Full Appropriations Council on Education & Economic Development

and General Government & Health Care

Tuesday, March 2, 2010
1:00 PM – 3:00 PM
212 Knott Building

Council Meeting Packet

Larry Cretul
Speaker

David Rivera
Chair

The Florida House of Representatives

Full Appropriations Council on Education & Economic Development
Full Appropriations Council on General Government & Health Care

Larry Cretul
Speaker

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Meeting Agenda
Tuesday, March 2, 2010
212 Knott Building
1:00 PM – 3:00 PM

I. Call to order/Roll Call

II. Opening Remarks by Chair Rivera

III. Consideration of the following bills:

HB 651 Department of Agriculture and Consumer Services by Rivera, Evers

HB 949 Florida Hurricane Catastrophe Fund by Patterson

IV. Consideration of the following proposed council bill:

PCB CEED 10-01 – Repealing Budget Provisions

V. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Department of Agriculture and Consumer Services
SPONSOR(S): Rivera and Evers & others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1158

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Natural Resources Appropriations Committee	13 Y, 0 N	Bellflower	Dixon
2)	Full Appropriations Council on Education & Economic Development		Bellflower KGB	Leznoff JL
3)				
4)				
5)				

SUMMARY ANALYSIS

The 2009 Legislature transferred over $588 million from various trust funds to the General Revenue Fund in the General Appropriations Act. This amount included a $6 million transfer from the Division of Licensing Trust Fund. This transfer was vetoed by Governor Crist.

Section 215.32(2)(b)4.a., F.S., allows the Legislature to transfer cash balances from various trust funds to the General Revenue Fund or the Budget Stabilization Fund notwithstanding any other law to the contrary. There are currently statutory exemptions to this in subparagraph 4.b., such as:

- trust funds required by federal programs or mandates;
- trust funds established for bond covenants, indentures, or resolutions whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body;
- the State Transportation Trust Fund;
- the trust fund containing the net annual proceeds from the Florida Education Lotteries,
- the Florida Retirement System Trust Fund;
- trust funds under the management of the State University System where trust funds used for auxiliary purposes, self-insurance and contracts, grants, and donations, as those terms are defined by general law;
- trust funds that serve as the clearing funds or accounts for the Chief Financial Officer or state agencies;
- trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and
- other trust funds authorized by the State Constitution.

This bill amends s. 215.32(2)(b) 4.b., F.S., to add the Division of Licensing Trust Fund within the Department of Agriculture and Consumer Services to this exemption list. This trust fund is the depository for license fees for concealed weapons permits and other various permit fees.

This legislation shall take effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

Article I, Section 8(a), of the Florida Constitution, states that the right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

The Division of Licensing within the Department of Agriculture and Consumer Services issues concealed weapons and firearms licenses, and protects the public from unethical business practices by licensing and regulating persons who provide private security, private investigative, and recovery services.

Section 483.6117, F.S., creates the Division of Licensing Trust Fund within the Department of Agriculture and Consumer Services. Funds that are deposited into this trust fund include application fees, license fees, and renewal fees for concealed weapons permits, security officers, private investigators, security office school instructors, recovery agents, firearms license, firearms instructors, and law enforcement officers. The trust fund is used to support and pay for the Division of Licensing program.

The 2009 Legislature included a $6 million transfer from the Licensing Trust Fund to the General Revenue Fund in the General Appropriations Act. This transfer was vetoed by Governor Crist.

Section 215.32(2)(b)4.a., F.S., states that notwithstanding any provision of law restricting the use of trust funds for specific purposes, unappropriated cash balances from selected trust funds may be authorized by the Legislature for transfer to the Budget Stabilization Fund and General Revenue Fund in the General Appropriations Act.

Currently, the funds listed below are exempt from this provision under s. 215.32(2)(b) 4.b., F.S.:

- trust funds required by federal programs or mandates;
- trust funds established for bond covenants, indentures, or resolutions whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body;
- the State Transportation Trust Fund;
- the trust fund containing the net annual proceeds from the Florida Education Lotteries,
- the Florida Retirement System Trust Fund;

- trust funds under the management of the State University System where trust funds used for auxiliary purposes, self-insurance and contracts, grants, and donations, as those terms are defined by general law;
- trust funds that serve as the clearing funds or accounts for the Chief Financial Officer or state agencies;
- trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and
- other trust funds authorized by the State Constitution.

Effect of Proposed Changes:

The bill adds the Division of Licensing Trust Fund in the Department of Agriculture and Consumer Services to the exempted list. Like any other law, this revision could not bind future legislatures. However, it provides the Division of Licensing Trust Fund a level of protection from transfer to the General Revenue Fund or the Budget Stabilization Fund that is absent for most other trust funds.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.32(2)(b) 4.b., F.S., to exempt the Division of Licensing Trust Fund within the Department of Agriculture and Consumer Services from the provision of law authorizing the Legislature to transfer unappropriated cash balances in trust funds to the Budget Stabilization Fund or the General Revenue Fund in the General Appropriations Act.

Section 2: Provides that this bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:
3. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill would prohibit the Legislature from transferring cash balances in the Division of Licensing Trust Fund to the General Revenue Fund or the Budget Stabilization Fund in the General Appropriations Act, absent further revision to Florida Statutes.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 215.32, F.S.; exempting the Division of Licensing Trust Fund in the department from legislative authorization for unappropriated cash balances in the fund to be transferred to the General Revenue Fund or the Budget Stabilization Fund; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 215.32, Florida Statutes, is amended to read:

215.32 State funds; segregation.—

(2) The source and use of each of these funds shall be as follows:

(b)1. The trust funds shall consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law. The state agency or branch of state government receiving or collecting such moneys shall be responsible for their proper expenditure as provided by law. Upon the request of the state agency or branch of state government responsible for the administration of the trust fund, the Chief Financial Officer may establish accounts within the trust fund at a level considered necessary for proper accountability. Once an account is established within a trust fund, the Chief Financial Officer may authorize payment from that account only upon determining that there is sufficient cash and releases at the level of the account.

2. In addition to other trust funds created by law, to the extent possible, each agency shall use the following trust funds as described in this subparagraph for day-to-day operations:

a. Operations or operating trust fund, for use as a depository for funds to be used for program operations funded by program revenues, with the exception of administrative activities when the operations or operating trust fund is a proprietary fund.

b. Operations and maintenance trust fund, for use as a depository for client services funded by third-party payors.

c. Administrative trust fund, for use as a depository for funds to be used for management activities that are departmental in nature and funded by indirect cost earnings and assessments against trust funds. Proprietary funds are excluded from the requirement of using an administrative trust fund.

d. Grants and donations trust fund, for use as a depository for funds to be used for allowable grant or donor agreement activities funded by restricted contractual revenue from private and public nonfederal sources.

e. Agency working capital trust fund, for use as a depository for funds to be used pursuant to s. 216.272.

f. Clearing funds trust fund, for use as a depository for funds to account for collections pending distribution to lawful recipients.

g. Federal grant trust fund, for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources.

To the extent possible, each agency must adjust its internal accounting to use existing trust funds consistent with the requirements of this subparagraph. If an agency does not have trust funds listed in this subparagraph and cannot make such adjustment, the agency must recommend the creation of the necessary trust funds to the Legislature no later than the next scheduled review of the agency's trust funds pursuant to s. 215.3206.

3. All such moneys are hereby appropriated to be expended in accordance with the law or trust agreement under which they were received, subject always to the provisions of chapter 216 relating to the appropriation of funds and to the applicable laws relating to the deposit or expenditure of moneys in the State Treasury.

4.a. Notwithstanding any provision of law restricting the use of trust funds to specific purposes, unappropriated cash balances from selected trust funds may be authorized by the Legislature for transfer to the Budget Stabilization Fund and General Revenue Fund in the General Appropriations Act.

b. This subparagraph does not apply to trust funds required by federal programs or mandates; trust funds established for bond covenants, indentures, or resolutions whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body; <u>the Division of Licensing Trust Fund in the Department of Agriculture and Consumer Services;</u> the State Transportation Trust Fund; the trust fund containing the net annual proceeds from the Florida Education Lotteries; the Florida Retirement System Trust Fund; trust funds under the management of the State Board of Education or the Board of Governors of the State University System, where such trust funds are for auxiliary enterprises, self-insurance, and contracts, grants, and donations, as those terms are defined by general law; trust funds that serve as clearing funds or accounts for the Chief Financial Officer or state agencies; trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and other trust funds authorized by the State Constitution.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 949 Florida Hurricane Catastrophe Fund
SPONSOR(S): Patterson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1460

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	General Government Policy Council	15 Y, 0 N	Callaway	Hamby
2)	Full Appropriations Council on Education & Economic Development		Fox R.F.	Leznoff
3)				
4)				
5)				

SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (Fund) is a tax-exempt trust fund created as a form of reinsurance for residential property insurers. The Fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property.

The Fund generally operates on a contract year. Historically, the Fund's contract year has run from June 1st to May 31st of the next calendar year. However, 2009 legislation changed the Fund's contract year to a calendar year starting January 1, 2011. In order to provide for a transition from a contract year ending on May 31st to one ending on December 31st, the legislation created a seven month transitional contract year from June 1, 2010 to December 31, 2010. The transitional contract year has created unintended consequences for insurers due to the way in which the cost of reinsurance is amortized (allocated as a cost) on insurers' financial statements. In 2010, an insurer's financial statement will show a larger expense associated with Fund reinsurance than historically shown because of the transitional contract year in 2010. The statement will show an expense equal to five months of Fund reinsurance costs from January 1, 2010 to May 31, 2010. And, the statements will also show an expense equal to 12 months of Fund reinsurance costs over the seven month period from June 1, 2010 to December 31, 2010. This reduces a company's pre-tax income and surplus more than what it is historically reduced each year for the purchase of Fund reinsurance. The reduction in income and surplus could impact the financial solvency of some insurance companies and may negatively impact an insurer's rating from the rating agencies. To remedy the negative financial impact of the transitional contract year, starting June 1, 2010, the bill returns the Fund's contract year to June 1st – May 31st.

The bill also provides legislative intent and findings relating to Fund coverage in order to facilitate insurers' purchase of private reinsurance and provides earlier time frames for the State Board of Administration and insurers to effectuate Fund coverage each year.

The bill changes the way in which the Fund's capacity for mandatory coverage is calculated each year. Instead of allowing the Fund's capacity to increase each year as the Fund's exposure increases (but limited by the increase in the Fund's cash balance), the bill sets the Fund's capacity at $17 billion for each contract year and does not allow the capacity to increase until the Fund's cash and bonding ability exceeds $34 billion.

The bill does not change the way the Fund's retention is calculated but requires the use of earlier exposure data in its calculation.

The bill does not have a fiscal impact on state or local governments. The bill should resolve the financial issues for insurers relating to the amortization of Fund reinsurance. Changes related to the Fund's capacity may reduce the likelihood or amount of assessments levied by the Fund on most property and casualty policyholders. Effectuating Fund coverage earlier in the year may result in lower private reinsurance costs for insurers. Lower private reinsurance costs may reduce property insurance rates for policyholders.

The bill is effective upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on the Florida Hurricane Catastrophe Fund
The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created after Hurricane Andrew as a form of reinsurance for residential property insurers.[1] The Fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property. For all residential property insurers, the FHCF must offer three options for reinsurance coverage. One of the three options is mandatory and thus must be purchased by all residential property insurers on their residential property exposure. One optional coverage, the Temporary Emergency Additional Coverage Options (TEACO), offers reinsurance for insurers below the mandatory coverage. The other, Temporary Increase In Coverage Limit Options (TICL) offers reinsurance for insurers above the mandatory coverage. In addition to these three coverage options, the Fund must offer specified insurers $10 million of additional reinsurance coverage.

The FHCF is administered by the State Board of Administration (SBA). Participating insurers choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.[2] Most insurers choose the 90 percent reimbursement percentage.[3] This means once an insurer triggers FHCF coverage, 90 percent of its losses will be reimbursed by the FHCF, up to the insurer's limit of coverage. Insurers may purchase additional reinsurance in the private market to reimburse them for their hurricane losses in amounts not covered by the FHCF. Reinsurance in the private market can also be purchased for the coinsurance amount (e.g., 10 percent) that is the insurer's responsibility for the coverage provided by the FHCF.

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

Changes Relating to the Fund's Contract Year
The FHCF generally operates on a contract year. The contract year dictates when Fund coverage is effective. Historically, the Fund's contract year has run from June 1st to May 31st of the next calendar

[1] s. 215.555, F.S.
[2] s. 215.555(2)(e)2., F.S.
[3] http://fhcf.paragonbenfield.com/pdf/08fin_pre.pdf. (last viewed January 15, 2009).

year. However, in the 2009 Legislative Session, CS/CS/CS/HB 1495[4] was enacted that changed the Fund's contract year to a calendar year starting January 1, 2011. Thus, beginning on January 1, 2011, the Fund's contract year is January 1st to December 31st rather than June 1st to May 31st. In order to provide for a transition from a contract year ending on May 31st to one ending on December 31st, the 2009 legislation created a seven month transitional contract year to run from June 1, 2010 to December 31, 2010.

The creation of the transitional contract year from June 1, 2010 to December 31, 2010 has created unintended consequences for insurance companies. FHCF coverage purchased by insurance companies is accounted for as reinsurance in the company's statutory basis financial statements. Accounting principles[5] allow a company's cost for reinsurance to be earned over the reinsurance contract period in proportion to the amount of reinsurance purchased. Thus, in many cases, insurers' financial statements divide and expense Fund reinsurance on a pro rata basis over the Fund's contract period. This expense directly reduces the insurer's pre-tax income and surplus. In other words, the cost of reinsurance from the FHCF is amortized (allocated as a cost) on the insurance company's financial statement in equal amounts each month of the Fund contract year. Under current law, in 2010, a company will amortize five months of Fund coverage from January 1, 2010 to May 31, 2010 which is the remainder of the 2009-2010 contract year. The company will also amortize all of the transitional contract year's Fund coverage from June 1, 2010 to December 31, 2010.

In 2010, an insurance company's financial statement will show a larger expense associated with Fund reinsurance than historically shown because of the transitional contract year in 2010. The statement will show an expense equal to five months of Fund reinsurance costs from January 1, 2010 to May 31, 2010 for the 2009 - 2010 contract year (consistent with how the Fund reinsurance costs have historically been expensed). And, the statements will also show an expense equal to <u>12 months of Fund reinsurance costs over the seven month period</u> from June 1, 2010 to December 31, 2010 for the transitional contract year. Thus, the transitional contract year results in insurance companies amortizing the equivalent of 17 months of FHCF coverage over 12 months rather than over 12 months as the companies have historically done. This results in an additional expense equal to the cost of five months of Fund reinsurance on the company's financial statement. This additional expense reduces a company's pre-tax income and surplus more than what it is historically reduced each year for the purchase of Fund reinsurance. The additional income and surplus reduction amount is equal to the cost of five months of Fund reinsurance. This reduction in income and surplus will be millions of dollars for insurers and could impact the financial solvency of some insurance companies.[6] An insurer's rating from the rating agencies could also negatively be impacted.

Starting June 1, 2010, the bill returns the Fund's contract year to June 1st – May 31st. This prevents the additional income and surplus decrease for insurers in 2010 and the resulting solvency problem because insurance companies will be amortizing 12 months of Fund reinsurance over 12 months in 2010 and thereafter. This is consistent with how insurers have historically expensed FHCF coverage on their financial statements.

Changes Facilitating Insurers' Purchase of Private Reinsurance

The bill also provides legislative intent and findings relating to Fund coverage in order to facilitate insurers' purchase of private reinsurance. The findings detail the importance of insurers being informed about the specifics of Fund coverage each year as early in the calendar year as possible. To that end, the bill requires the State Board of Administration to publish information that allows insurers to ascertain how much the reinsurance coverage the Fund is going to sell to insurers by January 1st of the year preceding the contract year (i.e. January 1st of each calendar year). Furthermore, the SBA is required to adopt the Fund's reimbursement contract by February 1st of the year preceding the contract year (i.e. February 1st of each calendar year) and insurers are required to execute the Fund's reimbursement contract by March 1st of the year preceding the contract year (i.e. March 1st of each calendar year). This allows insurers to determine the amount of private reinsurance they need so the insurers can purchase

[4] Section 1, Ch. 2009-87, L.O.F.

[5] Statement of Statutory Accounting Principles No. 62, Property and Casualty Reinsurance (SSAP 62).

[6] With limited exceptions, property and casualty insurance companies are required by s. 624.408(1)(a)5., F.S., to maintain $4 million in surplus at all times in order to keep their certificate of authority.

the needed private reinsurance early in the calendar year. Purchasing private reinsurance early in the calendar year should allow insurers to more competitively negotiate private reinsurance which may in turn reduce the cost of private reinsurance.

Changes Relating to the Fund's Capacity
The FHCF has a maximum amount it will reimburse insurers each year set by statute.[7] This is called the Fund's capacity. Under current law, the maximum amount the FHCF must pay (the capacity) in any one year for the mandatory coverage is $15 billion, adjusted annually based on the percentage growth in Fund exposure, but not to exceed the dollar growth in the cash balance of the Fund.[8] In recent years the Fund's capacity has grown annually due to the growth in exposure for the Fund. For the 2009-2010 contract year, the Fund's capacity for mandatory coverage is $17.175 billion, meaning the most the Fund has to reimburse insurers for property insurance claims paid by insurers is $17.175 billion for the Fund's mandatory coverage.[9]

The bill changes the way in which the Fund's capacity for mandatory coverage is calculated each year. The bill sets the Fund's capacity at $17 billion for each contract year and does not allow the capacity to increase until the Fund's cash and bonding ability exceeds $34 billion.[10] Thus, the Fund's capacity will no longer increase each year if the Fund's exposure increases. The change in the Fund's capacity calculation provided in the bill allows the FHCF to accumulate funds to pay the maximum mandatory coverage Fund obligations ($17 billion a year) for claims resulting from hurricanes in back-to-back seasons.[11] Once this happens, the Fund's capacity will increase. This change reverts the Fund's capacity calculation to how it was from 1999 – 2004. The change will allow the Fund's cash balance to grow in years where there are no hurricanes while keeping the Fund's exposure (capacity) frozen. Accordingly, the Fund will be less reliant on bonding to meet its mandatory coverage obligations.

Changes Relating to the Fund's Retention
Insurers buying reinsurance from the Fund must meet a deductible before the Fund will reimburse the insurer for property claims the insurer has paid. This is called the Fund's retention. Under current law, the total industry retention (aggregate retention) for the mandatory coverage is $4.5 billion per hurricane, adjusted annually based on the FHCF's exposure reported by insurers for the prior year.[12]

The bill requires the Fund's retention to be based on insurers' exposure two years prior to the current contract year, rather than one year prior as under current law.[13] For example, for the contract year beginning on June 1, 2010, the Fund's retention would be calculated on insurers' exposure reported in 2008, rather than in 2009 as under current law. The way the retention is calculated is not changed by the bill; the only change is what exposure time period the retention calculation is based on.
This change allows the Fund to be able to publish the aggregate retention by January 1st each year as the bill requires.

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[7] s. 215.555(4)(c)1., F.S.
[8] s. 215.555(4)(c)1., F.S. For mandatory coverage, the maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more mandatory coverage than those that pay lower premiums.
[9] The actual maximum payout of the Fund is greater than $17.175 billion because the Fund must reimburse insurers for claims under TICL coverage if the insurer purchased TICL coverage from the Fund.
[10] The capacity being set at $17 billion will start with the contract year beginning on June 1, 2010.
[11] The funds may be accumulated from premiums and bonding.
[12] s. 215.555(2)(e)1., F.S. For the current 2009-10 contract year (June 1, 2009 – May 31, 2010), the insurance industry as a whole has an aggregate retention of $7.223 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will hypothetically total to $7.223 billion per event, assuming all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $7.223 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.
[13] The change in the time period for the retention calculation contained in the bill results in an aggregate retention for the 2010-2011 contract year that is close to the retention for the 2009-2010 contract year. The aggregate retention for the 2009-2010 contract year is $7.223 billion whereas under the bill the aggregate retention for the 2010-2011 contract year is $7.18 billion.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prevents additional income and surplus decreases for residential property insurers in 2010 due to the FHCF's transitional contract year and the resulting solvency problem because the insurers will be amortizing 12 months of Fund reinsurance costs over 12 months in 2010 and thereafter.

The Fund capacity changes in the bill will allow the Fund to accumulate funds to pay claims without increasing the Fund's capacity. This should reduce the likelihood of assessments on insurers which are passed on to policyholders.[14] In the event assessments are levied, the changes may reduce the amount of the assessments.

Requiring the Fund to publish the specific amount of Fund coverage each year by January 1st should allow insurers to purchase their private reinsurance early in the year. Doing so should enable insurers to more competitively negotiate their private reinsurance which may reduce the cost of the private reinsurance. Private reinsurance costs are passed through to policyholders in rates so if an insurer is able to reduce its private reinsurance costs, its rate should also reduce.

D. FISCAL COMMENTS:

The bill does not have a fiscal impact on the Office of Insurance Regulation[15]. There is also no fiscal impact on the State Board of Administration, which administers the Fund[16].

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[14] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the Fund's obligations. Annual assessments are capped at 6 percent of premium with respect to losses from any one year and a maximum of 10 percent of premium to fund hurricane losses from multiple years. Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years. As of October 2009, the FHCF assessment base was $34.9 billion.

[15] Office of Insurance Regulation Fiscal Bill Analysis dated February 22, 2010 on file with the Government Operations Appropriations Committee.

[16] State Board of Administration Fiscal Impact Statement dated February 22, 2010 on file with the Government Operations Appropriations Committee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities 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 in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising the definition of the term "retention"; defining the term "contract year"; revising contract year designations for reimbursement contracts to conform; increasing a limitation on the claims-paying capacity of the fund under certain circumstances; authorizing the State Board of Administration to calculate estimated claims-paying capacity of the fund for specific contract years; revising contract year designations for reimbursement premiums to conform; revising contract year designations for temporary increase in coverage limit options and the TICL options addendum to conform; providing legislative intent; providing timing requirements for the board to adopt reimbursement contracts; providing timing requirements for insurers to execute reimbursement contracts; providing capacity, coverage, and retention information publication requirements for the board; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2), paragraphs (b), (c), and (d) of subsection (4), paragraph (b) of subsection (5), and paragraphs (c) through (g) of subsection (17) of section 215.555, Florida Statutes, are amended, paragraph (o) is added to subsection (2), and subsection (18) is added to that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(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 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 for the contract year 2 years ~~from the~~ prior to a specific 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. ~~In 2010, the contract year begins June 1, 2010, and ends December 31, 2010. In 2011 and thereafter, the contract year begins January 1 and ends December 31.~~

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 on or after January 1 of the contract year provided the insurer reports its losses as specified in the reimbursement contract.

<u>(o) "Contract year" means the period beginning on June 1 of a calendar year and ending on May 31 of the following calendar year.</u>

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the 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 (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 2008, insurers qualifying as limited apportionment companies under s. 627.351(6)(c), and insurers that have been approved to participate in 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, 2008, for the 2009-2010 contract year; as of

December 31, 2009, for the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~; and as of December 31, 2010, for the 2011-2012 ~~2011~~ contract year. 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. The optional coverage retention as specified shall be accessed before the mandatory coverage under the reimbursement contract, but once the limit of coverage selected under this option is exhausted, the insurer's retention under the mandatory coverage will apply. This coverage will apply and be paid concurrently with mandatory coverage. This subparagraph expires on May 31, 2012 ~~December 31, 2011~~.

(c)1. The contract shall also provide that the obligation of the 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 $17 ~~$15~~ billion for that contract year unless the board determines that there is sufficient estimated claims-paying capacity to provide $17 billion of capacity for the current contract year and an additional $17 billion of capacity for subsequent contract years. Upon making such determination, the board shall calculate the estimated claims-paying capacity for a specific contract year by adding to the $17 billion limit one-half of the fund's estimated claims-paying capacity in excess of $34 billion. However, ~~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 and October of the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity, estimated claims-paying 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 (5), the 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 board. The contract shall require the insurer to report to the 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 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 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 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.

3. The board may reimburse insurers for amounts up to the published factors or multiples for determining each

participating insurer's retention and projected payout derived as a result of the development of the premium formula in those situations in which the total reimbursement of losses to such insurers would not exceed the estimated claims-paying capacity of the fund. Otherwise, the projected payout ~~such~~ factors or multiples shall be reduced uniformly among all insurers to reflect the estimated claims-paying capacity.

(5) REIMBURSEMENT PREMIUMS.—

(b) The 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 board shall consider the coverage elected under paragraph (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 board to be appropriate. The formula must provide for a cash build-up factor. For the 2009-2010 contract year, the factor is 5 percent. For the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~, the factor is 10 percent. For the 2011-2012 ~~2011~~ contract year, the factor is 15 percent. For the 2012-2013 ~~2012~~ contract year, the factor is 20 percent. For the 2013-2014 ~~2013~~ contract year and thereafter, the factor is 25 percent. 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 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.

(17) TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

(c) Optional coverage.—For the <u>2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014</u> contract <u>years</u> ~~year commencing June 1, 2007, and ending May 31, 2008, the contract year commencing June 1, 2008, and ending May 31, 2009, the contract year commencing June 1, 2009, and ending May 31, 2010, the contract year commencing June 1, 2010, and ending December 31, 2010, the contract year commencing January 1, 2011, and ending December 31, 2011, the contract year commencing January 1, 2012, and ending December 31, 2012, and the contract year commencing January 1, 2013, and ending December 31, 2013~~, 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 (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 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 (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 board shall calculate and report to each TICL insurer the TICL coverage multiples based on 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, $9 billion, $10 billion, $11 billion, or $12 billion by the total estimated aggregate FHCF reimbursement premiums for the 2007-2008 contract year, and the 2008-2009 contract year.

b. For the 2009-2010 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on 10 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, $9 billion, and $10 billion by the total estimated aggregate FHCF reimbursement premiums for the 2009-2010 contract year.

c. For the <u>2010-2011</u> contract year ~~beginning June 1, 2010, and ending December 31, 2010~~, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on eight 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, and $8 billion by the total estimated aggregate FHCF reimbursement premiums for the contract year.

d. For the <u>2011-2012</u> ~~2011~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on six 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, and $6 billion by the total estimated aggregate FHCF reimbursement premiums for the 2011-2012 ~~2011~~ contract year.

e. For the 2012-2013 ~~2012~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on four options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, and $4 billion by the total estimated aggregate FHCF reimbursement premiums for the 2012-2013 ~~2012~~ contract year.

f. For the 2013-2014 ~~2013~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on two options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion and $2 billion by the total estimated aggregate FHCF reimbursement premiums for the 2013-2014 ~~2013~~ contract year.

g. The TICL insurer's increased coverage shall be the FHCF reimbursement premium multiplied by the TICL coverage multiple. 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 during the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~between June 1, 2007, and May 31, 2008, between June 1, 2008, and May 31, 2009, between June 1, 2009, and May 31, 2010, between June 1, 2010, and December 31, 2010, between January 1, 2011, and December 31, 2011, between January 1, 2012, and December 31, 2012, or between January 1, 2013, and December 31, 2013,~~ in exchange for the TICL reimbursement premium paid into the fund under paragraph (f) based upon the TICL coverage available and selected for each respective contract year. 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 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. 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 (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 (5), except that a cash build-up factor does not apply to the TICL reimbursement premiums. However, the TICL reimbursement premium shall be increased in the 2009-2010 contract year ~~2009-2010~~ by a factor of two, in the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010,~~ by a factor of three, in the 2011-2012 ~~2011~~ contract year by a factor of four, in the 2012-2013 ~~2012~~ contract year by a factor of five, and in the 2013-2014 ~~2013~~ contract year by a factor of six.

(g) Effect on claims-paying capacity of the fund.—For the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~terms commencing June 1, 2007, June 1, 2008, June 1, 2009, June 1, 2010, January 1, 2011, January 1, 2012, and January 1, 2013~~, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount not to exceed $12 billion and shall depend on the TICL coverage options available and selected for the specified contract year 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.

(18) FACILITATION OF INSURERS' PRIVATE CONTRACT NEGOTIATIONS PRIOR TO THE START OF THE HURRICANE SEASON.—

(a)1. In addition to the legislative findings and intent provided in this section, the Legislature finds that:

a. Because a Regular Session of the Legislature begins approximately 3 months before the start of a contract year and ends approximately 1 month before the start of a contract year, participants in the fund always face the possibility that legislative actions will change the coverage provided or offered by the fund with only a few days or weeks of advance notice.

b. The timing issues described in sub-subparagraph a. can create uncertainties and disadvantages for the residential property insurers that are required to participate in the fund when they negotiate for the procurement of private reinsurance or other sources of capital.

c. Providing participating insurers with a greater degree of certainty regarding the coverage provided or offered by the fund and more time to negotiate for the procurement of private reinsurance or other sources of capital will enable the residential property insurance market to operate with greater stability.

d. Increased stability in the residential property insurance market serves a primary purpose of the fund and benefits consumers in this state by enabling insurers to operate more economically. In years when reinsurance and capital markets experience a capital shortage, the last-minute rush by insurers only weeks before the start of the hurricane season to procure

<u>adequate coverage in order to meet their capital requirements can result in higher costs that are passed on to consumers in this state. However, if more time is available, residential property insurers should experience greater competition for their business with a corresponding beneficial effect for consumers in this state.</u>

<u>2. It is the intent of the Legislature to provide insurers with the terms and conditions of the reimbursement contract well in advance of the insurers' need to finalize their procurement of private reinsurance or other sources of capital, and thereby to improve insurers' negotiating position with reinsurers and other sources of capital.</u>

<u>3. It is also the intent of the Legislature that the board publish the fund's maximum statutory limit of coverage and the fund's total retention early enough that residential property insurers have the opportunity to better estimate their coverage from the fund.</u>

<u>(b) The board shall adopt the reimbursement contract for a particular contract year by February 1 of the immediately preceding contract year. However, the reimbursement contract shall be adopted as soon as possible in advance of the 2010-2011 contract year.</u>

<u>(c) Insurers writing covered policies shall execute the reimbursement contract by March 1 of the immediately preceding contract year and the contract shall have an effective date for the contract year as defined in paragraph (2)(o).</u>

<u>(d) The board shall publish in the Florida Administrative Weekly the maximum statutorily adjusted capacity for the</u>

mandatory coverage for a particular contract year, the maximum statutory coverage for any optional coverage for the particular contract year, and the aggregate fund retention used to calculate individual insurer's retention multiples for the particular contract year, no later than January 1 of the immediately preceding contract year.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CEED 10-01 Repealing Budgeting Provisions
SPONSOR(S): Full Appropriations Council on Education & Economic Development
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Full Appropriations Council on Education & Economic Development		Kramer TK	Leznoff JL
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Section 216.023, F.S. requires the head of each state agency to submit a final legislative budget request to the Legislature and to the Governor based on the agency's independent judgment of its needs by October 15 of each year. Pursuant to subsection (4)(b) each state agency and the judicial branch are required to submit a one-page summary of information for the preceding year that must contain the following information relating to unit costs:

1. The number of activity units performed or accomplished.

2. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with output measures prior to computing unit costs.

3. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.

4. The total amount of reversions and pass-through expenditures omitted from unit-cost calculations.

These reports have not been utilized in making appropriations decisions, or in policy making or accountability analyses. The bill repeals subsection (4)(b) of s. 216.023, F.S.

Mobility 2000 was created during the 2000 Legislative session in order to advance transportation projects. Section 339.1371, F.S. provides that funds will be used for corridors that link Florida's economic regions to seaports, international airports, and markets to provide connections through major gateways, improved mobility in major urbanized areas, and access routes for emergency evacuation to coastal communities based on analysis of current and projected traffic conditions. The section also provides that in fiscal year 2001-2002 and each year thereafter, the increase in revenue to the State Transportation Trust Fund derived from the law creating the statute must be first used by the Department of Transportation to fund the Mobility 2000 initiative and any remaining funds must be used to fund the Florida Strategic Intermodal System.

Mobility 2000 projects have been completed. The bill repeals s. 339.1371, F.S.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Unit-Cost Data: Section 216.023, F.S. requires the head of each state agency to submit a final legislative budget request to the Legislature and to the Governor based on the agency's independent judgment of its needs by October 15 of each year.

This section requires the legislative budget request to include specified information for each program such as the authority for the program, details on trust funds and fees and the total number of positions. Subsection (4)(b) provides that "it is the intent of the Legislature that total accountability measures, including unit-cost data, serve not only as a budgeting tool but also as a policymaking tool and an accountability tool." Each state agency and the judicial branch is required to submit a one-page summary of information for the preceding year that must contain:

1. The final budget for the agency and the judicial branch.

2. Total funds from the General Appropriations Act.

3. Adjustments to the General Appropriations Act.

4. The line-item listings of all activities.

5. The number of activity units performed or accomplished.

6. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with output measures prior to computing unit costs.

7. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.

8. The total amount of reversions and pass-through expenditures omitted from unit-cost calculations.

If an agency does not submit this information, the Legislature is required to reduce the allocation for the agency in the General Appropriations Act by at least 10 percent.

These reports have not been utilized in making appropriations decisions, or in policy making or accountability analyses. In May 2005, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report relating to unit costs.[1] The report indicated that the usefulness of the unit cost information was limited because "many agencies are not allocating all of their costs when calculating their unit costs, and agencies are using different methodologies to calculate their direct and indirect activity costs." According to the report "these differences limit the Legislature's ability to validly compare the efficiency of similar activities performed by different agencies or to assess changes in agency performance over time."

In 2006, the Legislature created a working group consisting of representatives from the Governor's Office, OPPAGA, the Auditor General, the Department of Financial Services, and legislative staff to develop a cost-allocation methodology for agencies to use in the computation of activity and unit costs.[2] The workgroup concluded that "to fully achieve the primary goal of creating auditable and comparable unit cost data, the Legislature should consider a number of changes to current cost accounting and indirect cost allocation practices prior to the development of a new unit cost methodology" but indicated that these changes "would likely require significant and potentially costly changes to current agency accounting practices."[3]

The bill repeals subsection (4)(b) of s. 216.023, F.S. and makes corresponding changes to s. 216.013, F.S., relating to long-range program plans and conforms cross-references in s. 287.0574 and s. 489.145, F.S.

Mobility 2000

Mobility 2000 was created during the 2000 Legislative session in Chapter 2000-257, Laws of Fla. in order to advance transportation projects. The act increased the percentage of the rental car surcharge that was to be deposited into the State Transportation Trust Fund, eliminated certain service charges and appropriated funds from General Revenue to the State Transportation Trust Fund.

Section 339.1371, F.S. requires the Department of Transportation, beginning in fiscal year 2000-2001, to allocate sufficient funds to implement the Mobility 2000 initiative. The section requires the department to develop a plan to expend these revenues and amend the current tentative work program for the time period 2000-2001 through 2004-2005 prior to adoption to include Mobility 2000 projects.

The section also requires the department to submit a budget amendment prior to work program adoption requesting budget authority needed to implement the Mobility 2000 initiative. The section provides that funds will be used for corridors that link Florida's economic regions to seaports, international airports, and markets to provide connections through major gateways, improved mobility in major urbanized areas, and access routes for emergency evacuation to coastal communities based on analysis of current and projected traffic conditions.

The section also provides that in fiscal year 2001-2002 and each year thereafter, the increase in revenue to the State Transportation Trust Fund derived from specified sections of Chapter 2000-257, Laws of Florida must be first used by the Department of Transportation to fund the Mobility 2000 initiative and any remaining funds must be used to fund the Florida Strategic Intermodal System created pursuant to s. 339.61.

Mobility 2000 projects have been completed. The bill repeals s. 339.1371, F.S.

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[1] *More Uniform Methodology Is Needed for State Agencies' Unit Cost Information*, Report No. 05-35, May 2005 http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0535rpt.pdf

[2] Ch. 2006-146, s. 18, Laws of Fla.

[3] *Unit Cost Calculation Workgroup Report Required by Chapter 2006-146, Laws of Florida, December 31, 2006.*

See also, The Legislature Has Taken Steps to Promote the Self-Sufficiency of Regulatory Programs, Report 07-39, September 2007.

B. SECTION DIRECTORY:

Section 1. Amends s. 216.023, F.S., relating to Legislative budget requests to be furnished to Legislature by agencies.

Section 2. Repeals s. 339.1371, F.S.

Section 3. Amends s. 216.013, F.S., relating to long-range program plan.

Section 4. Amends. 287.0574, F.S., relating to business cases to outsource; review and analysis; requirements.

Section 5. Amends s. 489.145, F.S., relating to guaranteed energy, water, and wastewater performance savings contracting.

Section 6. Provides effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to repealing budget provisions; amending s. 216.023, F.S.; deleting certain budget summary requirements; repealing s. 339.1371, F.S., relating to Mobility 2000 funding; amending ss. 216.013, 287.0574, and 489.145, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (4) of section 216.023, Florida Statutes, is amended to read:

216.023 Legislative budget requests to be furnished to Legislature by agencies.—

(4) ~~(a)~~ The legislative budget request must contain for each program:

<u>(a)</u>~~1.~~ The constitutional or statutory authority for a program, a brief purpose statement, and approved program components.

<u>(b)</u>~~2.~~ Information on expenditures for 3 fiscal years (actual prior-year expenditures, current-year estimated expenditures, and agency budget requested expenditures for the next fiscal year) by appropriation category.

<u>(c)</u>~~3.~~ Details on trust funds and fees.

<u>(d)</u>~~4.~~ The total number of positions (authorized, fixed, and requested).

<u>(e)</u>~~5.~~ An issue narrative describing and justifying changes in amounts and positions requested for current and proposed

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

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programs for the next fiscal year.

(f) ~~6.~~ Information resource requests.

(g) ~~7.~~ Supporting information, including applicable cost-benefit analyses, business case analyses, performance contracting procedures, service comparisons, and impacts on performance standards for any request to outsource or privatize agency functions. The cost-benefit and business case analyses must include an assessment of the impact on each affected activity ~~from those identified in accordance with paragraph (b)~~. Performance standards must include standards for each affected activity and be expressed in terms of the associated unit of activity.

(h) ~~8.~~ An evaluation of any major outsourcing and privatization initiatives undertaken during the last 5 fiscal years having aggregate expenditures exceeding $10 million during the term of the contract. The evaluation shall include an assessment of contractor performance, a comparison of anticipated service levels to actual service levels, and a comparison of estimated savings to actual savings achieved. Consolidated reports issued by the Department of Management Services may be used to satisfy this requirement.

(i) ~~9.~~ Supporting information for any proposed consolidated financing of deferred-payment commodity contracts including guaranteed energy performance savings contracts. Supporting information must also include narrative describing and justifying the need, baseline for current costs, estimated cost savings, projected equipment purchases, estimated contract costs, and return on investment calculation.

(j)~~10.~~ For projects that exceed $10 million in total cost, the statutory reference of the existing policy or the proposed substantive policy that establishes and defines the project's governance structure, planned scope, main business objectives that must be achieved, and estimated completion timeframes. Information technology budget requests for the continuance of existing hardware and software maintenance agreements, renewal of existing software licensing agreements, or the replacement of desktop units with new technology that is similar to the technology currently in use are exempt from this requirement.

~~(b) It is the intent of the Legislature that total accountability measures, including unit-cost data, serve not only as a budgeting tool but also as a policymaking tool and an accountability tool. Therefore, each state agency and the judicial branch must submit a summary of information for the preceding year in accordance with the legislative budget instructions. Each summary must provide a one-page overview and must contain:~~

~~1. The final budget for the agency and the judicial branch.~~

~~2. Total funds from the General Appropriations Act.~~

~~3. Adjustments to the General Appropriations Act.~~

~~4. The line-item listings of all activities.~~

~~5. The number of activity units performed or accomplished.~~

~~6. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with~~

~~output measures prior to computing unit costs.~~

~~7. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.~~

~~8. The total amount of reversions and pass-through expenditures omitted from unit-cost calculations.~~

~~At the regular session immediately following the submission of the agency unit cost summary, the Legislature shall reduce in the General Appropriations Act for the ensuing fiscal year, by an amount equal to at least 10 percent of the allocation for the fiscal year preceding the current fiscal year, the funding of each state agency that fails to submit the report required under this paragraph.~~

Section 2. Section 339.1371, Florida Statutes, is repealed.

Section 3. Paragraph (h) of subsection (1) of section 216.013, Florida Statutes, is amended to read:

216.013 Long-range program plan.—State agencies and the judicial branch shall develop long-range program plans to achieve state goals using an interagency planning process that includes the development of integrated agency program service outcomes. The plans shall be policy based, priority driven, accountable, and developed through careful examination and justification of all agency and judicial branch programs.

(1) Long-range program plans shall provide the framework for the development of budget requests and shall identify or update:

(h) Legislatively approved output and outcome performance

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

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measures. ~~Each performance measure must identify the associated activity contributing to the measure from those identified in accordance with s. 216.023(4)(b).~~

Section 4. Subsection (4) of section 287.0574, Florida Statutes, is amended to read:

287.0574 Business cases to outsource; review and analysis; requirements.—

(4) For any proposed outsourcing, the state agency shall develop a business case that justifies the proposal to outsource. In order to reduce any administrative burden, the council may allow a state agency to submit the business case in the form required by the budget instructions issued pursuant to s. 216.023(4)(g) ~~s. 216.023(4)(a)7.~~, augmented with additional information if necessary, to ensure that the requirements of this section are met. The business case is not subject to challenge or protest pursuant to chapter 120. The business case must include, but need not be limited to:

(a) A detailed description of the service or activity for which the outsourcing is proposed.

(b) A description and analysis of the state agency's current performance, based on existing performance metrics if the state agency is currently performing the service or activity.

(c) The goals desired to be achieved through the proposed outsourcing and the rationale for such goals.

(d) A citation to the existing or proposed legal authority for outsourcing the service or activity.

(e) A description of available options for achieving the goals. If state employees are currently performing the service or activity, at least one option involving maintaining state provision of the service or activity shall be included.

(f) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.

(g) A description of the current market for the contractual services that are under consideration for outsourcing.

(h) A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. Such analysis must specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All elements of cost must be clearly identified in the cost-benefit analysis, described in the business case, and supported by applicable records and reports. The state agency head shall attest that, based on the data and information underlying the business case, to the best of his or her knowledge, all projected costs, savings, and benefits are valid and achievable. As used in this section, the term "cost" means the reasonable, relevant, and verifiable cost, which may include, but is not limited to, elements such as personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead, and interim and final payments. The appropriate elements shall depend on the nature of the specific initiative. As used in this section, the term "savings" means the difference between the direct and indirect actual annual baseline costs compared to the projected annual cost for the contracted functions or responsibilities in any succeeding state fiscal year during the term of the contract.

(i) A description of differences among current state agency policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required.

(j) A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.

(k) The projected timeframe for key events from the beginning of the procurement process through the expiration of a contract.

(l) A plan to ensure compliance with the public records law.

(m) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(n) A state agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor.

(o) A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.

(p) A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

Section 5. Paragraph (a) of subsection (6) of section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed energy, water, and wastewater performance savings contracting.—

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The Department of Management Services, with the assistance of the Office of the Chief Financial Officer, shall, within available resources, provide technical content assistance to state agencies contracting for energy, water, and wastewater efficiency and conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy, water, and wastewater performance contracting by state agencies. The Department of Management Services shall review the investment-grade audit for each proposed project and certify that the cost savings are appropriate and sufficient for the term of the contract. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, shall, within available resources, develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy, water, and wastewater performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency

shall submit such proposed contract or lease to the Office of the Chief Financial Officer for review and approval. A proposed contract or lease shall include:

(a) Supporting information required by s. 216.023(4)(i) ~~s. 216.023(4)(a)9.~~ in ss. 287.063(5) and 287.064(11). For contracts approved under this section, the criteria may, at a minimum, include the specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against which proposals shall be evaluated.

The Office of the Chief Financial Officer shall not approve any contract submitted under this section from a state agency that does not meet the requirements of this section.

Section 6. This act shall take effect July 1, 2010.