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# **Government Operations Subcommittee**

**Wednesday, January 18, 2012  
9:00 AM  
306 HOB**

# **Meeting Packet**

**Dean Cannon  
Speaker**

**Jimmy Patronis  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Wednesday, January 18, 2012 09:00 am  
**End Date and Time:** Wednesday, January 18, 2012 10:30 am  
**Location:** 306 HOB  
**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

HB 673 Preference in Award of State Contracts by Brodeur  
HB 843 State Lottery by Roberson, K.  
HB 1177 Campaign Financing by Ingram

**Consideration of the following proposed committee bill(s):**

PCB GVOPS 12-09 -- Florida State Employee Wellness Council

**NOTICE FINALIZED on 01/13/2012 16:20 by Godwin.Chandra**


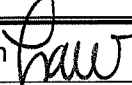


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 673 Preference in Award of State Contracts

**SPONSOR(S):** Brodeur and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Meadows 	Williamson 
2) Community & Military Affairs Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

Current law authorizes state agencies, counties, municipalities, school districts, and other political subdivisions to award a preference to a Florida based business for the purchase of personal property, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state. The reciprocal preference law is discretionary and may be used by a procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in Florida. The preference available is limited to the preference provided for by an out-of-state bidder's home state. Florida state and local agencies can only apply a preference against a bidder from another state if, and to the extent that, the other state imposes a preference on Florida bidders.

The bill expands the reciprocal preference provided in current law to include the purchase of construction services. It also provides that for a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, Florida's reciprocal preference preempts and supersedes any local ordinance or regulation based upon specified criteria. Finally, the bill provides that, other than the requirements imposed for solicitations involving state funds, a county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

The bill does not appear to have a fiscal impact.

The bill provides for an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services. The Department of Management Services is responsible for overseeing state purchasing activity including professional and construction services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.<sup>2</sup> The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.<sup>3</sup>

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors.

These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposal," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.<sup>4</sup>

Current law requires that contracts for commodities or contractual services in excess of \$35,000<sup>5</sup> must be procured utilizing a competitive solicitation process.<sup>6,7</sup>

Local governmental units are not subject to the provisions of Chapter 287, F.S. Local governmental units may look to Chapter 287, F.S., for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

Florida law authorizes state agencies, counties, municipalities, school districts, and other political subdivisions to use a preference in the award of contracts for the purchase of personal property, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state.<sup>8</sup> The reciprocal preference is discretionary and may be used by a procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state.<sup>9</sup> The

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<sup>1</sup> As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

<sup>2</sup> See ss. 287.032 and 287.042, F.S.

<sup>3</sup> Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

<sup>4</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>5</sup> Section 287.012, F.S.

<sup>6</sup> Section 287.057(1), F.S.

<sup>7</sup> As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

<sup>8</sup> Section 287.084(1), F.S.

<sup>9</sup> *Id.*

preference available is limited to the preference provided for by an out-of-state bidder's home state.<sup>10</sup> Florida state and local agencies can only apply a preference against a bidder from another state if, and to the extent that, the other state imposes a preference on Florida bidders.<sup>11</sup>

If a solicitation to purchase personal property provides for the granting of a preference, any vendor whose principal place of business is not in Florida must submit with the bid, proposal, or reply documents with a written opinion of an attorney, licensed in the vendor's state, explaining the preferences that state provides to vendors, within the vendor's state, for public contracts.<sup>12</sup>

Florida's preference law does not apply to transportation projects for which federal aid funds are available.<sup>13</sup>

### **Effect of Proposed Changes**

The bill expands the reciprocal preference in current law to include the purchase of construction services.

The bill requires the procuring entity to disclose in its solicitation documents if state funds are being used in the payment, and the amount of the funds or the percentage of the funds compared to the anticipated total cost of the personal property or construction services. For a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, the bill provides that Florida's reciprocal preference preempts and supersedes any local ordinance or regulation that grants a preference to a vendor based upon the following specified criteria:

- The vendor maintaining an office or place of business within a particular jurisdiction;
- The vendor hiring employees or subcontractors from within a specific jurisdiction; or
- The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Finally, the bill provides that, other than the requirements imposed for solicitations involving state funds, a county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

The bill provides for an effective date of July 1, 2012.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 287.084, F.S., relating to preference to Florida business.

Section 2 provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 287.084(2), F.S.

<sup>13</sup> See s. 287.084(1), F.S. The Common Grant Rule issued by the U.S. Department of Transportation, 49 C.F.R.s. 18.36(c)(2), prohibits the use of state or local geographical preferences in the evaluation of bids or proposals for projects involving federal funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could result in more business being awarded to Florida based companies as a result of the new preference for construction services.

D. FISCAL COMMENTS:

There is no known fiscal impact on local governments; however, there may be an operational impact as the statute would preempt local ordinances or regulations in certain circumstances.<sup>14</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 in the aggregate with counties or municipalities.

2. Other:

The establishment of local preference laws could implicate the Equal Protection Clause and the Commerce Clause of the United States Constitution.

The Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”<sup>15</sup> The in-state preference provisions in this bill could constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.<sup>16</sup> Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.<sup>17</sup>

The Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”<sup>18</sup> The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.<sup>19</sup>

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<sup>14</sup> Substantive Analysis of HB 427, Department of Management Services, February 24, 2011 (on file with the Government Operations Subcommittee). HB 673 is identical to HB 427 which was filed during the 2011 Legislative Session.

<sup>15</sup> U.S. CONST. amend. XIV, § 1. See also FLA. CONST. art. I, s. 2.

<sup>16</sup> *Nordlinger v. Hahn*, 505 U.S. 1, 33-34 (1992) (stating that a “classification *rationaly* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.”).

<sup>17</sup> *Id.*

<sup>18</sup> U.S. CONST. art. I, s. 8, cl. 3.

<sup>19</sup> See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. "If a statute 'directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,' the court may declare it unconstitutional as applied, without further inquiry."<sup>20</sup>
2. ". . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state's interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits."<sup>21</sup>

However, when a state or local government is acting as a "market participant" rather than a "market regulator," it is not subject to the limitations of the Commerce Clause.<sup>22</sup> A state is considered to be a "market participant" when it is acting as an economic actor such as a purchaser of goods and services.<sup>23</sup> Since the state is acting as a "market participant" under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

#### B. RULE-MAKING AUTHORITY:

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

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Other Comments: Principle Place of Business

Current law does not provide for a definition of "principle place of business." There are two competing tests to determine where a company's principle place of business is located.

The first is the "substantial predominance" test, which analyzes the following criteria: the location of its employees, where sales took place, its production activities, its tangible property, its sources of income, the value of land owned and leased, and the replacement cost of assets located in a certain state.<sup>24</sup>

The second test is the "nerve center test." Under this test a company's principle place of business refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities.<sup>25</sup>

The Department of Management Services has previously utilized the "nerve center" test to determine a company's principle place of business. In a 2010 memorandum to purchasing directors, the department indicated it intended to use the nerve center test when applying the Florida based business preference found in section 49 of Chapter 2010-151, Laws of Florida, to both state term contracts and other department issued solicitations.<sup>26</sup>

##### Drafting Issues: Relating to Clause

The relating to clause for the bill provides that it is "[a]n act relating to preference in award of state contracts"; however, the bill creates provisions applicable to state and local contracts. As such, the sponsor may want to consider an amendment to correct the drafting error in the relating to clause to provide that the bill is "[a]n act relating to preference in award of governmental entity contracts."

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<sup>20</sup> *National Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1211(Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

<sup>21</sup> *Id.* (citations omitted); See *Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109.

<sup>22</sup> See *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204, 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

<sup>23</sup> *Id.*

<sup>24</sup> *Ghaderi v. United Airlines, Inc.*, 136 F.Supp.2d 1041, 1044-46 (N.D. Cal. 2001). See also, *Diaz v. Target Corp.*, No. 09-3477, 2009 U.S. Dist. LEXIS 62000 (C.D. Cal. July 2, 2009); *Castaneda v. Costco Wholesale Corp.*, No. 08-7599, 2009 U.S. Dist. LEXIS 3595 (C.D. Cal. Jan. 9, 2009).

<sup>25</sup> *Hertz Corp. v. Friend et al.*, No. 08-1107, 2010 U.S. LEXIS 1897 (U.S. Feb. 23, 2010).

<sup>26</sup> Memorandum to Purchasing Directors, Department of Management Services, September 2, 2010 at 3 (on file with the Government Operations Subcommittee).



Drafting Issues: Construction Services

The bill amends s. 287.084, F.S., to expand the reciprocal preference in current law to include the purchase of construction services; however, chapter 287, F.S., regulates state agency procurement of personal property and services. Chapter 255, F.S., relates to public property and publicly owned buildings and regulates contracts pertaining to construction services. As such, the sponsor may want to consider an amendment to remove the reference to "construction services" in s. 287.084, F.S., and, instead, create the same preference for construction services in chapter 255, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not Applicable.

HB 673

2012

1                   A bill to be entitled  
 2           An act relating to preference in award of state  
 3           contracts; amending s. 287.084, F.S.; expanding  
 4           provisions that authorize an agency, county,  
 5           municipality, school district, or other political  
 6           subdivision of the state to provide preferential  
 7           consideration to a Florida business in awarding  
 8           competitively bid contracts to purchase personal  
 9           property to include the purchase of construction  
 10          services; providing that for specified competitive  
 11          solicitations the authority to grant preference  
 12          supersedes any local ordinance or regulation which  
 13          grants preference to specified vendors; requiring a  
 14          county, municipality, school district, or other  
 15          political subdivision to make specified disclosures in  
 16          competitive solicitation documents; providing  
 17          construction; providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. Subsection (1) of section 287.084, Florida  
 22           Statutes, is amended to read:

23           287.084 Preference to Florida businesses.—

24           (1) (a) When an agency, county, municipality, school  
 25           district, or other political subdivision of the state is  
 26           required to make purchases of personal property or construction  
 27           services through competitive solicitation and the lowest  
 28           responsible and responsive bid, proposal, or reply is by a

29 vendor whose principal place of business is in a state or  
 30 political subdivision thereof which grants a preference for the  
 31 purchase of such personal property or construction services to a  
 32 person whose principal place of business is in such state, then  
 33 the agency, county, municipality, school district, or other  
 34 political subdivision of this state may award a preference to  
 35 the lowest responsible and responsive vendor having a principal  
 36 place of business within this state, which preference is equal  
 37 to the preference granted by the state or political subdivision  
 38 thereof in which the lowest responsible and responsive vendor  
 39 has its principal place of business. However, this section does  
 40 not apply to transportation projects for which federal aid funds  
 41 are available.

42 (b)1. For a competitive solicitation in which payment for  
 43 the personal property or construction services is to be made in  
 44 whole or in part from funds appropriated by the state, this  
 45 section preempts and supersedes any local ordinance or  
 46 regulation that grants preference to a vendor based upon:

47 a. The vendor maintaining an office or place of business  
 48 within a particular local jurisdiction;

49 b. The vendor hiring employees or subcontractors from  
 50 within a particular local jurisdiction; or

51 c. The vendor's prior payment of local taxes, assessments,  
 52 or duties within a particular local jurisdiction.

53 2. In any competitive solicitation subject to this  
 54 section, a county, municipality, school district, or other  
 55 political subdivision shall disclose in the solicitation  
 56 document whether payment will come from funds appropriated by

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2012

57 the state and, if known, the amount of such funds or the  
 58 percentage of such funds as compared to the anticipated total  
 59 cost of the personal property or construction services.

60 3. Except as provided in subparagraph 1., this section  
 61 does not prevent a county, municipality, school district, or  
 62 other political subdivision of this state from awarding a  
 63 contract to any vendor in accordance with applicable state laws  
 64 or local ordinances or regulations.

65 Section 2. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 673 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative Brodeur offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 255.0991, Florida Statutes, is created  
8 to read:

9 255.0991 Preference to Florida businesses.-

10 (1) (a) When an agency, county, municipality, school  
11 district, or other political subdivision of the state is  
12 required to make purchases of construction services through  
13 competitive solicitation and the lowest responsible and  
14 responsive bid, proposal, or reply is by a vendor whose  
15 principal place of business is in a state or political  
16 subdivision thereof which grants a preference for the purchase  
17 of such construction services to a person whose principal place  
18 of business is in such state, then the agency, county,  
19 municipality, school district, or other political subdivision of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 673 (2012)

Amendment No.

20 this state may award a preference to the lowest responsible and  
21 responsive vendor having a principal place of business within  
22 this state, which preference is equal to the preference granted  
23 by the state or political subdivision thereof in which the  
24 lowest responsible and responsive vendor has its principal place  
25 of business. However, this section does not apply to  
26 transportation projects for which federal aid funds are  
27 available.

28 (b)1. For a competitive solicitation in which payment for  
29 the construction services is to be made in whole or in part from  
30 funds appropriated by the state, this section preempts and  
31 supersedes any local ordinance or regulation that grants  
32 preference to a vendor based upon:

33 a. The vendor maintaining an office or place of business  
34 within a particular local jurisdiction;

35 b. The vendor hiring employees or subcontractors from  
36 within a particular local jurisdiction; or

37 c. The vendor's prior payment of local taxes, assessments,  
38 or duties within a particular local jurisdiction.

39 2. In any competitive solicitation subject to this  
40 section, a county, municipality, school district, or other  
41 political subdivision shall disclose in the solicitation  
42 document whether payment will come from funds appropriated by  
43 the state and, if known, the amount of such funds or the  
44 percentage of such funds as compared to the anticipated total  
45 cost of the construction services.

46 3. Except as provided in subparagraph 1., this section  
47 does not prevent a county, municipality, school district, or

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Amendment No.

48 other political subdivision of this state from awarding a  
49 contract to any vendor in accordance with applicable state laws  
50 or local ordinances or regulations.

51 (2) If a solicitation provides for the granting of such  
52 preference as is provided in this section, any vendor whose  
53 principal place of business is outside the State of Florida must  
54 accompany any written bid, proposal, or reply documents with a  
55 written opinion of an attorney at law licensed to practice law  
56 in that foreign state, as to the preferences, if any or none,  
57 granted by the law of that state to its own business entities  
58 whose principal places of business are in that foreign state in  
59 the letting of any or all public contracts.

60 Section 2. Subsection (1) of section 287.084, Florida  
61 Statutes, is amended to read:

62 287.084 Preference to Florida businesses.-

63 (1) (a) When an agency, county, municipality, school  
64 district, or other political subdivision of the state is  
65 required to make purchases of personal property through  
66 competitive solicitation and the lowest responsible and  
67 responsive bid, proposal, or reply is by a vendor whose  
68 principal place of business is in a state or political  
69 subdivision thereof which grants a preference for the purchase  
70 of such personal property to a person whose principal place of  
71 business is in such state, then the agency, county,  
72 municipality, school district, or other political subdivision of  
73 this state may award a preference to the lowest responsible and  
74 responsive vendor having a principal place of business within  
75 this state, which preference is equal to the preference granted

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Amendment No.

76 by the state or political subdivision thereof in which the  
77 lowest responsible and responsive vendor has its principal place  
78 of business. However, this section does not apply to  
79 transportation projects for which federal aid funds are  
80 available.

81 (b)1. For a competitive solicitation in which payment for  
82 the personal property is to be made in whole or in part from  
83 funds appropriated by the state, this section preempts and  
84 supersedes any local ordinance or regulation that grants  
85 preference to a vendor based upon:

86 a. The vendor maintaining an office or place of business  
87 within a particular local jurisdiction;

88 b. The vendor hiring employees or subcontractors from  
89 within a particular local jurisdiction; or

90 c. The vendor's prior payment of local taxes, assessments,  
91 or duties within a particular local jurisdiction.

92 2. In any competitive solicitation subject to this  
93 section, a county, municipality, school district, or other  
94 political subdivision shall disclose in the solicitation  
95 document whether payment will come from funds appropriated by  
96 the state and, if known, the amount of such funds or the  
97 percentage of such funds as compared to the anticipated total  
98 cost of the personal property.

99 3. Except as provided in subparagraph 1., this section  
100 does not prevent a county, municipality, school district, or  
101 other political subdivision of this state from awarding a  
102 contract to any vendor in accordance with applicable state laws  
103 or local ordinances or regulations.



Amendment No.

104 Section 3. This act shall take effect July 1, 2012.  
105  
106

107 -----

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

109 Remove the entire title and insert:

110 A bill to be entitled

111 An act relating to preference in award of governmental entity  
112 contracts; creating s. 255.0991, F.S.; authorizing an agency,  
113 county, municipality, school district, or other political  
114 subdivision of the state to provide preferential consideration  
115 to a Florida business in awarding competitively bid contracts to  
116 purchase construction services; providing that for specified  
117 competitive solicitations the authority to grant preference  
118 supersedes any local ordinance or regulation which grants  
119 preference to specified vendors; requiring a county,  
120 municipality, school district, or other political subdivision to  
121 make specified disclosures in competitive solicitation  
122 documents; amending s. 287.084, F.S.; providing that for  
123 specified competitive solicitations the authority to grant  
124 preference supersedes any local ordinance or regulation which  
125 grants preference to specified vendors; requiring a county,  
126 municipality, school district, or other political subdivision to  
127 make specified disclosures in competitive solicitation  
128 documents; providing an effective date.

HB 843

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 843 State Lottery  
**SPONSOR(S):** Roberson  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 902

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Naf <i>sn</i>	Williamson <i>raw</i>
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

Current law allows the Department of the Lottery to operate machines from which a player can buy instant lottery game tickets. This bill expands the types of permissible player-activated machines to also include machines that dispense online game tickets.

The bill provides an effective date of July 1, 2012.

The bill appears likely to have a positive fiscal impact on state revenues.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Department of the Lottery

In 1987, the Legislature enacted chapter 87-65, L.O.F.,<sup>1</sup> to implement a voter-approved constitutional amendment<sup>2</sup> allowing the State of Florida to operate a lottery. The Department of the Lottery (Lottery) was established for the purpose of operating the state lottery "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens."<sup>3</sup> Specified proceeds from the sale of lottery tickets are transferred to the Educational Enhancement Trust Fund and are used to benefit public education.<sup>4</sup>

###### Instant Ticket Vending Machines

Current law allows the Lottery to operate instant ticket vending machines (ITVMs) from which a player can buy instant lottery game tickets.<sup>5</sup> No other player-activated machines are permissible.<sup>6</sup> An ITVM must:

- Be under the supervision and within the direct line of sight of the lottery retailer to ensure that the machine is only operated by persons at least 18 years of age;
- Be capable of being electronically deactivated by the retailer to prohibit use by persons less than 18 years of age, using a lockout device that maintains the ITVM's deactivation for at least 5 minutes; and
- Be designed to prevent its use or conversion for use in any manner other than the dispensing of instant lottery tickets.<sup>7</sup>

An authorized ITVM dispenses instant lottery game tickets after the insertion of a coin or currency by a player.<sup>8</sup> It may dispense change to players purchasing tickets but may not be used for paying the holders of any kind of winning tickets. At least one clerk must be on duty at the lottery retailer unless the retailer has violated s. 24.1055, F.S.,<sup>9</sup> in which case at least two clerks must be on duty.<sup>10</sup>

The Lottery must lease all ITVMs.<sup>11</sup>

According to a report by the Office of Program Policy Analysis and Government Accountability:

The first 1,000 ITVMs, which were installed at the Lottery's highest selling retailers around the state [in 2009], appear to have exceeded initial sales estimates. Scratch-off sales at these retailers increased 20% compared to a statewide decrease of 1% for all other retailers. Assuming the average increase of 20% in scratch-off sales at these retailers was primarily due to vending machine sales, the Lottery achieved nearly \$12 million more in transfers to education. Moreover, the vending machines provide players convenient access

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<sup>1</sup> Codified as ch. 24, F.S.

<sup>2</sup> Section 15, Art. X of the State Constitution.

<sup>3</sup> Section 24.104, F.S.

<sup>4</sup> See s. 24.121(2), F.S.

<sup>5</sup> See s. 24.105(9)(a)3. and 4., F.S.

<sup>6</sup> *Id.*

<sup>7</sup> See s. 24.105(9)(a)4., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 24.1055, F.S., prohibits the sale of lottery tickets to minors.

<sup>10</sup> Section 24.105(9)(a)4., F.S.

<sup>11</sup> Section 24.111(2)(h), F.S.

to a larger selection of games; transmit sales data in real-time, allowing the Lottery to better track ticket sales; and improve retailer operational efficiency.<sup>12</sup>

### Gaming Compact Provisions Related to Lottery Vending Machines

The gaming compact between the State of Florida (state) and the Seminole Tribe of Florida (Tribe) provides the Tribe the exclusive right to conduct specified types of gaming in return for revenue sharing payments by the Tribe to the state.<sup>13</sup> If the state violates the exclusivity provisions of the compact, the Tribe may be able to reduce or cease payments to the state.<sup>14</sup> The compact limits lottery game distribution, but provides an exception for three types of lottery vending machines (LVMs).<sup>15</sup> However, the compact limits the numbers of LVMs that may be located at any one location to 10 and limits the usage of LVMs to provide that no LVM that dispenses instant tickets may be installed at any licensed pari-mutuel facility.<sup>16</sup>

### **Effect of Proposed Changes**

The bill requires the Lottery to adopt rules governing the establishment and operation of full service vending machines (FSVMs). FSVMs are player-operated machines that dispense online lottery tickets, instant lottery tickets, or both online and instant lottery tickets.<sup>17</sup>

The bill relocates and amends the requirements for vending machines and vending machine retailers to include FSVMs. The bill makes drafting changes to the requirements but the content remains substantially the same, with an additional requirement that the vending machine, or any machine or device linked to the vending machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The bill specifies that this new requirement does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines.

As a conforming change, the bill amends the requirement that the Lottery must lease all ITVMs to instead provide that the Lottery must lease all vending machines that dispense online lottery tickets, instant lottery tickets, or both online and instant lottery tickets.

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<sup>12</sup> "Lottery Profits Decline; Options Available to Enhance Transfers to Education," Office of Program Policy Analysis and Government Accountability Report No. 11-12 (March 2011) at 4.

<sup>13</sup> *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 128 (hereinafter Gaming Compact).

<sup>14</sup> See part XII, Gaming Compact, *supra* at n. 8.

<sup>15</sup> The three types of allowable lottery vending machines are:

1. A machine to dispense pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket, or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. This does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines; or
2. A machine to dispense pre-determined electronic instant lottery tickets that displays an image of the ticket on a video screen on the machine and the player must touch the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels or simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets; or
3. A machine to dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine does not reveal the winning numbers and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine, or any machines or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine may not be used to redeem a winning ticket. This does not preclude the use of casino game themes or titles for signage or advertising displays on the machine. (See parts III.F. and XII.B.8., Gaming Compact, *supra* at n. 7)

<sup>16</sup> See part XII.B.8, Gaming Compact, *supra* at n. 8.

<sup>17</sup> Online games are games where the player picks numbers and the drawing occurs at a later time and location and which are connected to a central computer. Instant games are paper scratch-off tickets. (See "Review Options for New Lottery Games and Game Distribution," Florida Senate Issue Brief 2012-220.) The type of full service vending machine created by the bill appears to be a lottery vending machine permitted under the gaming compact.

The bill provides an effective date of July 1, 2012.

**B. SECTION DIRECTORY:**

Section 1 amends s. 24.105, F.S., relating to permissible Lottery player-activated vending machines.

Section 2 amends s. 24.111, F.S., relating to the Lottery's lease of player-activated vending machines.

Section 3 amends s. 24.112, F.S., relating to requirements for Lottery player-activated vending machines and vending machine retailers.

Section 4 provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

Fiscal Year 2012-2013: \$8,100,000.

Fiscal Year 2013-2014: \$21,000,000.

*Also see FISCAL COMMENTS.*

2. Expenditures:

Fiscal Year 2012-2013: \$2,940,000. *Also 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:**

The Lottery estimates that the cost for one FSVM would be \$700 per month, and has requested funding for 350 FSVMs in the current year's legislative budget request, for a total appropriations request of \$2,940,000.<sup>18</sup>

The revenue estimating conference held on November 3, 2011 estimated that the additional revenue to the Educational Enhancement Trust Fund from the addition of 350 FSVMs would be \$8,100,000 in Fiscal Year 2012-2013, and \$21,000,000 in Fiscal Year 2013-2014.<sup>19</sup>

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<sup>18</sup> Because lease of the FSVMs would be subject to an open procurement process pending the passage of this bill, this funding approximation is based on information from the industry and providers. (See email correspondence between House of Representatives staff and Lottery staff, January 16, 2012. On file with the Government Operations Subcommittee.)

<sup>19</sup> "Revenue Impacts of Authorization for Additional Lottery Sales Equipment," Revenue Estimating Conference analysis (November 3, 2011), available online at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact1103.pdf> (last visited January 16, 2011).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Section 24.105(9)(a), F.S., requires the Lottery to adopt rules governing the establishment and operation of the state lottery, including the type of lottery games to be conducted. The Lottery may need to amend any existing rules relating to ITVMs to also include FSVMs, and appears to have sufficient authority to do so.

The Lottery does not appear to have any existing rules limiting the locations of LVMs. However, Lottery staff states there are no instances in which the amount of LVMs in one location would exceed 10, the maximum allowable under the terms of the gaming compact.<sup>20</sup>

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>20</sup> See email correspondence between House of Representatives staff and Lottery staff, January 16, 2012. On file with the Government Operations Subcommittee.

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1                   A bill to be entitled  
 2           An act relating to the state lottery; amending s.  
 3           24.105, F.S.; deleting a provision relating to player-  
 4           activated vending machines; conforming provisions to  
 5           changes made by the act; amending s. 24.111, F.S.;  
 6           revising the requirement that the Department of the  
 7           Lottery lease certain vending machines; amending s.  
 8           24.112, F.S.; allowing vending machines to dispense  
 9           lottery tickets if certain requirements are met;  
 10          providing an effective date.

11

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

13

14           Section 1. Paragraph (a) of subsection (9) of section  
 15           24.105, Florida Statutes, is amended to read:

16           24.105 Powers and duties of department.—The department  
 17           shall:

18           (9) Adopt rules governing the establishment and operation  
 19           of the state lottery, including:

20           (a) The type of lottery games to be conducted, except  
 21           that:

22           1. No name of an elected official shall appear on the  
 23           ticket or play slip of any lottery game or on any prize or on  
 24           any instrument used for the payment of prizes, unless such prize  
 25           is in the form of a state warrant.

26           2. No coins or currency shall be dispensed from any  
 27           electronic computer terminal or device used in any lottery game.

28           3. Other than as specifically provided in s. 24.112



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29 | ~~subparagraph 4.~~, no terminal or device may be used for any  
30 | lottery game which may be operated solely by the player without  
31 | the assistance of the retailer.

32 |       ~~4. The only player-activated machine which may be utilized~~  
33 | ~~is a machine which dispenses instant lottery game tickets~~  
34 | ~~following the insertion of a coin or currency by a ticket~~  
35 | ~~purchaser. To be authorized a machine must: be under the~~  
36 | ~~supervision and within the direct line of sight of the lottery~~  
37 | ~~retailer to ensure that the machine is monitored and only~~  
38 | ~~operated by persons at least 18 years of age; be capable of~~  
39 | ~~being electronically deactivated by the retailer to prohibit use~~  
40 | ~~by persons less than 18 years of age through the use of a~~  
41 | ~~lockout device that maintains the machine's deactivation for a~~  
42 | ~~period of no less than 5 minutes; and be designed to prevent its~~  
43 | ~~use or conversion for use in any manner other than the~~  
44 | ~~dispensing of instant lottery tickets. Authorized machines may~~  
45 | ~~dispense change to players purchasing tickets but may not be~~  
46 | ~~utilized for paying the holders of winning tickets of any kind.~~  
47 | ~~At least one clerk must be on duty at the lottery retailer while~~  
48 | ~~the machine is in operation. However, at least two clerks must~~  
49 | ~~be on duty at any lottery location which has violated s.~~  
50 | ~~24.1055.~~

51 |       Section 2. Paragraph (h) of subsection (2) of section  
52 | 24.111, Florida Statutes, is amended to read:

53 |       24.111 Vendors; disclosure and contract requirements.-

54 |       (2) The department shall investigate the financial  
55 | responsibility, security, and integrity of each vendor with  
56 | which it intends to negotiate a contract for major procurement.

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57 Such investigation may include an investigation of the financial  
 58 responsibility, security, and integrity of any or all persons  
 59 whose names and addresses are required to be disclosed pursuant  
 60 to paragraph (a). Any person who submits a bid, proposal, or  
 61 offer as part of a major procurement must, at the time of  
 62 submitting such bid, proposal, or offer, provide the following:

63 (h) The department shall lease all ~~instant ticket~~ vending  
 64 machines that dispense online lottery tickets, instant lottery  
 65 tickets, or both online and instant lottery tickets.

66  
 67 The department shall not contract with any vendor who fails to  
 68 make the disclosures required by this subsection, and any  
 69 contract with a vendor who has failed to make the required  
 70 disclosures shall be unenforceable. Any contract with any vendor  
 71 who does not comply with such requirements for periodically  
 72 updating such disclosures during the tenure of such contract as  
 73 may be specified in such contract may be terminated by the  
 74 department. This subsection shall be construed broadly and  
 75 liberally to achieve the ends of full disclosure of all  
 76 information necessary to allow for a full and complete  
 77 evaluation by the department of the competence, integrity,  
 78 background, and character of vendors for major procurements.

79 Section 3. Subsection (15) is added to section 24.112,  
 80 Florida Statutes, to read:

81 24.112 Retailers of lottery tickets; authorization of  
 82 vending machines to dispense lottery tickets.-

83 (15) A vending machine may be used to dispense online  
 84 lottery tickets, instant lottery tickets, or both online and

85 instant lottery tickets.

86 (a) The vending machine must:

87 1. Dispense a lottery ticket after a purchaser inserts a  
 88 coin or currency in the machine.

89 2. Be capable of being electronically deactivated for a  
 90 period of 5 minutes or more.

91 3. Be designed to prevent its use for any purpose other  
 92 than dispensing a lottery ticket.

93 (b) In order to be authorized to use a vending machine to  
 94 dispense lottery tickets, a retailer must:

95 1. Locate the vending machine in the retailer's direct  
 96 line of sight to ensure that purchases are only made by persons  
 97 at least 18 years of age.

98 2. Ensure that at least one employee is on duty when the  
 99 vending machine is available for use. However, if the retailer  
 100 has previously violated s. 24.1055, at least two employees must  
 101 be on duty when the vending machine is available for use.

102 (c) A vending machine that dispenses a lottery ticket may  
 103 dispense change to a purchaser but may not be used to redeem any  
 104 type of winning lottery ticket.

105 (d) The vending machine, or any machine or device linked  
 106 to the vending machine, may not include or make use of video  
 107 reels or mechanical reels or other video depictions of slot  
 108 machine or casino game themes or titles for game play. This does  
 109 not preclude the use of casino game themes or titles on such  
 110 tickets or signage or advertising displays on the machines.

111 Section 4. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1177 Campaign Financing  
SPONSOR(S): Ingram  
TIED BILLS: IDEN./SIM. BILLS: SB 1596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Naf <i>in</i>	Williamson <i>AW</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law exempts tickets or advertising for a campaign fundraiser from requirements for political advertisements circulated before an election. This bill subjects such tickets or advertising to those political advertisement requirements.

Current law also prescribes a name designation for certain campaign bank accounts, and requires checks for certain campaign bank accounts to contain a specific name designation. Debit cards count as checks if certain conditions are met, including that they contain the same name designation required for checks. This bill amends those provisions to require that such bank accounts, checks, and debit cards contain specified designation information, instead of prescribing an exact phrase.

The bill provides the act shall take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Requirements for Tickets or Advertising for Campaign Fundraisers***

Current law provides that a ticket or advertising for a campaign fundraiser is exempt from the political advertisement requirements of s. 106.143, F.S.<sup>1</sup> That section of law governs political advertisements circulated before an election.

Disclosure requirements of s. 106.143, F.S., include, but are not limited to:

- Political advertisements that are circulated prior to an election and paid for by the candidate must prominently state certain information such as the name of the candidate, the party affiliation, and the office sought.<sup>2</sup>
- Any other political advertisement must be marked as a paid political advertisement and must provide information such as the name and address of the person paying for the advertisement.<sup>3</sup>
- Advertisements made by in-kind contributions of political parties must prominently state certain information such as the name of the political party and who approved the advertisement.<sup>4</sup>

Other provisions in s. 106.143, F.S., include additional political advertisement specifications and requirements governing a candidate's representation of an endorsement.

This bill subjects a ticket or advertising for a campaign fundraiser to the provisions of s. 106.143, F.S.

##### ***Information on Bank Accounts, Checks, and Debit Cards***

Current law requires all funds received by the campaign treasurer of a candidate or political committee to be deposited in an account designated "... (name of candidate or committee) ... Campaign Account."<sup>5</sup> This bill amends that provision to require that such accounts contain the name of the candidate or committee, instead of prescribing an exact phrase.

Current law also requires checks for a primary campaign depository account to contain the statement "... (name of candidate or political committee) ... Campaign Account."<sup>6</sup> This bill amends that provision to require that such checks contain the name of the campaign account of the candidate or political committee, instead of prescribing an exact phrase. Debit cards count as checks if certain conditions are met, including that they contain the name statement required for checks.<sup>7</sup> Therefore, the bill also amends that provision to require that such debit cards contain the name of the campaign account of the candidate or political committee, instead of prescribing an exact phrase.

By making those changes to designation requirements for bank accounts and checks, the bill clarifies that a check to a campaign does not have to contain an exact phrase in order to be in compliance with statutory provisions governing elections. The bill's changes also appear to codify banks' current practice regarding the deposit of checks in campaign accounts.<sup>8</sup>

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<sup>1</sup> See s. 106.025(1)(c), F.S.

<sup>2</sup> See s. 106.143(1)(a)-(b), F.S.

<sup>3</sup> See s. 106.143(1)(c), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> See s. 106.05, F.S.

<sup>6</sup> See ss. 106.11(1)(b), F.S.

<sup>7</sup> See s. 106.11(2)(a), F.S.

<sup>8</sup> The amount of variation a bank will accept between the name on an account and the name written on a check to the account depends on the bank's application of provisions in Florida's uniform commercial code. Section 673.1101(3)(b)1., F.S., provides that if a check is payable to a fund or organization which is not a legal entity (like a campaign), the instrument is payable to a representative of the members of the fund or organization. Therefore, if the candidate or political committee's name is on the check, the bank should

**B. SECTION DIRECTORY:**

Section 1 amends s. 106.025, F.S., relating to requirements for tickets or advertising for a campaign fundraiser.

Section 2 amends s. 106.05, F.S., relating to designation of a campaign account for a candidate or political committee.

Section 3 amends s. 106.11, F.S., relating to requirements for checks and debit cards for campaign accounts.

Section 4 provides that the act shall take effect 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:**

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 governments.

2. Other:

None.

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accept it for deposit in the account. (See email correspondence between House of Representatives staff and Department of State staff (January 13, 2012). On file with the Government Operations Subcommittee.)

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



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1                   A bill to be entitled  
 2           An act relating to campaign financing; amending s.  
 3           106.025, F.S.; providing that tickets or advertising  
 4           for a campaign fund raiser must comply with the  
 5           requirements of political advertisements circulated  
 6           before an election; amending s. 106.05, F.S.; revising  
 7           the information that is required to appear on a bank  
 8           account for deposit of funds; amending s. 106.11,  
 9           F.S.; revising the information that is required to  
 10          appear on bank account checks of candidates or  
 11          political committees; revising information used to  
 12          determine when debit cards are considered bank checks;  
 13          providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Paragraph (c) of subsection (1) of section  
 18           106.025, Florida Statutes, is amended to read:  
 19           106.025 Campaign fund raisers.—  
 20           (1)  
 21           (c) Any tickets or advertising for ~~such~~ a campaign fund  
 22           raiser must comply with ~~is exempt from~~ the requirements of s.  
 23           106.143.

24           Section 2. Section 106.05, Florida Statutes, is amended to  
 25           read:  
 26           106.05 Deposit of contributions; statement of campaign  
 27           treasurer.—All funds received by the campaign treasurer of any  
 28           candidate or political committee shall, prior to the end of the

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29 5th business day following the receipt thereof, Saturdays,  
30 Sundays, and legal holidays excluded, be deposited in a campaign  
31 depository designated pursuant to s. 106.021, in an account that  
32 contains the designated "... (name of the candidate or  
33 committee.) ... ~~Campaign Account.~~" Except for contributions to  
34 political committees made by payroll deduction, all deposits  
35 shall be accompanied by a bank deposit slip containing the name  
36 of each contributor and the amount contributed by each. If a  
37 contribution is deposited in a secondary campaign depository,  
38 the depository shall forward the full amount of the deposit,  
39 along with a copy of the deposit slip accompanying the deposit,  
40 to the primary campaign depository prior to the end of the 1st  
41 business day following the deposit.

42 Section 3. Paragraph (b) of subsection (1) and paragraph  
43 (a) of subsection (2) of section 106.11, Florida Statutes, are  
44 amended to read:

45 106.11 Expenses of and expenditures by candidates and  
46 political committees.—Each candidate and each political  
47 committee which designates a primary campaign depository  
48 pursuant to s. 106.021(1) shall make expenditures from funds on  
49 deposit in such primary campaign depository only in the  
50 following manner, with the exception of expenditures made from  
51 petty cash funds provided by s. 106.12:

52 (1)

53 (b) The checks for such account shall contain, as a  
54 minimum, the following information:

55 1. The ~~statement~~ "... (name of the campaign account of the  
56 candidate or political committee.) ... ~~Campaign Account.~~"

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

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- 57           2. The account number and the name of the bank.
- 58           3. The exact amount of the expenditure.
- 59           4. The signature of the campaign treasurer or deputy  
60 treasurer.
- 61           5. The exact purpose for which the expenditure is  
62 authorized.
- 63           6. The name of the payee.
- 64           (2) (a) For purposes of this section, debit cards are  
65 considered bank checks, if:
- 66           1. Debit cards are obtained from the same bank that has  
67 been designated as the candidate's or political committee's  
68 primary campaign depository.
- 69           2. Debit cards are issued in the name of the treasurer,  
70 deputy treasurer, or authorized user and contain the state  
71 "... (name of the campaign account of the candidate or political  
72 committee.) ... Campaign Account."
- 73           3. No more than three debit cards are requested and  
74 issued.
- 75           4. The person using the debit card does not receive cash  
76 as part of, or independent of, any transaction for goods or  
77 services.
- 78           5. All receipts for debit card transactions contain:
- 79           a. The last four digits of the debit card number.
- 80           b. The exact amount of the expenditure.
- 81           c. The name of the payee.
- 82           d. The signature of the campaign treasurer, deputy  
83 treasurer, or authorized user.
- 84           e. The exact purpose for which the expenditure is

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85 | authorized.

86

87 | Any information required by this subparagraph but not included  
88 | on the debit card transaction receipt may be handwritten on, or  
89 | attached to, the receipt by the authorized user before  
90 | submission to the treasurer.

91 |       Section 4. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-09 Florida State Employee Wellness Council  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Naf <i>mn</i>	Williamson <i>raw</i>

**SUMMARY ANALYSIS**

The Florida State Employee Wellness Council is an advisory body to the Department of Management Services for state employee wellness issues. A review of the council by the Office of Program Policy Analysis and Government Accountability concluded that the council does not appear to be fulfilling its mission and that council duties related to wellness programs have been assigned to other state entities. The terms of the last council members expired in 2010, and no new members have been appointed.

This bill repeals the council.

The bill provides an effective date of July 1, 2012.

The bill may have a positive fiscal impact on state expenditures.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Florida State Employee Wellness Council (the council) is an advisory body to the Department of Management Services (the department).<sup>1</sup> The council's duties are to encourage participation in wellness programs by state employees and to assist the department in developing standards and criteria for age-based and gender-based wellness programs.<sup>2</sup> The council is to be composed of nine members appointed by the Governor.<sup>3</sup> Members of the council serve without compensation but are entitled to reimbursement for per diem and travel expenses incurred in the performance of their duties.<sup>4</sup>

The Office of Program Policy Analysis and Government Accountability (OPPAGA) evaluated the council as part of the sunset review of the department.<sup>5</sup> OPPAGA recommended abolishing the council because the council did not appear to be fulfilling its statutory mission and because council duties related to wellness programs had been assigned to other state entities.<sup>6</sup>

The last recorded meeting of the council took place in 2008, and the terms of the last council members expired in 2010. No new members have been appointed.<sup>7</sup>

##### Effect of Proposed Changes

The bill repeals the Florida State Employee Wellness Council.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 110.123(13), F.S., relating to the Florida State Employee Wellness Council.

Section 2 provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have a positive fiscal impact due to the elimination of future per diem and travel expenses of council members.

---

<sup>1</sup> See s. 110.123(13)(b), F.S.

<sup>2</sup> See s. 110.123(13)(i), F.S.

<sup>3</sup> See s. 110.123(13)(c), F.S.

<sup>4</sup> See s. 110.123(h), F.S. Reimbursement is as provided in s. 112.061, F.S.

<sup>5</sup> Under the Florida Government Accountability Act (formerly ss. 11.901-.920, F.S., which were created in 2006 and repealed in 2011), most state agencies and their respective advisory committees were subject to a "sunset" review process to determine whether the agency should be retained, modified, or abolished.

<sup>6</sup> See Department of Management Services Advisory Committees Assessment, Office of Program Policy Analysis and Government Accountability, Report No. 08-S11, December 2008. As an example of the assignment of council duties to other state entities, the Department of Health is required to collaborate with other state agencies to promote healthy lifestyles of state employees (*id.* at 4; see also s. 381.0054, F.S.).

<sup>7</sup> Email correspondence between House of Representatives staff and Department of Management Services staff (January 13, 2012). (On file with the Government Operations Subcommittee.)

**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 governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



PCB GVOPS 12-09

ORIGINAL

2012

1                   A bill to be entitled  
2           An act relating to the Florida State Employee Wellness  
3           Council; repealing s. 110.123(13), F.S., relating to  
4           the creation and duties of the Florida State Employee  
5           Wellness Council; providing an effective date.

6  
7   Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Subsection (13) of section 110.123, Florida  
10 Statutes, is repealed.

11           Section 2. This act shall take effect July 1, 2012.