~ shall notify insurers of the

estimated borrowing capacity and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (6) ~~(5)~~, the division ~~board~~ shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the division ~~board~~. The contract shall require the insurer to report to the division ~~board~~ no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the division ~~board~~ to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the division ~~board~~ to pay, or the insurer

to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the division ~~board~~ shall pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year.

(e)1. Except as provided in subparagraphs 2. and 3., the contract shall provide that if an insurer demonstrates to the division ~~board~~ that it is likely to qualify for reimbursement under the contract, and demonstrates to the division ~~board~~ that the immediate receipt of moneys from the division ~~board~~ is likely to prevent the insurer from becoming insolvent, the division ~~board~~ shall advance the insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer, up to 50 percent of the division's ~~board's~~ estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the advance and interest thereon.

2. With respect only to an entity created under s. 627.351, the contract shall also provide that the division ~~board~~ may, upon application by such entity, advance to such entity, at market interest rates, up to 90 percent of the lesser of:

a. The division's ~~board's~~ estimate of the amount of reimbursement due to such entity; or

b. The entity's share of the actual reimbursement premium paid for that contract year, multiplied by the currently available liquid assets of the fund. In order for the entity to qualify for an advance under this subparagraph, the entity must demonstrate to the division ~~board~~ that the advance is essential to allow the entity to pay claims for a covered event and the division ~~board~~ must determine that the fund's assets are sufficient and are sufficiently liquid to allow the division ~~board~~ to make an advance to the entity and still fulfill the division's ~~board's~~ reimbursement obligations to other insurers. The entity's final reimbursement for any contract year in which an advance has been made under this subparagraph must be reduced by an amount equal to the amount of the advance and any interest on such advance. In order to determine what amounts, if any, are due the entity, the division ~~board~~ may require the entity to report its exposure and its losses at any time to determine retention levels and reimbursements payable.

3. The contract shall also provide specifically and solely with respect to any limited apportionment company under s. 627.351(2)(b)3. that the division ~~board~~ may, upon application by such company, advance to such company the amount of the estimated reimbursement payable to such company as calculated pursuant to paragraph (d), at market interest rates, if the division ~~board~~ determines that the fund's assets are sufficient and are sufficiently liquid to permit the division ~~board~~ to make an advance to such company and at the same time fulfill its reimbursement obligations to the insurers that are participants in the fund. Such company's final reimbursement for any contract

year in which an advance pursuant to this subparagraph has been made shall be reduced by an amount equal to the amount of the advance and interest thereon. In order to determine what amounts, if any, are due to such company, the division ~~board~~ may require such company to report its exposure and its losses at such times as may be required to determine retention levels and loss reimbursements payable.

(f) In order to ensure that insurers have properly reported the insured values on which the reimbursement premium is based and to ensure that insurers have properly reported the losses for which reimbursements have been made, the division ~~board~~ shall inspect, examine, and verify the records of each insurer's covered policies at such times as the division ~~board~~ deems appropriate and according to standards established by rule for the specific purpose of validating the accuracy of exposures and losses required to be reported under the terms and conditions of the reimbursement contract. The costs of the examinations shall be borne by the division ~~board~~. However, in order to remove any incentive for an insurer to delay preparations for an examination, the division ~~board~~ shall be reimbursed by the insurer for any examination expenses incurred in addition to the usual and customary costs of the examination, which additional expenses were incurred as a result of an insurer's failure, despite proper notice, to be prepared for the examination or as a result of an insurer's failure to provide requested information while the examination is in progress. If the division ~~board~~ finds any insurer's records or other necessary information to be inadequate or inadequately posted,

recorded, or maintained, the division ~~board~~ may employ experts to reconstruct, rewrite, record, post, or maintain such records or information, at the expense of the insurer being examined, if such insurer has failed to maintain, complete, or correct such records or deficiencies after the division ~~board~~ has given the insurer notice and a reasonable opportunity to do so. Any information contained in an examination report, which information is described in s. 215.557, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as provided in s. 215.557. Nothing in this paragraph expands the exemption in s. 215.557.

(g) The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to the Florida Insurance Guaranty Association for the benefit of Florida policyholders of the insurer the net amount of all reimbursement moneys owed to the insurer. As used in this paragraph, the term "net amount of all reimbursement moneys" means that amount which remains after reimbursement for:

1. Preliminary or duplicate payments owed to private reinsurers or other inuring reinsurance payments to private reinsurers that satisfy statutory or contractual obligations of the insolvent insurer attributable to covered events to such reinsurers; or

2. Funds owed to a bank or other financial institution to cover obligations of the insolvent insurer under a credit agreement that assists the insolvent insurer in paying claims attributable to covered events.

The private reinsurers, banks, or other financial institutions shall be reimbursed or otherwise paid prior to payment to the Florida Insurance Guaranty Association, notwithstanding any law to the contrary. The guaranty association shall pay all claims up to the maximum amount permitted by chapter 631; thereafter, any remaining moneys shall be paid pro rata to claims not fully satisfied. This paragraph does not apply to a joint underwriting association, risk apportionment plan, or other entity created under s. 627.351.

(6) ~~(5)~~ REIMBURSEMENT PREMIUMS.--

(a) Each reimbursement contract shall require the insurer to annually pay to the fund an actuarially indicated premium for the reimbursement.

(b) The division ~~State Board of Administration~~ shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the division ~~board~~ shall consider the coverage elected under paragraph (5) ~~(4)~~ (b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the division ~~board~~ to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies

after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the division ~~board~~. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(c) No later than September 1 of each year, each insurer shall notify the division ~~board~~ of its insured values under covered policies by zip code, as of June 30 of that year. On the basis of these reports, the division ~~board~~ shall calculate the premium due from the insurer, based on the formula adopted under paragraph (b). The insurer shall pay the required annual premium pursuant to a periodic payment plan specified in the contract. The division ~~board~~ shall provide for payment of reimbursement premium in periodic installments and for the adjustment of provisional premium installments collected prior to submission of the exposure report to reflect data in the exposure report. The division ~~board~~ shall collect interest on late reimbursement premium payments consistent with the assumptions made in developing the premium formula in accordance with paragraph (b).

(d) All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes.

(e) If Citizens Property Insurance Corporation assumes or otherwise provides coverage for policies of an insurer placed in liquidation under chapter 631 pursuant to s. 627.351(6), the

corporation may, pursuant to conditions mutually agreed to between the corporation and the division ~~State Board of Administration~~, obtain coverage for such policies under its contract with the division ~~fund~~ or accept an assignment of the liquidated insurer's contract with the division ~~fund~~. If Citizens Property Insurance Corporation elects to cover these policies under the corporation's contract with the division ~~fund~~, it shall notify the division ~~board~~ of its insured values with respect to such policies within a specified time mutually agreed to between the corporation and the division ~~board~~, after such assumption or other coverage transaction, and the division ~~fund~~ shall treat such policies as having been in effect as of June 30 of that year. In the event of an assignment, the division ~~fund~~ shall apply that contract to such policies and treat Citizens Property Insurance Corporation as if the corporation were the liquidated insurer for the remaining term of the contract, and the corporation shall have all rights and duties of the liquidated insurer beginning on the date it provides coverage for such policies, but the corporation is not subject to any preexisting rights, liabilities, or duties of the liquidated insurer. The assignment, including any unresolved issues between the liquidated insurer and Citizens Property Insurance Corporation under the contract, shall be provided for in the liquidation order or otherwise determined by the court. However, if a covered event occurs before the effective date of the assignment, the corporation may not obtain coverage for such policies under its contract with the division ~~fund~~ and shall

accept an assignment of the liquidated insurer's contract as provided in this paragraph.

(7) ~~(6)~~ REVENUE BONDS.--

(a) General provisions.--

1. Upon the occurrence of a hurricane and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under paragraph (c) or paragraph (d) for the issuance of revenue bonds for the benefit of the fund. The proceeds of such revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under subsection (6) ~~(5)~~ and under paragraph (b) to secure such revenue bonds, and the division ~~board~~ may execute such agreements between the division ~~board~~ and the issuer of any revenue bonds and providers of other financing arrangements under paragraph (8) ~~(7)~~ (b) as the board deems necessary to evidence, secure, preserve, and protect such

pledge. If reimbursement premiums received under subsection (6) ~~(5)~~ or earnings on such premiums are used to pay debt service on revenue bonds, such premiums and earnings shall be used only after the use of the moneys derived from assessments under paragraph (b). The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds. The division ~~board~~ may also enter into agreements under paragraph (c) or paragraph (d) for the purpose of issuing revenue bonds in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The Legislature finds and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to ensure ~~assure~~ that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane.

(b) Emergency assessments.--

1. If the board determines that the amount of revenue produced under subsection (6) ~~(5)~~ is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this

state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the division ~~board~~ in a form and at a time specified by the division ~~board~~. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. Failure to collect and remit the assessment as required by this subparagraph is a violation of this subparagraph, and the surplus lines agent and insureds procuring coverage shall pay penalties and interest as provided by s. 626.936(2). The Florida Surplus Lines Service Office shall remit the collected

assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the division ~~board~~ in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the division ~~board~~ in a form and at a time specified by the division ~~board~~.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (6) ~~(5)~~ is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until

the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the division ~~fund~~ a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the division ~~fund~~ has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the division ~~fund~~ shall have no right, title, or interest in or to the assessments, except as provided in the division's ~~fund's~~ agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the

unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2010, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2010.

(c) Revenue bond issuance through counties or municipalities.--

1. If the board elects to enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund, the division ~~board~~ shall enter into such contracts with one or more local governments, including agreements providing for the pledge of revenues, as are necessary to effect such issuance. The governing body of a county or municipality is authorized to issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the Florida Hurricane Catastrophe Fund, for the purposes set forth in this section or for the purpose of paying the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane by assuring that policyholders located in this state are able to recover claims under property insurance policies after a covered event.

2. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance

programs, any local government may provide for the payment of fund reimbursements, regardless of whether or not the losses for which reimbursement is made occurred within or outside of the territorial jurisdiction of the local government.

3. The state hereby covenants with holders of bonds issued under this paragraph that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. There shall be no liability on the part of, and no cause of action shall arise against, any members or employees of the governing body of a local government for any actions taken by them in the performance of their duties under this paragraph.

(d) Florida Hurricane Catastrophe Fund Finance Corporation.--

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the Florida Hurricane Catastrophe Fund Finance Corporation.

b. The corporation shall operate under a six-member ~~five-member~~ board of directors consisting of the Governor or a designee, the Chief Financial Officer or a designee, the Attorney General or a designee, the Commissioner of Agriculture or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the director ~~senior employee~~ of the Division ~~State Board of Administration responsible for operations~~ of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under chapter 607 and under chapter 617, subject only to the provisions of this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds issued by the corporation, the notice required by s. 75.06 shall be published only in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political

subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the Florida Hurricane Catastrophe Fund Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence shall continue until terminated by law; however, no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

(e) Protection of bondholders.--

1. As long as the corporation has any bonds outstanding, neither the division ~~fund~~ nor the corporation shall have the authority to file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and neither any public officer nor any organization, entity, or other person shall authorize the division ~~fund~~ or the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

2. The state hereby covenants with holders of bonds of the corporation that the state will not limit or alter the denial of authority under this paragraph or the rights under this section vested in the division ~~fund~~ or the corporation to fulfill the terms of any agreements made with such bondholders or in any way impair the rights and remedies of such bondholders as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

3. Notwithstanding any other provision of law, any pledge of or other security interest in revenue, money, accounts, contract rights, general intangibles, or other personal property made or created by the fund or the corporation shall be valid, binding, and perfected from the time such pledge is made or other security interest attaches without any physical delivery of the collateral or further act and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the division ~~fund~~ or the corporation irrespective of whether or not such parties have notice of such claims. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(8) ~~(7)~~ ADDITIONAL POWERS AND DUTIES.--

(a) The board may authorize the division to procure reinsurance from reinsurers acceptable to the Office of Insurance Regulation for the purpose of maximizing the capacity of the fund and may enter into capital market transactions, including, but not limited to, industry loss warranties, catastrophe bonds, side-car arrangements, or financial contracts permissible for the State Board of Administration's ~~board's~~ usage under s. 215.47(10) and (11), consistent with prudent management of the fund.

(b) In addition to borrowing under subsection (7) ~~(6)~~, the board may also authorize the division to borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates.

(c) Each fiscal year, the Legislature shall appropriate from the investment income of the Florida Hurricane Catastrophe Fund an amount no less than $10 million and no more than 35 percent of the investment income based upon the most recent fiscal year-end audited financial statements for the purpose of providing funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve hurricane preparedness, reduce potential losses in the event of a hurricane, provide research into means to reduce such losses, educate or inform the public as to means to reduce hurricane losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades, or protect local infrastructure from potential damage from a hurricane. Moneys shall first be available for appropriation under this paragraph in fiscal year 1997-1998. Moneys in excess of the $10 million specified in this paragraph shall not be available for appropriation under this paragraph if the ~~State~~ board ~~of Administration~~ finds that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

(d) The division ~~board~~ may allow insurers to comply with reporting requirements and reporting format requirements by using alternative methods of reporting if the proper administration of the fund is not thereby impaired and if the alternative methods produce data which is consistent with the purposes of this section.

(e) In order to ensure ~~assure~~ the equitable operation of the fund, the division ~~board~~ may impose a reasonable fee on an insurer to recover costs involved in reprocessing inaccurate, incomplete, or untimely exposure data submitted by the insurer.

(9) ~~(8)~~ ADVISORY COUNCIL.--The State Board of Administration shall appoint a nine-member advisory council that consists of an actuary, a meteorologist, an engineer, a representative of insurers, a representative of insurance agents, a representative of reinsurers, and three consumers who shall also be representatives of other affected professions and industries~~,~~ to provide the board with information and advice in connection with its duties under this section. Members of the advisory council shall serve at the pleasure of the board and are eligible for per diem and travel expenses under s. 112.061.

(10) ~~(9)~~ APPLICABILITY OF S. 19, ART. III OF THE STATE CONSTITUTION.--The Legislature finds that the Florida Hurricane Catastrophe Fund created by this section is a trust fund established for bond covenants, indentures, or resolutions within the meaning of s. 19(f)(3), Art. III of the State Constitution.

(11) ~~(10)~~ VIOLATIONS.--Any violation of this section or of rules adopted under this section constitutes a violation of the insurance code.

(12) ~~(11)~~ LEGAL PROCEEDINGS.--The division may ~~board is authorized to~~ take any action necessary to enforce the rules, and the provisions and requirements of the reimbursement contract, required by and adopted pursuant to this section.

(13) ~~(12)~~ FEDERAL OR MULTISTATE CATASTROPHIC FUNDS.--Upon the creation of a federal or multistate catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund created by this section, the division, upon approval by the ~~State~~ board, ~~of Administration~~ shall promptly make recommendations to the Legislature for coordination with the federal or multistate program, for termination of the fund, or for such other actions as the division ~~board~~ finds appropriate in the circumstances.

(14) ~~(13)~~ REVERSION OF FUND ASSETS UPON TERMINATION.--The fund, the division, and the duties of the board under this section may be terminated only by law. Upon termination of the fund, all assets of the fund shall revert to the General Revenue Fund.

(15) ~~(14)~~ SEVERABILITY.--If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.

(16) ~~(15)~~ COLLATERAL PROTECTION INSURANCE.--As used in this section and ss. 627.311 and 627.351, the term "collateral protection insurance" means commercial property insurance of which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the

mortgage or other lending document. Collateral protection insurance is not residential coverage.

(17) ~~(16)~~ TEMPORARY EMERGENCY ADDITIONAL COVERAGE OPTIONS ~~FOR ADDITIONAL COVERAGE~~.--

(a) Findings and intent.--

1. The Legislature finds that:

a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure reinsurance for the 2006 hurricane season with an attachment point below the insurers' respective Florida Hurricane Catastrophe Fund attachment points, were unable to procure sufficient amounts of such reinsurance, or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.

b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and increases in the number of policies issued by the Citizens Property Insurance Corporation.

c. It is likely that the reinsurance market disruptions will not significantly abate prior to the 2007 hurricane season.

2. It is the intent of the Legislature to create a temporary emergency program, applicable to the 2007, 2008, and 2009 hurricane seasons, to address these market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.

(b) Applicability of other provisions of this section.--All provisions of this section and the rules adopted

under this section apply to the program created by this subsection unless specifically superseded by this subsection.

(c) Optional coverage.--For the contract year commencing June 1, 2007, and ending May 31, 2008, the contract year commencing June 1, 2008, and ending May 31, 2009, and the contract year commencing June 1, 2009, and ending May 31, 2010, the board shall offer for each of such years the optional coverage as provided in this subsection.

(d) Additional definitions.--As used in this subsection, the term:

1. "TEACO options" means the temporary emergency additional coverage options created under this subsection.

2. "TEACO insurer" means an insurer that has opted to obtain coverage under the TEACO options in addition to the coverage provided to the insurer under its reimbursement contract.

3. "TEACO reimbursement premium" means the premium charged by the fund for coverage provided under the TEACO options.

4. "TEACO retention" means the amount of losses below which a TEACO insurer is not entitled to reimbursement from the fund under the TEACO option selected. A TEACO insurer's retention options shall be calculated as follows:

a. The division ~~board~~ shall calculate and report to each TEACO insurer the TEACO retention multiples. There shall be three TEACO retention multiples for defining coverage. Each multiple shall be calculated by dividing $3 billion, $4 billion, or $5 billion by the total estimated mandatory FHCF

reimbursement premium assuming all insurers selected the 90-percent coverage level.

b. The TEACO retention multiples as determined under sub-subparagraph a. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under sub-subparagraph a. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under sub-subparagraph a. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under sub-subparagraph a.

c. An insurer shall determine its provisional TEACO retention by multiplying its estimated mandatory FHCF reimbursement premium by the applicable adjusted TEACO retention multiple and shall determine its actual TEACO retention by multiplying its actual mandatory FHCF reimbursement premium by the applicable adjusted TEACO retention multiple.

d. For TEACO insurers who experience multiple covered events causing loss during the contract year, the insurer's full TEACO retention shall be applied to each of the covered events causing the two largest losses for that insurer. For other covered events resulting in losses, the TEACO option does not apply and the insurer's retention shall be one-third of the full retention as calculated under paragraph (2)(q) ~~(e)~~.

5. "TEACO addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and TEACO insurers under the program created by this subsection.

6. "FHCF" means the Florida Hurricane Catastrophe Fund.

(e) TEACO addendum.--

1. The TEACO addendum shall provide for reimbursement of TEACO insurers for covered events occurring during the contract year~~,~~ in exchange for the TEACO reimbursement premium paid into the fund under paragraph (f). Any insurer writing covered policies has the option of choosing to accept the TEACO addendum for any of the 3 contract years that the coverage is offered.

2. The TEACO addendum shall contain a promise by the division ~~board~~ to reimburse the TEACO insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's TEACO retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph (5)~~(4)~~(b).

3. The TEACO addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. The TEACO addendum shall also provide that the obligation of the division ~~board~~ with respect to all TEACO addenda shall not exceed an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(g)~~(e)~~ and the $3 billion, $4 billion, or $5 billion industry TEACO retention level options actually selected, but in no event may the division's ~~board's~~ obligation exceed the actual claims-paying capacity of the fund plus the additional capacity created in paragraph (g). If the actual claims-paying capacity and the additional capacity created under

paragraph (g) fall short of the division's ~~board's~~ obligations under the reimbursement contract, each insurer's share of the fund's capacity shall be prorated based on the premium an insurer pays for its mandatory reimbursement coverage and the premium paid for its optional TEACO coverage as each such premium bears to the total premiums paid to the fund times the available capacity.

5. The priorities, schedule, and method of reimbursements under the TEACO addendum shall be the same as provided under subsection (5) ~~(4)~~.

6. A TEACO insurer's maximum reimbursement for a single event shall be equal to the product of multiplying its mandatory FHCF premium by the difference between its FHCF retention multiple and its TEACO retention multiple under the TEACO option selected and by the coverage selected under paragraph (5)~~(4)~~(b), plus an additional 5 percent for loss adjustment expenses. A TEACO insurer's maximum reimbursement under the TEACO option selected for a TEACO insurer's two largest events shall be twice its maximum reimbursement for a single event.

(f) TEACO reimbursement premiums.--

1. Each TEACO insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TEACO reimbursement premium calculated as specified in this paragraph.

2. The insurer's TEACO reimbursement premium associated with the $3 billion retention option shall be equal to 85 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (e)6. The TEACO

reimbursement premium associated with the $4 billion retention option shall be equal to 80 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (e)6. The TEACO premium associated with the $5 billion retention option shall be equal to 75 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (e)6.

(g) Effect on claims-paying capacity of the fund.--For the contract term commencing June 1, 2007, the contract year commencing June 1, 2008, and the contract term beginning June 1, 2009, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (5) ~~(4)~~(c)1. by an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(q) ~~(e)~~ and the $3 billion industry TEACO retention level specified in sub-subparagraph (d)4.a. The additional capacity shall apply only to the additional coverage provided by the TEACO option and shall not otherwise affect any insurer's reimbursement from the fund.

(18) ~~(17)~~ TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.--

(a) Findings and intent.--

1. The Legislature finds that:

a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure sufficient amounts of reinsurance for the 2006 hurricane season or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.

b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and increases in the number of policies issued by Citizens Property Insurance Corporation.

c. It is likely that the reinsurance market disruptions will not significantly abate prior to the 2008 ~~2007~~ hurricane season.

2. It is the intent of the Legislature to create options for insurers to purchase a temporary increased coverage limit above the statutorily determined limit in subparagraph (5)~~(4)~~(c)1., applicable for the ~~2007,~~ 2008~~,~~ and 2009 hurricane seasons, to address market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.

(b) Applicability of other provisions of this section.--All provisions of this section and the rules adopted under this section apply to the coverage created by this subsection unless specifically superseded by provisions in this subsection.

(c) Optional coverage.--For the contract year commencing ~~June 1, 2007, and ending May 31, 2008, the contract year commencing~~ June 1, 2008, and ending May 31, 2009, and the contract year commencing June 1, 2009, and ending May 31, 2010, the board shall offer, for each of such years, the optional coverage as provided in this subsection.

(d) Additional definitions.--As used in this subsection, the term:

1. "FHCF" means Florida Hurricane Catastrophe Fund.

2. "FHCF reimbursement premium" means the premium paid by an insurer for its coverage as a mandatory participant in the FHCF, but does not include additional premiums for optional coverages.

3. "Payout multiple" means the number or multiple created by dividing the statutorily defined claims-paying capacity as determined in subparagraph (5)~~(4)~~(c)1. by the aggregate reimbursement premiums paid by all insurers estimated or projected as of calendar year-end.

4. "TICL" means the temporary increase in coverage limit.

5. "TICL options" means the temporary increase in coverage options created under this subsection.

6. "TICL insurer" means an insurer that has opted to obtain coverage under the TICL options addendum in addition to the coverage provided to the insurer under its FHCF reimbursement contract.

7. "TICL reimbursement premium" means the premium charged by the fund for coverage provided under the TICL option.

8. "TICL coverage multiple" means the coverage multiple when multiplied by an insurer's FHCF reimbursement premium that defines the temporary increase in coverage limit.

9. "TICL coverage" means the coverage for an insurer's losses above the insurer's statutorily determined claims-paying capacity based on the claims-paying limit in subparagraph (5)~~(4)~~(c)1., which an insurer selects as its temporary increase in coverage from the fund under the TICL options selected. A TICL insurer's increased coverage limit options shall be calculated as follows:

a. The division ~~board~~ shall calculate and report to each TICL insurer the TICL coverage multiples based on 9 ~~12~~ options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, and $9 billion~~, $10 billion, $11 billion, or $12 billion~~ by the total estimated aggregate FHCF reimbursement premiums for ~~the 2007-2008 contract year,~~ the 2008-2009 contract year~~,~~ and the 2009-2010 contract year.

b. The TICL insurer's increased coverage shall be the FHCF reimbursement premium multiplied by the TICL coverage multiple for the TICL option selected. In order to determine an insurer's total limit of coverage, an insurer shall add its TICL coverage multiple to its payout multiple. The total shall represent a number that, when multiplied by an insurer's FHCF reimbursement premium for a given reimbursement contract year, defines an insurer's total limit of FHCF reimbursement coverage for that reimbursement contract year.

10. "TICL options addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and insurers selecting an option to increase an insurer's FHCF coverage limit.

(e) TICL options addendum.--

1. The TICL options addendum shall provide for reimbursement of TICL insurers for covered events occurring between June 1, 2007, and May 31, 2008, and between June 1, 2008, and May 31, 2009, or between June 1, 2009, and May 31, 2010, in exchange for the TICL reimbursement premium paid into

the fund under paragraph (f). Any insurer writing covered policies has the option of selecting an increased limit of coverage under the TICL options addendum and shall select such coverage at the time that it executes the FHCF reimbursement contract.

2. The TICL addendum shall contain a promise by the board to reimburse the TICL insurer for 70 ~~45~~ percent of the TICL coverage based on the TICL option selected for the insurer's~~, 75 percent, or 90 percent of its~~ losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. ~~The percentage shall be the same as the coverage level selected by the insurer under paragraph (4)(b).~~

3. The TICL addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. The priorities, schedule, and method of reimbursements under the TICL addendum shall be the same as provided under subsection (5) ~~(4)~~.

(f) TICL reimbursement premiums.--Each TICL insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TICL reimbursement premium determined as specified in subsection (6) ~~(5)~~.

(g) Effect on claims-paying capacity of the fund.--For the contract terms commencing ~~June 1, 2007,~~ June 1, 2008, and June 1, 2009, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in

subparagraph (5)~~(4)~~(c)1. by an amount not to exceed $9 ~~$12~~ billion and shall depend on the TICL coverage options selected and the number of insurers that select the TICL optional coverage. The additional capacity shall apply only to the additional coverage provided under the TICL options and shall not otherwise affect any insurer's reimbursement from the fund if the insurer chooses not to select the temporary option to increase its limit of coverage under the FHCF.

(h) Increasing the claims-paying capacity of the fund.--For the contract years commencing ~~June 1, 2007,~~ June 1, 2008, and June 1, 2009, the board may increase the claims-paying capacity of the fund as provided in paragraph (g) by an amount not to exceed $4 billion in four $1 billion options and shall depend on the TICL coverage options selected and the number of insurers that select the TICL optional coverage. Each insurer's TICL premium shall be calculated based upon the additional limit of increased coverage that the insurer selects. Such limit is determined by multiplying the TICL multiple associated with one of the four options times the insurer's FHCF reimbursement premium. The reimbursement premium associated with the additional coverage provided in this paragraph shall be determined as specified in subsection (6) ~~(5)~~.

Section 2. Section 215.557, Florida Statutes, is amended to read:

215.557 Reports of insured values.--The reports of insured values under covered policies by zip code submitted to the Division of the Florida Hurricane Catastrophe Fund ~~State Board of Administration~~ pursuant to s. 215.555, as created by s. 1,

ch. 93-409, Laws of Florida, or similar legislation, are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 3. Paragraph (h) of subsection (4) of section 215.5586, Florida Statutes, is amended to read:

215.5586 My Safe Florida Home Program.--There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide inspections for at least 400,000 site-built, single-family, residential properties and provide grants to at least 35,000 applicants before June 30, 2009. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that shall include the following:

(4) ADVISORY COUNCIL.--There is created an advisory council to provide advice and assistance to the department regarding administration of the program. The advisory council shall consist of:

(h) The director ~~senior officer~~ of the Division of the Florida Hurricane Catastrophe Fund.

Members appointed under paragraphs (a)-(d) shall serve at the pleasure of the Financial Services Commission. Members appointed under paragraphs (e) and (f) shall serve at the pleasure of the appointing officer. All other members shall serve voting ex officio. Members of the advisory council shall serve without compensation but may receive reimbursement as provided in s. 112.061 for per diem and travel expenses incurred in the performance of their official duties.

Section 4. Subsection (1) of section 215.559, Florida Statutes, is amended to read:

215.559 Hurricane Loss Mitigation Program.--

(1) There is created a Hurricane Loss Mitigation Program. The Legislature shall annually appropriate $10 million of the moneys authorized for appropriation under s. 215.555(8) ~~(7)~~(c) from the Florida Hurricane Catastrophe Fund to the Department of Community Affairs for the purposes set forth in this section.

Section 5. Subsections (2), (3), (6), and (7) of section 215.5595, Florida Statutes, are amended to read:

215.5595 Insurance Capital Build-Up Incentive Program.--

(2) The purpose of this section is to provide surplus notes to new or existing authorized residential property insurers under the Insurance Capital Build-Up Incentive Program administered by the division ~~State Board of Administration~~, under the following conditions:

(a) The amount of the surplus note for any insurer or insurer group, other than an insurer writing only manufactured housing policies, may not exceed $25 million or 20 percent of the total amount of funds available under the program, whichever

is greater. The amount of the surplus note for any insurer or insurer group writing residential property insurance covering only manufactured housing may not exceed $7 million.

(b) The insurer must contribute an amount of new capital to its surplus which is at least equal to the amount of the surplus note and must apply to the board by July 1, 2006. If an insurer applies after July 1, 2006, but before June 1, 2007, the amount of the surplus note is limited to one-half of the new capital that the insurer contributes to its surplus, except that an insurer writing only manufactured housing policies is eligible to receive a surplus note of up to $7 million. For purposes of this section, new capital must be in the form of cash or cash equivalents as specified in s. 625.012(1).

(c) The insurer's surplus, new capital, and the surplus note must total at least $50 million, except for insurers writing residential property insurance covering only manufactured housing. The insurer's surplus, new capital, and the surplus note must total at least $14 million for insurers writing only residential property insurance covering manufactured housing policies as provided in paragraph (a).

(d) The insurer must commit to meeting a minimum writing ratio of net written premium to surplus of at least 2:1 for the term of the surplus note, which shall be determined by the Office of Insurance Regulation and certified quarterly to the board. For this purpose, the term "net written premium" means net written premium for residential property insurance in this state ~~Florida~~, including the peril of wind, and "surplus" refers to the entire surplus of the insurer. If the required ratio is

not maintained during the term of the surplus note, the division ~~board~~ may increase the interest rate, accelerate the repayment of interest and principal, or shorten the term of the surplus note, subject to approval by the Commissioner of Insurance of payments by the insurer of principal and interest as provided in paragraph (f).

(e) If the requirements of this section are met, the division ~~board~~ may approve an application by an insurer for a surplus note, unless the division ~~board~~ determines that the financial condition of the insurer and its business plan for writing residential property insurance in this state ~~Florida~~ places an unreasonably high level of financial risk to the state of nonpayment in full of the interest and principal. The division ~~board~~ shall consult with the Office of Insurance Regulation and may contract with independent financial and insurance consultants in making this determination.

(f) The surplus note must be repayable to the state with a term of 20 years. The surplus note shall accrue interest on the unpaid principal balance at a rate equivalent to the 10-year U.S. Treasury Bond rate, require the payment only of interest during the first 3 years, and include such other terms as approved by the division ~~board~~. Payment of principal or interest by the insurer on the surplus note must be approved by the Commissioner of Insurance, who shall approve such payment unless the commissioner determines that such payment will substantially impair the financial condition of the insurer. If such a determination is made, the commissioner shall approve such

payment that will not substantially impair the financial condition of the insurer.

(g) The total amount of funds available for the program is limited to the amount appropriated by the Legislature for this purpose. If the amount of surplus notes requested by insurers exceeds the amount of funds available, the division ~~board~~ may prioritize insurers that are eligible and approved, with priority for funding given to insurers writing only manufactured housing policies, regardless of the date of application, based on the financial strength of the insurer, the viability of its proposed business plan for writing additional residential property insurance in the state, and the effect on competition in the residential property insurance market. Between insurers writing residential property insurance covering manufactured housing, priority shall be given to the insurer writing the highest percentage of its policies covering manufactured housing.

(h) The division ~~board~~ may allocate portions of the funds available for the program and establish dates for insurers to apply for surplus notes from such allocation which are earlier than the dates established in paragraph (b).

(i) Notwithstanding paragraph (d), a newly formed manufactured housing insurer that is eligible for a surplus note under this section shall meet the premium to surplus ratio provisions of s. 624.4095.

(j) As used in this section, "an insurer writing only manufactured housing policies" includes:

1. A Florida domiciled insurer that begins writing personal lines residential manufactured housing policies in Florida after March 1, 2007, and that removes a minimum of 50,000 policies from Citizens Property Insurance Corporation without accepting a bonus, provided at least 25 percent of its policies cover manufactured housing. Such an insurer may count any funds above the minimum capital and surplus requirement that were contributed into the insurer after March 1, 2007, as new capital under this section.

2. A Florida domiciled insurer that writes at least 40 percent of its policies covering manufactured housing in this state ~~Florida~~.

(3) As used in this section, the term:

(a) "Division ~~Board~~" means the Division of the Florida Hurricane Catastrophe Fund of the State Board of Administration established in s. 215.555.

(b) "Program" means the Insurance Capital Build-Up Incentive Program established by this section.

(6) The division ~~board~~ shall adopt rules prescribing the procedures, administration, and criteria for approving the issuance of surplus notes pursuant to this section, which may be adopted pursuant to the procedures for emergency rules of chapter 120. Otherwise, actions and determinations by the division ~~board~~ pursuant to this section are exempt from chapter 120.

(7) The division ~~board~~ shall invest and reinvest the funds appropriated for the program in accordance with s. 215.47 and consistent with division ~~board~~ policy.

Section 6. Paragraph (c) of subsection (1), paragraphs (a), (b), (d), (f), and (g) of subsection (2), and paragraph (b) of subsection (3) of section 627.0628, Florida Statutes, are amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.--

(1) LEGISLATIVE FINDINGS AND INTENT.--

(c) It is the intent of the Legislature to create the Florida Commission on Hurricane Loss Projection Methodology as a panel of experts to provide the most actuarially sophisticated guidelines and standards for projection of hurricane losses possible, given the current state of actuarial science. It is the further intent of the Legislature that such standards and guidelines must be used by the Division of the Florida Hurricane Catastrophe Fund of the State Board of Administration in developing reimbursement premium rates for the Florida Hurricane Catastrophe Fund, and, subject to paragraph (3)(c), may be used by insurers in rate filings under s. 627.062 unless the way in which such standards and guidelines were applied by the insurer was erroneous, as shown by a preponderance of the evidence.

(2) COMMISSION CREATED.--

(a) There is created the Florida Commission on Hurricane Loss Projection Methodology, which is assigned to the Division of the Florida Hurricane Catastrophe Fund of the State Board of Administration. For the purposes of this section, the term "commission" means the Florida Commission on Hurricane Loss Projection Methodology. The commission shall be administratively

housed within the State Board of Administration, but it shall independently exercise the powers and duties specified in this section.

(b) The commission shall consist of the following 11 members:

1. The insurance consumer advocate.

2. The director of the Division of the Florida Hurricane Catastrophe Fund ~~senior employee~~ of the State Board of Administration ~~responsible for operations of the Florida Hurricane Catastrophe Fund~~.

3. The Executive Director of the Citizens Property Insurance Corporation.

4. The Director of the Division of Emergency Management of the Department of Community Affairs.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Five members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer which was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner's insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

(d) The board of the Division of the Florida Hurricane Catastrophe Fund of the State Board of Administration shall annually appoint one of the members of the commission to serve as chair.

(f) The Division of the Florida Hurricane Catastrophe Fund of the State Board of Administration shall, as a cost of administration of the Florida Hurricane Catastrophe Fund, provide for travel, expenses, and staff support for the commission.

(g) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the commission, any member of the Division of the Florida Hurricane Catastrophe Fund ~~State Board of Administration~~, or any employee of the Division of the Florida Hurricane Catastrophe Fund ~~State Board of Administration~~ for any action taken in the performance of their duties under this section. In addition, the commission may, in writing, waive any potential cause of action

for negligence of a consultant, contractor, or contract employee engaged to assist the commission.

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

(b) In establishing reimbursement premiums for the Florida Hurricane Catastrophe Fund, the Division of the Florida Hurricane Catastrophe Fund ~~State Board of Administration~~ must, to the extent feasible, employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable.

Section 7. Subsection (10) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.--

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(g) ~~(e)~~ and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 8. Paragraph (u) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS PROPERTY INSURANCE CORPORATION.--

(u)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association shall become policies of the corporation. All obligations, rights, assets and liabilities of the Residential Property and Casualty Joint Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and shall become policies of the corporation. All obligations, rights, assets, and liabilities of the Florida Windstorm Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1,

2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation shall in no way affect the coverage with respect to covered policies as defined in s. 215.555(2) (g) ~~(e)~~ provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the Florida Hurricane Catastrophe Fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the high-risk account of the corporation. Notwithstanding any other provision of law, the coverage provided by the Florida Hurricane Catastrophe Fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the high-risk account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all Florida Hurricane

Catastrophe Fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

Section 9. This act shall take effect July 1, 2008.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7057 PCB GEAC 08-21 Distinguished Educator Retirement Option Program
**SPONSOR(S):** Government Efficiency & Accountability Council and Attkisson
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2812

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Government Efficiency & Accountability Council | 7 Y, 6 N | Williamson/Dykes | Cooper |
| 1) Policy & Budget Council | | Leznoff | Hansen |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

The bill creates the Distinguished Educator Retirement Option Program (program) administered by the local school district and funded by the Florida Education Finance Program. The program is a tax-sheltered annuity or custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code.

The program provides increased retirement contributions for qualified instructional personnel and classroom teachers. The following are qualified participants for the program:

- Instructional personnel employed in Title I schools that have at least 75 percent of their eligible students making learning gains in both reading and mathematics, based upon results on the statewide assessment.
- Classroom teachers teaching reading or mathematics and who have at least 75 percent of their students making learning gains in each subject taught by that teacher, based upon results on the statewide assessment.

The Department of Education (Department) must identify annually those instructional personnel and classroom teachers who qualify for participation in the program, and certify annually to each school district those qualified participants.

Each school district must provide a tax-sheltered annuity or custodial account for each instructional personnel and classroom teacher, within its district, certified by the Department for eligibility in the program. For each certified instructional personnel, the school district must pay to a tax-sheltered annuity or custodial account an amount equal to 1.95 percent of that personnel's annual salary, and for each certified classroom teacher, the school district must pay an amount equal to 4.40 percent of that teacher's annual salary.

By October 1, 2008, the Department must request from the Internal Revenue Service a letter ruling whether the provisions of the bill comply with the Internal Revenue Code.

The bill provides that the benefit is funded by the Florida Education Finance Program and would have an indeterminate but significant fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires school districts to provide a tax-sheltered annuity or custodial account available to eligible participants for the Distinguished Educator Retirement Option Program.

Safeguard individual liberty – The bill increases the retirement options for classroom teachers and instructional personnel by creating the Distinguished Educator Retirement Option Program.

B. EFFECT OF PROPOSED CHANGES:

**Effect of Bill**

The bill creates the Distinguished Educator Retirement Option Program (program). The program is a tax-sheltered annuity or custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code. It is administered by the local school district and is funded by the Florida Education Finance Program.[1] All 67 school districts currently offer such accounts.[2]

The purpose of the program is to provide increased retirement contributions for qualified instructional personnel[3] and classroom teachers.[4] The following are qualified participants for the program:

- Instructional personnel employed in Title I[5] schools that have at least 75 percent of their eligible students[6] making learning gains in both reading and mathematics, based upon results on the statewide assessment.
- Classroom teachers teaching reading or mathematics and who have at least 75 percent of their students making learning gains in each subject taught by that teacher, based upon results on the statewide assessment.

---

[1] Florida school districts and developmental research schools receive State funding through the Florida Education Finance Program (FEFP), which was established by the Florida Legislature in 1973. To provide equalization of educational opportunity in Florida, the FEFP formula recognizes (1) varying local property tax bases, (2) varying program cost factors, (3) district cost differentials, and (4) differences in per student cost for equivalent educational programs due to sparsity and dispersion of student population. The funding provided by FEFP is based upon the numbers of individual students participating in particular educational programs. A numerical value is assigned to each student according to the student's hours and days of attendance in those programs. The individual student thus becomes equated to a numerical value known as an unweighted FTE (full-time equivalent student). For example, one student would be reported as one FTE if the student was enrolled in six classes per day at 50 minutes per class for the full 180-day school year (i.e., six classes at 50 minutes each per day is five hours of class a day or 25 hours per week, which equals one FTE). Summary of Florida Auditor General Report 2007-199, *FEFP-Alexander D. Henderson University School*, June 28, 2007, available at http://www.myflorida.com/audgen/pages/summaries/2007-199.htm (site last visited March 19, 2008).

[2] Telephone conversation with the Chair of the Creative Benefits for Educators and staff of the Department of Education, March 19, 2008.

[3] Section 1012.01(2), F.S., defines "instructional personnel" to mean "any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students." Included in the classification of instructional personnel are the following K-12 personnel: classroom teachers, student personnel services, librarians and media specialists, other instructional staff (*e.g.,* primary specialists, learning resource specialists, and instructional trainers), education paraprofessionals.

[4] Section 1012.01(2)(a), F.S., defines "classroom teachers" to mean "staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers."

[5] Title I, Part A of the federal Elementary and Secondary Education Act of 1965, as amended and reauthorized under the No Child Left Behind Act of 2001, provides financial assistance to school districts and schools with high numbers or high percentages of disadvantaged children to help ensure that all children meet challenging state academic standards.

[6] The term "eligible students" means students who are in grades or subjects tested by the statewide assessment, the FCAT. *See* email from the Foundation for Florida's Future to staff, March 19, 2008 (on file with the Committee on State Affairs).

The Department of Education (Department) must identify annually those instructional personnel and classroom teachers who qualify for participation in the program. If a person qualifies as both instructional personnel and a classroom teacher, then the Department only identifies that person for the category receiving the greater of the two benefits, which would be designation as a qualified classroom teacher. Beginning July 1, 2009, and each July 1 thereafter, the Department must certify to each school district those personnel and teachers eligible for participation in the program.

Each school district must provide a tax-sheltered annuity or custodial account for each instructional personnel and classroom teacher, within its district, who was certified by the Department for eligibility in the program. For each certified instructional personnel, the school district must pay an amount equal to 1.95 percent of that personnel's annual salary to:

- An insurance company licensed to do business in Florida;
- A credit union, bank, or savings and loan association qualified to do business in Florida; or
- A custodial account to be invested in regulated investment company stock to be held in such custodial account, as selected by the person, as premiums on an annuity contract issued in the name of such person or as payment into a qualified custodial account established pursuant to s. 403(b) of the United State Internal Revenue Code.[7]

For each certified classroom teacher, the school district must pay an amount equal to 4.40 percent of that teacher's annual salary to one of the aforementioned accounts.

Each certified instructional personnel and classroom teacher participating in the program may pay matching funds to the same account established by the school district.

The amount of any payments made to such account cannot exceed the amount excludable from income under the requirements of s. 403(b) of the United States Internal Revenue Code. In addition, the amount contributed is considered part of the employee's salary for all purposes other than federal income taxation.

The purchase of a tax-sheltered annuity or other qualified investment does not impose liability or responsibility on the employing agency.

The bill authorizes the State Board of Education (SBE) to adopt necessary rules to create a process for identifying eligible instructional personnel and classroom teachers. It also authorizes the SBE to adopt rules to create a process for certifying qualified participants to the appropriate school districts.

By October 1, 2008, the Department must request from the Internal Revenue Service a letter ruling whether the provisions of the bill comply with the Internal Revenue Code.

**Background**

K-20 Education System

The State Board of Education (SBE) is the chief implementing and coordinating body of public education in Florida, except for the State University System.[8] The SBE is responsible for approving the student performance standards known as the Sunshine State Standards.[9] The Commissioner of

[7] Section 403(b), IRC, covers educational employers and not-for-profit organizations. School boards already may provide a 403(b) plan for their employees' deferred compensation program. Creation of such a plan would allow for the deferment of taxation of benefits accrued under this program until the participant directly receives the benefit. *See* Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

[8] Section 1002.02(1), F.S.

[9] Section 1001.03(1), F.S.

Education is the chief educational officer and is responsible for assisting the SBE in enforcing compliance with the mission and goals of the K-20 education system.[10]

Each county constitutes a school district. The school officials for each school district are responsible for the actual operation and administration of schools within their district.[11]

Accountability System

The Department maintains an accountability system that measures student progress toward the following goals:

- Highest student achievement, as indicated by evidence of student learning gains at all levels.
- Seamless articulation and maximum access, as measured by evidence of progression, readiness, and access by targeted groups of students identified by the Commissioner of Education.
- Skilled workforce and economic development, as measured by evidence of employment and earnings.
- Quality efficient services, as measured by evidence of return on investment.
- Other goals as identified by law or rule.[12]

The Commissioner of Education prepares annual reports of the results of the statewide assessment program. The reports describe student achievement in the state, each district, and each school.[13] It also provides the grade assigned to each school. School grades are based on certain criteria[14] and student assessment data.[15]

Learning Gains

An "annual learning gain" is an increase in a student's learning from the prior year, as measured by the Florida Comprehensive Assessment Test (FCAT). A student makes a learning gain if one of the following three criteria are met:

- Improved FCAT achievement level from prior year (*e.g.,* from level 1 to level 2);
- Maintained FCAT achievement levels 3, 4, or 5 from prior year; or
- Maintained FCAT achievement levels 1 or 2 and demonstrated more than 1 year's growth according to FCAT developmental scale scores, which establish by grade level the anticipated increase in a student's FCAT scale scores from the prior year. A retained student's increase in developmental scale scores for repeated grade levels is not used to calculate learning gains.[16]

A student is not included in the calculation of learning gains if the student's FCAT achievement level declines from the prior year, even if the lower score is at or above grade level.[17]

---

[10] Section 1001.10(1), F.S.
[11] Section 1001.30, F.S.
[12] Section 1008.31(2)(c), F.S.
[13] Section 1008.34(1), F.S.
[14] The criteria consist of a combination of: Student achievement scores, including achievement scores for students seeking a special diploma. Student learning gains as measured by annual FCAT assessments in grades 3 through 10; learning gains for students seeking a special diploma, as measured by an alternate assessment tool, shall be included not later than the 2009-2010 school year. Improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are exhibiting satisfactory performance. Section 1008.34(3)(a), F.S.
[15] Student assessment data used in determining grades includes: The aggregate scores of all eligible students enrolled in the school who have been assessed on the FCAT. The aggregate scores of all eligible students enrolled in the school who have been assessed on the FCAT, including Florida Writes, and who have scored at or in the lowest 25th percentile of students in the school in reading, math, or writing, unless these students are exhibiting satisfactory performance. Effective with the 2005-2006 school year, the achievement scores and learning gains of eligible students attending alternative schools that provide dropout prevention and academic intervention services pursuant to s. 1003.53, F.S. Section 1008.34(3)(b), F.S.
[16] School Grades Fact Sheet by the Schools & Learning Council, January 2008, at question 3 (on file with the Committee on State Affairs).
[17] *Id.*

Florida Retirement System

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The secretary of the Department of Management Services (DMS) through the Division of Retirement (Division) administers the FRS.[18]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members, 264,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program (DROP) participants.[19]

As of June 30, 2007, district school boards represent nearly half (48.70 percent) of the FRS membership.[20]

Currently, instructional personnel receive increased retirement benefits under DROP. Such personnel may indefinitely postpone the decision to join DROP. Other FRS participants must make the decision within 12 months from when the member first qualifies for normal retirement based on age or years of service.[21] In addition, instructional personnel may participate in DROP for up to 96-months, whereas other FRS participants are authorized to participate for up to 60-months.[22]

Section 403(b) of the United States Internal Revenue Code

Under a 403(b) qualified plan, there is an annual cap on the total contributions that can be contributed. Both employer and employee contributions count towards this cap. For instance, in 2007 the limit was the lesser of 100 percent of the employee's earnings or $45,000. If an employee were to have multiple 403(b) plans, the total contributed between their various 403(b) plans could not exceed the maximum contribution limit for the calendar year.[23]

C. SECTION DIRECTORY:

Section 1 provides a declaration of important state interest.

Section 2 creates s. 1012.721, F.S., to create the Distinguished Educator Retirement Option Program.

Section 3 requires a letter ruling from the Internal Revenue Service.

Section 4 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.[24]

---

[18] Section 121.025, F.S.

[19] Department of Management Services 2008 Substantive Bill Analysis for HB 67, September 16, 2007, at 1 (on file with the Committee on State Affairs).

[20] Department of Management Services 2008 Substantive Bill Analysis for HB 67, September 16, 2007, at 2.

[21] *See* s. 121.091(13), F.S.

[22] *Id.*

[23] Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

[24] Per the Department of Education, the bill does not appear to create a fiscal impact on the department. Email from the Department of Education to staff, March 19, 2008 (on file with the Committee on State Affairs).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   *See* FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses could see increased investments by local school districts on behalf of instructional personnel and classroom teachers who qualify for the Distinguished Educator Retirement Option Program.

D. FISCAL COMMENTS:

The provisions of the bill are funded by the Florida Education Finance Program (FEFP). Florida school districts and developmental research schools receive State funding through the FEFP. The funding provided by FEFP is based upon the numbers of individual students participating in particular educational programs. A numerical value is assigned to each student according to the student's hours and days of attendance in those programs.[25]

The fiscal impact per school district is unknown; however, based on data from 2006 and 2007, the following instructional personnel and classroom teachers would have qualified for the program:

- Title I schools with 75 percent of students making gains in reading and math: 48 schools qualified, making the benefit applicable to 2039 instructional personnel.[26]
- Teachers in Title I schools with 75 percent of students making gains in reading or math: 885 schools qualified, making the benefit applicable to 2563 teachers.[27]

The following is the estimated annual contribution for each certified instructional personnel and classroom teacher whose annual salary ranges from $40,000 to $60,000:[28]

| SALARY | 4.4% Contribution Rate (Qualified Classroom Teachers) | 1.95% Contribution Rate (Qualified Instructional Personnel) |
|---|---|---|
| **$30,000** | $1,320 | $585 |
| **$40,000** | $1,760 | $780 |
| **$50,000** | $2,200 | $975 |
| **$60,000** | $2,640 | $1,170 |

[25] The individual student thus becomes equated to a numerical value known as an unweighted FTE (full-time equivalent student). For example, one student would be reported as one FTE if the student was enrolled in six classes per day at 50 minutes per class for the full 180-day school year (i.e., six classes at 50 minutes each per day is five hours of class a day or 25 hours per week, which equals one FTE). Summary of Florida Auditor General Report 2007-199, *FEFP-Alexander D. Henderson University School*, June 28, 2007, available at http://www.myflorida.com/audgen/pages/summaries/2007-199.htm (site last visited March 19, 2008).

[26] The data is based upon 2007 staff (number of instructional personnel) and school grades data. Email from the Department of Education to the Foundation for Florida's Future, February 28, 2008 (on file with the Committee on State Affairs).

[27] The data is based upon 2006 student performance. Email from the Department of Education to the Foundation for Florida's Future, February 28, 2008 (on file with the Committee on State Affairs).

[28] Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the State Board of Education (Board) with rulemaking authority. It authorizes the Board to adopt rules necessary for creating a process for identifying instructional personnel and classroom teachers eligible for the program. The bill also authorizes the Board to adopt rules to create a process for certifying to the appropriate school districts those personnel and teachers who are qualified participants for the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

One of the most noble things we could do is show our teachers respect. One way to show them respect is through their compensation package. After all, what more noble thing could we do then to reward the instructional personnel of a Title I school for raising the learning gains of its students? What about the teacher who raises the learning gains in his or her own classroom? What if we could challenge those teachers to go and teach in the low, disadvantaged schools throughout our state? Any teacher who raises learning gains within their classroom and who is willing to teach the disadvantaged, should be rewarded with the highest retirement benefit reserved only for our elected officials. This bill will accomplish that vision.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Government Efficiency & Accountability Council heard PCB GEAC 08-21 and adopted one amendment to the PCB. The amendment narrows the scope of the benefit for classroom teachers by only including those classroom teachers employed by a Title I school. It also corrects a cross-reference in the definition of "learning gains" and corrects a drafting error.

A bill to be entitled

An act relating to the Distinguished Educator Retirement Option Program; providing a declaration of important state interest; creating s. 1012.721, F.S.; creating the Distinguished Educator Retirement Option Program; providing definitions; creating reporting requirements for the Department of Education; requiring each school district to establish a Distinguished Educator Retirement Option Program that funds a tax-sheltered annuity or custodial account for certain qualified participants; providing for funding from the Florida Education Finance Program; authorizing the State Board of Education to adopt rules; requiring a letter ruling from the Internal Revenue Service; providing an effective date.

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

Section 1. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. Therefore, the Legislature hereby determines and declares that this act fulfills an important state interest.

Section 2. Section 1012.721, Florida Statutes, is created to read:

1012.721 Distinguished Educator Retirement Option Program.--

(1) As used in this section, the term:

(a) "Distinguished Educator Retirement Option Program" or "program" means a tax-sheltered annuity or custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code and administered by a local school district.

(b) "Learning gains" means student learning gains used for calculating school grades under s. 1008.34(3)(a)2.

(c) "Title I school" means a Title I school as defined by federal law.

(2) There is hereby created the Distinguished Educator Retirement Option Program which shall be funded by the Florida Education Finance Program.

(3)(a) For purposes of increased retirement contributions, the Department of Education shall annually identify the following:

1. Instructional personnel who are employed in Title I schools that have at least 75 percent of the students eligible for the statewide assessment in the school making learning gains in both reading and mathematics, based upon results on the statewide assessment provided in s. 1008.22.

2. Classroom teachers who are employed in Title I schools who teach reading or mathematics and who have at least 75 percent of the students assigned to the teacher making learning gains in each subject taught by that classroom teacher, based upon results on the statewide assessment provided in s. 1008.22.

(b) For any person who qualifies as both instructional personnel and a classroom teacher, the department shall identify

that person for the category receiving the greater of the two benefits.

(4) Beginning July 1, 2009, and each July 1 thereafter, the department shall certify to each school district those instructional personnel and classroom teachers who meet the requirements of subsection (3) and who are therefore eligible to participate in the Distinguished Educator Retirement Option Program.

(5)(a) Each school district shall provide a tax-sheltered annuity or custodial account for each certified instructional personnel and classroom teacher, within its district, who is eligible for the Distinguished Educator Retirement Option Program.

(b) For each instructional personnel who is certified by the department as eligible for participation in the program, the school district shall pay an amount equal to 1.95 percent of that person's annual salary to an insurance company licensed to do business in Florida; to a credit union, bank, or savings and loan association qualified to do business in Florida; or to a custodial account to be invested in regulated investment company stock to be held in such custodial account, as selected by the person, notwithstanding any other provision of law, as premiums on an annuity contract issued in the name of such person or as payment into a qualified custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code.

(c) For each classroom teacher who is certified by the department as eligible for participation in the program, the school district shall pay an amount equal to 4.40 percent of

that person's annual salary to an insurance company licensed to do business in Florida; to a credit union, bank, or savings and loan association qualified to do business in Florida; or to a custodial account to be invested in regulated investment company stock to be held in such custodial account, as selected by the person, notwithstanding any other provision of law, as premiums on an annuity contract issued in the name of such person or as payment into a qualified custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code.

(d) Each instructional personnel and classroom teacher who participates in the program may pay matching funds to the same account established by the school district.

(e) The amount of such payments shall not exceed the amount excludable from income under s. 403(b) of the United States Internal Revenue Code and shall be considered a part of the employee's salary for all purposes other than federal income taxation.

(6) The purchase of such tax-sheltered annuity or other investment qualified under the United States Internal Revenue Code and not prohibited under the laws of this state for an employee shall impose no liability or responsibility whatsoever on the employing agency except to show that the payments have been remitted for the purposes for which deducted.

(7) The State Board of Education may adopt rules pursuant to ss. 120.536(1) and 120.54 as necessary to administer the creation of a process for identifying instructional personnel and classroom teachers eligible for the Distinguished Educator

Retirement Option Program and for certifying to the appropriate school districts those qualified participants.

Section 3. The Department of Education shall request from the Internal Revenue Service, by October 1, 2008, a letter ruling regarding the provisions of this act.

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