

Department of Elder Affairs 2010 Legislative Action Summary

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Section I. Appropriations

House Bill 5001

RELATING TO APPROPRIATIONS

This bill is the \$70.4 billion General Appropriations Act (state budget) for state fiscal year 2010-2011. It provides the budget for the Department of Elder Affairs, as well as all other state agencies. The department's total budget for fiscal year 2010-11 is \$718.2 million, which is an increase of \$15 million (2.10 percent) over the last fiscal year. Key matters, which impact the department and our state's elders, are as follows:

- \$8.2 million to serve those on the waiting list for the Aged and Disabled Adult Medicaid Waiver with a priority score of 4 or higher.
- \$6.8 million to support seniors transitioning out of nursing home care and into community-based service waivers through the continuation of the Florida Nursing Home Transition Plan.
- \$2.6 million to support the Program for All-Inclusive Care for the Elderly (PACE), providing for 200 additional slots- 100 in Hillsborough County and 100 in Pinellas County.
- All Medicaid Waiver programs at the Department of Elder Affairs were held harmless.
- The Alzheimer's Medicaid Waiver was allowed to sunset and all clients were transitioned to other home and community-based waivers.
- \$1.6 million to fund an additional 25 CARES and Long-Term Care Diversion staff to decrease backlogs and support critical services in the programs.
- Authorization for \$7.2 million in federal American Recovery and Reinvestment Act (ARRA) funding to be used for Senior Nutrition Services.
- Authorization for \$1.1 million in federal ARRA funding to be used for Community Services Employment Program.
- Restoration of the Medically Needy and Medicaid for the Aged and Disabled (MEDS-AD) Programs for 1.4 billion.
- Funds appropriated for Aging Resource Centers (ARC) are required to be equally allocated to each ARC at the beginning of the fiscal year. The Department of Elder Affairs may re-allocate funds during the fiscal year based on negotiations with the ARCs.
- Authorization to transfer funds from the nursing home line item in order to transition the greatest number of appropriate eligible beneficiaries from skilled nursing facilities to community-based alternatives, thereby maximizing the reduction in Medicaid nursing home occupancy.
- When comparing the reductions to the Department's 2009 base budget, the Department's 2009-2010 budget was reduced by 2.57% overall.
- Alzheimer's Projects (which includes Memory Disorder Clinics, the Brain Bank, and Alzheimer's Projects) funded with non-recurring dollars, a total of \$5.8 million. Funding for this item in the department's budget will end on June 30, 2011 unless the Legislature decides to include it in the FY 2011-12 budget.
- Local Service Programs (except the Little Havana Activities and Nutrition Centers of Dade County and City of Hialeah projects) funded with non-recurring dollars, a total of \$7 million. Funding for this item in the department's budget will end on June 30, 2011 unless the Legislature decides to include it in the FY 2011-12 budget.
- \$200,000 of recurring dollars to fund the Little Havana Activities and Nutrition Centers of Dade County local service program. \$250,000 of recurring dollars to fund the City of Hialeah local service program.

- \$1.7 million to fund construction of the Mildred Pepper Senior Center in southwest Miami-Dade County.
- \$1.2 million to complete the construction of the Charles and Rae Kane Senior Center in Martin County.
- \$2.2 million in spending authority for various federal grants.

Signed by the Governor on 05/28/10 – Chapter 2010-152, Laws of Florida
<http://laws.flrules.org/2010/152>

Senate Bill 5003

RELATING TO APPROPRIATIONS IMPLEMENTING BILL

This bill implements the provisions of House Bill 5001 within the Florida Statutes. The statutory changes are effective for only one year and either expire on July 1, 2011 or revert to the language as it existed before the changes made by this bill. Key matters, which impact the department and our state's elders, are as follows:

Section 55. Extends for another year the provision that, for health savings accounts for full-time and part-time state employees in association with a health insurance plan option authorized by the Legislature, the state's monthly contribution for employees having individual coverage shall be \$41.66 and the monthly contribution for employees having family coverage shall be \$83.33. (This maintains the same contribution amounts as were established for the 2009-2010 fiscal year.)

Section 62. Provides that funds appropriated for travel by state employees shall be limited to travel for activities that are critical to each state agency's mission. The section prohibits funds from being used to travel to foreign countries, other states, conferences, staff-training or other administrative functions unless the agency head approves it in writing. Agency heads are also required to consider using teleconferencing and electronic communication to meet the needs of the activity before approving travel.

Section 64. Provides that an agency may transfer funds from the data processing appropriation categories to another appropriation category for the purpose of supporting and managing its computer resources until such time as the agency's data processing function is transferred to the Southwood Shared Resource Center, the Northwood Shared Resource Center, or the Northwest Regional Data Center.

Section 65. Provides that state agencies required by the 2010-2011 General Appropriations Act to begin planning for a data center consolidation scheduled for a subsequent FY may accelerate the consolidation into FY 2010-2011 contingent on the approval by the Legislative Budget Commission. The primary data center may add positions contingent on an equal or greater number of positions being placed in reserve from the agency data center being consolidated.

Section 70. Provides for any purchase of goods and services in excess of \$5 million through state contracting, preference shall be given to the maximum extent possible by law

Signed by the Governor on 05/28/10 – Chapter 2010-153, Laws of Florida (Governor vetoed specific line item, not impacting DOEA)
<http://laws.flrules.org/2010/153>

House Bill 5301

RELATING TO MEDICAID SERVICES

This is a conforming bill to the General Appropriations Act and contains various statutory revisions to conform to budget adjustments in the area of health care.

- Amends s. 400.23, F.S., modifying nursing home staffing requirements to allow for a combined direct care staffing requirement of 3.9 hours per resident per day. The bill also amends s. 400.141, F.S., providing a cross-reference to conform to the act;
- Amends s. 400.179, F.S., precluding the collection of Lease Alternative Bond Fund payments for nursing homes when the fund balance exceeds \$25 million;
- Amends s. 409.904, F.S., extending the date that the Medicaid Aged and Disabled (MEDS-AD) and Medically Needy programs are set to sunset to June 30, 2011;
- Amends s. 409.905, F.S., authorizing the agency to develop and implement a program to reduce the number of hospital readmissions among the non-Medicare population in AHCA Areas 9, 10, and 11;
- Amends s. 409.907, F.S., authorizing the agency to enroll entities as Medicare crossover-only providers for payment and claims processing purposes; requiring the provider to have a current provider agreement with Centers for Medicare and Medicaid Services; requiring a provider to immediately notify the agency of suspensions or disenrollment as a Medicare provider; requiring health care services records to be kept by the provider for a minimum of 6 years; and providing an enrollment exclusion for providers that are required to post a surety bond as part of the Medicaid enrollment process. This bill also amends 409.908, F.S., providing penalties for providers that fail to report suspension or disenrollment from Medicare;
- Amends ss. 409.9082 and 409.9083, F.S., clarifying the use of the funds collected as a result of implementing quality assessment programs for nursing homes and privately operated intermediate care facilities for the developmentally disabled;
- Amends ss. 409.911, 409.9112, 409.9113, and 409.9117, F.S., specifying the years of audited data to be used in determining Medicaid and charity care days for hospitals participating in the Disproportionate Share Hospital (DSH) Program and revising the formula used to calculate disproportionate share dollars to provider service network hospitals;
- Creates an undesignated section of law authorizing the Agency for Health Care Administration (AHCA) to contract with a private health care organization to provide comprehensive services to frail and elderly persons residing in Polk, Highlands, Hardee, and Hillsborough Counties and approving 150 initial enrollees in the Program of All-inclusive Care for the Elderly (PACE) to serve persons in Polk, Highlands, and Hardee Counties; and
- Creates an undesignated section of law authorizing the Agency for Health Care Administration (AHCA) to contract for a new PACE site in Southwest Miami-Dade County and approving 50 initial enrollees in the PACE to serve persons in Southwest Miami-Dade County.

Signed by the Governor on 5/28/10 – Chapter 2010-156, Laws of Florida
<http://laws.flrules.org/2010/156>

Section II. Bills Impacting the Department

Senate Bill 1412

RELATING TO OBSOLETE OR OUTDATED AGENCY PLANS/REPORTS/PROGRAMS

This bill modifies or deletes numerous specific agency program, planning, and reporting requirements.

Section 37. Amends s. 120.542, F.S., which requires a yearly report from agencies to the Legislature and Governor on agency petitions for rule variances and waivers.

Section 56. Repeals s. 216.181(10)(c), F.S., requiring state agencies and the judicial branch to report, each fiscal quarter, the number of filled positions, the number of vacant positions, and the salary rate associated with each category to the Legislative Budget Commission.

Section 64. Repeals s. 287.045(11), F.S., which requires each agency to report annually to DMS on agency total expenditures on, and use of, products with recycled content and the percentage of its budget that represents purchases of similar products made from virgin materials, and requires DMS to prepare annual summaries of statewide purchases delineating those with recycled content to be submitted to the Governor and the Legislature.

Section 107. Repeals s. 400.148(2), F.S., which requires the AHCA to develop a pilot project in selected counties to demonstrate the effect of assigning skilled and trained medical personnel to ensure the quality of care, safety, and continuity of care for long-stay Medicaid recipients in the highest-scoring nursing homes in the Florida Nursing Home Guide.

Section 122. Repeals s. 409.221(4)(k), F.S., by removing a requirement that AHCA, Elder Affairs, DOH, and DCF each, review the implementation of the consumer-directed care program and annually report to the Legislature.

Section 141. Amends s. 429.07(3)(b), F.S., by deleting a requirement that the Department of Elder Affairs submit to the Governor and Legislature an annual report on extended congregate care services.

Section 142. Amends s. 429.41(5), F.S., by removing a requirement that the Department of Elder Affairs submit to the Legislature an annual report on DOEA's implementation of abbreviated biennial licensure inspections of assisted living facilities.

Section 143. Amends s. 430.04, F.S., by removing a requirement that the DOEA prepare and submit to political leaders a master plan for policies in the state related to aging. The bill changes references to entities and persons within the Legislature to references to "the Legislature." The bill deletes a requirement that agency budget requests reflect the results and recommendations of program reviews concerning programs related to aging, and deletes requirements that the master plans be updated every three years, and that the implementation of the plan be reported every year.

Section 144. Amends s. 430.502, F.S., by requiring the Alzheimer's Disease Advisory Committee to make recommendations to the DEA and the Legislature concerning the need for additional memory disorder clinics in the state. The bill deletes a requirement that the waiver program design be submitted to the Legislature for consultation during the development process.

Signed by the Governor on 05/26/10 – Chapter 2010-102, Laws of Florida
<http://laws.flrules.org/2010/102>

Section III. Bills Impacting Elders

House Joint Resolution 37

RELATING TO HEALTH CARE SERVICES

The joint resolution proposes to amend Section 28 of Article I of the Florida Constitution. The joint resolution prohibits any person, employer, or health care provider from being compelled to participate in any health care system. The joint resolution authorizes any person or employer to pay directly for health care services and provides that persons or employers shall not incur a penalty or fine for direct payment.

The joint resolution authorizes a health care provider to accept direct payment and prohibits penalties and fines for providers accepting direct payment.

The joint resolution permits reasonable regulation but bans any law or rule which prohibits private health insurance sales or purchases.

Nothing in the joint resolution will affect:

- Which health care services a provider is required to perform;
- Which health care services are permitted by law;
- Worker's compensation care as provided by general law;
- Laws or rules in effect as of March 1, 2010;
- Negotiated provisions in any insurance contract, network agreement, or other provider agreement contractually limiting co-payments, coinsurance, deductibles, or other patient charges; and
- Any general law passed by a two-thirds vote of the membership of each house, provided that the law states with specificity the public necessity justifying the exemption.

The joint resolution provides definitions and usage of its terms and includes a ballot summary. The joint resolution was approved by three-fifths vote of the membership of each house; thus it will be presented to the electors of Florida at the November 2, 2010 general election. Approval requires a favorable vote from 60 percent or more of the electors voting on the measure.

The joint resolution has a negative, non-recurring fiscal impact on state government of \$90,800. The Department of State must expend funds to meet constitutional publishing requirements for the proposed constitutional amendment.

On July 29, 2010, the proposed measure was removed from the ballot by court order.

House Bill 91

RELATING TO ADULT PROTECTIVE SERVICES

The bill changes several definitions used in ch. 415, F.S., relating to adult protective services. The bill replaces the terms "disabled adult" and "elderly persons" with the term "vulnerable adult," and adds

“sensory” to the term “vulnerable adult.” The bill creates a definition for “activities of daily living” that conforms the phrase with its use in Part II of ch. 429, F.S., relating to adult family-care homes.

The bill provides that the central abuse hotline must transfer to the appropriate county sheriff’s office reports of known or suspected abuse of a vulnerable adult involving a person other than a relative, caregiver, or household member. This change aligns the abuse of vulnerable adult reporting requirements with the abuse of children reporting requirements.

The bill authorizes the Department of Children & Families (Department), upon a good faith belief that a vulnerable adult lacks the capacity, to file a petition to determine capacity in emergency and nonemergency adult protective proceedings, pursuant to s. 744.3201, F.S. A copy of a petition for appointment of a guardian or emergency temporary guardian can be filed along with a petition to determine capacity. The bill prohibits the Department from serving as guardian or providing legal counsel to the guardian once such petition has been filed.

The bill provides the Department with access to records of the Department of Highway Safety & Motor Vehicles for use in conducting protective investigations.

The bill has no impact on state or local government.

Signed by the Governor on 5/7/10 – Chapter 2010-31, Laws of Florida
<http://laws.flrules.org/2010/31>

House Bill 491

RELATING TO TEACHING NURSING HOMES

A teaching nursing home is a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility. Presently, only one facility, the Miami Jewish Home and Hospital for the Aged at Douglas Gardens, is designated a teaching nursing home.

The bill revises the requirements for becoming a teaching nursing home, which increases the number of facilities eligible for the designation. Under the revised requirements, the Miami Jewish Home and Hospital for the Aged at Douglas Gardens will remain eligible. Presently, Joseph L. Morse Geriatric Center, Inc., (MorseLife) in Palm Beach County, River Garden Hebrew Home for the Aged in Jacksonville, and Indian River Center in West Melbourne may also meet the requirements of the bill. In the future, other nursing homes may become eligible.

The bill will have no fiscal impact on state government.

Signed by the Governor on 6/3/10 – Chapter 2010-197, Laws of Florida
<http://laws.flrules.org/2010/197>

House Bill 945

RELATING TO AUTOMATED EXTERNAL DEFIBRILLATORS IN ASSISTED LIVING FACILITIES

Automated external defibrillators (AEDs) are computerized devices that are used by healthcare providers and by lay rescuers to revive victims who are thought to be in cardiac arrest.

The bill amends s. 429.255, F.S., effective July 1, 2011, to provide that an ALF with 17 or more beds must have on the premises at all times a functioning AED. The bill encourages the location of the AED to be registered with the medical director of the local emergency medical service.

The bill directs that facility staff may withdraw or withhold the use of an AED if presented with an order not to resuscitate in the same manner as they can now withdraw or withhold cardiopulmonary resuscitation. The civil immunity provisions of the Cardiac Arrest Survival Act and the Good Samaritan Act will apply to both the ALF and the facility staff.

The bill provides that the Department of Elder Affairs may adopt rules relating to the use of an automated external defibrillator in an ALF.

The bill provides an appropriation of \$11,200 in nonrecurring revenue and \$22,447 in recurring revenue in FY 2010-2011 and \$113,030 in recurring revenue in FY 2011-2012 from the General Revenue Fund to the Agency for Health Care Administration for two Health Facility Evaluators (two FTEs) to implement the provisions of the bill.

Signed by the Governor on 6/3/10 – Chapter 2010-200, Laws of Florida
<http://laws.flrules.org/2010/200>

House Bill 1003

RELATING TO VETERANS

The bill clarifies several sections of Florida law pertaining to veterans' services, and reduces duplicate fundraising regulatory requirements for veterans' services organizations. Specifically, the bill:

- Amends s. 496.406, F.S., to exempt any division, department, post, or chapter of a veterans' service organization that has been granted a federal charter under Title 36, U.S.C.;
- Deletes the eligibility requirement that service-disabled veterans must have suffered a 10 percent or greater service-connected disability in order to be eligible to receive any of the benefits provided for under the Florida Service-Disabled Veteran Business Enterprise Opportunity Act;
- Codifies the Florida Department of Veterans Affairs' current policy that to be eligible for residency in the Veterans' Domiciliary Home of Florida (assisted living) or any of the four Veterans' Nursing Homes of Florida (skilled nursing), a veteran must have been approved as eligible for care and treatment by the U.S. Department of Veterans Affairs; and
- Revises the eligibility requirements for residency in any of the Veterans' Nursing Homes of Florida to also include veterans with peacetime service, not just those with wartime service.

Senate Bill 1484

RELATING TO MEDICAID

This bill amends multiple sections of Florida Statutes relating to Medicaid as following:

- Amends s. 16.59, F.S., requiring Medicaid related fraud units to be colocated, to the extent possible;
- Requiring the Medicaid managed care fraud investigators within the Attorney General's Office to colocate with the Division of Insurance Fraud within the Department of Financial Services (DFS); and conforming provisions to changes made by the act;
- Amends s. 20.121, F.S., establishing the Division of Public Assistance Fraud within the DFS effective January 1, 2011;
- Amends s. 409.912, F.S., allowing a provider service network to provide behavioral health services in addition to physical health services in areas of the state not under Medicaid reform and conforming provisions to changes made by the act;
- Amends s. 409.91211, F.S., extending the guidelines for phasing in financial risk for approved provider service networks and Children's Medical Services Networks over the period of the waiver and the extension thereof; revising the requirements for the selection of a behavioral health care provider in Broward County for children who have a case open in the Department of Children and Family Services' HomeSafeNet; and authorizing a participating specialty plan to receive an administrative fee for coordination of services contingent on the state share being provided through intergovernmental transfers (IGTs);
- Amends s. 409.91212, F.S., requiring each Medicaid managed care plan to adopt an anti-fraud plan to address overpayment, abuse, and fraud in the provision of Medicaid services and to submit the plan for approval to the Office of Medicaid Program Integrity with the Agency for Health Care Administration (AHCA); requiring each Medicaid managed care plan to establish a fraud investigative unit or contract with an entity; requiring an annual report from each managed care plan outlining its experience in implementing an anti-fraud plan; providing penalties for Medicaid managed care plans that fail to comply; and requiring all Medicaid managed care plans to report any suspected instance of overpayment, fraud, or abuse to the Office of Medicaid Program Integrity within 15 days;
- Amends ss. 411.01, 414.33, and 414.39, F.S., conforming provisions to changes made by the act. This bill also amends 943.401, F.S., transferring and renumbering s. 934.401, F.S., as s. 414.411, F.S., and directing the DFS rather than the Florida Department of Law Enforcement (FDLE) to investigate public assistance fraud;
- Creates ss. 624.35 and 624.351, F.S., establishing the "Medicaid and Public Assistance Fraud Strike Force" (Strike Force) within the DFS to develop a statewide strategy and coordinate state and local efforts and resources to prevent, investigate, and prosecute Medicaid and public assistance fraud.
- Creates s. 624.352, F.S., requiring the Chief Financial Officer to develop model interagency agreements to coordinate the prevention, investigation, and prosecution of Medicaid and public assistance fraud;

- Creates an undesignated section of law directing the AHCA to request an extension of the current Medicaid Reform waiver obtained under s. 1115 of the Social Security Act and to preserve the Low Income Pool provisions of the waiver by no later than July 1, 2010;
- Creates an undesignated section of law directing the AHCA to develop methodologies to maintain the use of IGTs and certified public expenditures in a Medicaid managed care environment; authorizing the AHCA to convene a workgroup to advise on the study and development of IGT distribution methods; and requiring a report to the Legislature and Governor by January 1, 2011;
- Creates an undesignated section of law requiring the Auditor General and the Office of Program Policy Analysis and Government Accountability to review and evaluate the AHCA's Medicaid fraud and abuse systems and requiring a report to the Legislature and Governor by December 1, 2011;
- Creates an undesignated section of law establishing the Medicaid claims adjudication project in the AHCA to decrease the incidence of inaccurate payments and to improve efficiency to the Medicaid claims processing systems; and
- Creates an undesignated section of law transferring all powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to public assistance fraud in the FDLE to the Division of Public Assistance Fraud in DFS.

Signed by the Governor on 5/28/10 – Chapter 2010-144, Laws of Florida
<http://laws.flrules.org/2010/144>

Senate Bill 2176

RELATING TO INSURANCE

This bill makes changes to various insurance laws primarily related to commercial lines insurance, risk management or self-insurance for public entities, warranty associations, disability presumption and workers' compensation for law enforcement officers, Medicare supplemental insurance, and annuities. The changes made by the bill that potentially impact Florida's elders are as follows:

Medicare Supplemental Insurance

Medicare is health insurance for people 65 years of age and older and for those under age 65 with a disability or End Stage Renal Disease. Under federal law, Medicare beneficiaries age 65 and older, who are also enrolled in Medicare Part B, have a guaranteed right to purchase a Medicare supplemental policy (Medigap insurance) during an open enrollment period. Medigap insurance helps pay some of the health costs not covered by Medicare, including copayments, coinsurance, and deductibles.

The Department of Health and Human Services (HHS) defines the parameters and provides guidelines for standardized Medigap policies. HHS has opined a network arrangement wherein the facility agrees to waive all or a portion of the Medicare Part A in-patient deductible if the facility does not violate standardization provisions. In addition, HHS has opined if products containing such provisions are permitted to be marketed and sold in a state, the waiver of the Part A premium deductible and the premium credit must be factored into the loss ratio calculation and into the policy premium.

The bill allows insurers that offer Medigap insurance policies to enter into agreements with in-patient facility networks that agree to waive the Medicare Part A deductible in whole or in part. The insurer is

not required to file a copy of the network agreement with the OIR. Such network agreements are not subject to OIR approval. The bill also provides that premium credits granted to insureds under Medigap insurance policies for using in-network in-patient facilities do not constitute an unfair method of competition or unfair or deceptive trade practice. The waiver of the Medicare Part A deductible and premium credit are required to be factored into the insurer's loss-ratio calculation and policy premium.

Annuities

An annuity is a contract sold by an insurance company designed to provide a stream of payments to the purchaser at specified intervals, typically after retirement. Because these contracts allow retirees protection against outliving their savings, these products have become extremely popular among Florida's increasingly large retirement-aged population.

The Department of Financial Services (DFS) is the state agency responsible for regulating the sale of annuities in Florida. This bill makes several changes in the Florida Insurance Code to enhance penalties for unethical annuity sales practices as well as provide certain consumer protections for seniors who purchase annuity contracts. The bill includes the following provisions:

- Generally prohibits family members of the life insurance agent that sells the policy from being named as beneficiaries;
- Strengthens DFS's ability to deny licensure to agents for specified misconduct;
- Bars issuance of a license to an agent or customer representative who previously had their license revoked due to the solicitation or sale of an insurance product to a senior consumer;
- Generally entitles senior consumers of annuities to a 21-day unconditional refund;
- Requires more favorable annuity contract terms for seniors and requires sales agents to provide seniors with greater disclosures prior to the sale of an annuity contract; and
- Increases the maximum administrative fines for deceptive annuity sales practices towards seniors and gives DFS the authority to order the selling agent to pay restitution to a senior who is harmed by a violation of this section.

Signed by the Governor on 6/1/10 – Chapter 2010-175, Laws of Florida
<http://laws.flrules.org/2010/175>

House Bill 7069

RELATING TO SCREENING

Florida law mandates criminal background screening of certain individuals applying to operate or to be employed in a business that deals primarily with vulnerable persons. Each provider, employee, or contractor required to submit to a criminal background screening may be subject to one of two types of screening requirements. A Level 1 screening simply requires a name search of state records, while a Level 2 screening requires a fingerprint search of state and national records. If a person's screening results determine he or she is not qualified to work in a position of trust due to their criminal history, he or she may apply for an exemption from disqualification.

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. Key changes made by the bill:

- Require that no person required to be screened may begin work until the screening has been completed;
- Increase all Level 1 screening to Level 2 screening;
- Require all fingerprints to be submitted electronically by July 1, 2012;
- Require certain personnel that are not presently being screened to begin Level 2 screening;
- Add additional serious crimes to the list of disqualifying offenses;
- Authorize agencies to request the retention of fingerprints by the Florida Department of Law Enforcement;
- Provide that an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony;
- Require that all exemptions from disqualification be granted only by the agency head; and
- Authorize the Department of Children and Family Services to drug test a licensed foster parent if there is a reasonable suspicion that he or she is using illegal drugs.

The new screening requirements are prospective. Existing persons working with vulnerable populations are not required to be rescreened until such time they are otherwise required to be rescreened by existing law.

Signed by the Governor on 5/26/10 – Chapter 2010-114, Laws of Florida
<http://laws.flrules.org/2010/114>

Section IV. Other Bills of Importance

Senate Bill 1178

RELATING TO COST-BENEFIT/RETURN-ON-INVESTMENT/DYNAMIC SCORING

The bill creates s. 216.138, F.S., providing authority for the President of the Senate or the Speaker of the House of Representatives to request special impact sessions of consensus estimating conferences to evaluate proposed legislation based on tools and models not generally employed by the conferences, including cost-benefit, return-on-investment, or dynamic scoring techniques, when suitable and appropriate for the legislation being evaluated.

The bill also provides that the Office of Economic and Demographic Research, acting in consultation with the principals of the consensus estimating conferences and after receiving public input, shall develop protocols and procedures necessary to implement the provisions of s. 216.138, F.S. At a minimum, the protocols and procedures to be used for evaluating specific proposed legislation shall include cost-benefit, return-on-investment, and dynamic scoring techniques and may include additional, appropriate economic techniques. Additionally, the protocols and procedures must address the format for reporting results and provide proposed linkages to the appropriations and revenue forecasting processes, including any statutory changes that may be needed. The linkages must be consistent with the constitutional requirement for a balanced budget.

The office is required to submit a report of its findings and recommendations to the President of the Senate and the Speaker of the House of Representatives by December 1, 2010. Subject to approval by the President of the Senate and the Speaker of the House of Representatives following the submission of the report, the protocols and procedures shall be used to the extent feasible for the analysis of specific proposed legislation by consensus estimating conferences as provided in s. 216.138, F.S., unless and until such approval is subsequently affirmatively revoked.

Signed by the Governor on 5/26/10 – Chapter 2010-101, Laws of Florida
<http://laws.flrules.org/2010/101>

House Bill 1193

RELATING TO RETIREMENT

The bill revises the definition of “special risk member” to include members of the Florida Retirement System (FRS) who suffer from a qualifying injury and are no longer capable of being employed in a Special Risk Class eligible position. Any member employed in a law enforcement, firefighting, or criminal detention position who suffers a qualifying injury in the line of duty could continue membership in the FRS Special Risk Class. However, such member must continue to work for the same employer for whom they were working when they sustained the qualifying injury. In addition, the bill defines the term “qualifying injury” as the physical loss, or loss of use, of two or more limbs. This provision of the bill applies to members reaching maximum medical improvement after August 1, 2008.

This bill also revises firefighter death benefits and expands the activities that qualify firefighters to receive death benefits to include training sessions. An additional death benefit is authorized when a

firefighter is injured by an unlawful and intentional act of another in the performance of his or her duties and dies as the result of such injury. Both benefit payments are adjusted to the Consumer Price Index. This provision of the bill applies to deaths of firefighters occurring on or after November 1, 2007.

Signed by the Governor on 6/1/10 – Chapter 2010-179, Laws of Florida
<http://laws.flrules.org/2010/179>

House Bill 1307

RELATING TO STATE FINANCIAL MATTERS

The bill makes changes to the Florida Retirement System (FRS) Investment Plan that codify practices and policies used by the State Board of Administration (SBA) in administration of the plan since its inception. In addition, the bill:

- Makes changes to the investment authorizations for the FRS Pension Plan by increasing the permitted holdings of foreign equity from 25 to 35 percent of the total fund;
- Permits proceeds of bonds issued on behalf of the Florida Hurricane Catastrophe Fund to be invested without limitation in certain federal tax-exempt obligations; and
- Authorizes the SBA to secure trademarks, copyrights, and patents on behalf of the FRS or any other fund under its jurisdiction.

The bill reduces the administrative charge employers pay for employee participants in the FRS Investment Plan by 40 percent for the next four years. It also provides additional time for employers to pay invoices for FRS Investment Plan participant losses related to an employer payment delinquency.

The bill makes SBA governance changes to improve transparency and accountability including:

- Producing an annual set of financial statements that must be reported to the Legislature and audited by an independent commercial audit firm;
- Creating minimum qualifications for the executive director of the SBA;
- Increasing the number of members of the Investment Advisory Council from six to nine effective February 1, 2011;
- Codifying in law the Audit Committee created in 2007 by the Trustees of the SBA;
- Requiring the Investment Advisory Council to receive regular fiduciary training and to complete an annual conflict disclosure statement; and
- Creating ethics, certification, and disclosure requirements for SBA investment advisers and managers.

If the Trustees of the SBA cannot be convened within 48 hours, the bill authorizes the executive director of the SBA to act in an emergency to extend the expiration of moratoriums on contributions and withdrawals to the Local Government Investment Pool.

Signed by the Governor on 6/1/10 – Chapter 2010-180, Laws of Florida
<http://laws.flrules.org/2010/180>

House Bill 1565

RELATING TO RULEMAKING

The bill makes significant changes to the Administrative Procedure Act relating to agency rules that require a prepared or revised statement of estimated regulatory costs (SERC), the elements of a SERC, the declaration of invalidity of a SERC, and the economic development thresholds that trigger legislative review and ratification of a rule before it may become effective.

The bill requires an agency to prepare a SERC prior to the adoption, amendment, or repeal of a rule that either has an adverse impact (rather than any impact, as in current law) on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within one year after implementation of the rule.

The bill exempts an emergency rule from the 90-day effective period limitation and the renewability prohibition when an agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and the proposed rule is awaiting ratification by the Legislature. Nothing precludes the agency from adopting a rule identical to the emergency rule through the rule adoption process used for all rules.

The bill requires an agency to revise its SERC if any change to the proposed rule increases regulatory costs. At least 45 days before filing a proposed rule for final adoption, an agency must provide a copy of its revised SERC to the person who submitted the lower cost regulatory alternative and provide notice on its website that the document is available to the public.

An agency that fails to prepare or revise a SERC according to these new conditions has committed a material failure to follow the state's rulemaking procedures. However, the proposed rule is not declared invalid unless the issue is raised within one year after the rule's effective date and the agency's failure materially affects the substantial interests of the person challenging the agency. Additionally, any rule that is challenged by a substantially affected person because it is an "invalid exercise of delegated legislative authority" imposing regulatory costs on a regulated person, city, or county that could be reduced by a lower cost alternative, may not be automatically declared invalid unless the issue is raised in an administrative hearing within one year after the rule's effective date; the challenge is to the agency's rejection of a lower cost alternative under one of two provisions of the Administrative Procedure Act; and, the substantial interests of the person challenging the agency on its proposed rule are materially affected by the rejection of the lower cost alternative.

In addition to other required elements of a SERC, the bill requires the inclusion of an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of \$1 million in the aggregate within five years after rule implementation on:

- Economic growth;
- Private-sector job creation or employment;
- Business competitiveness;
- Private-sector investment;
- Productivity;
- Innovation; or

- Ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets.

Also, it must include whether the proposed rule directly or indirectly increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after rule implementation.

The requirement for an economic analysis does not apply to the adoption of an emergency rule that addresses an immediate danger to the public health, safety, or welfare or the adoption of federal standards.

Additionally, the required SERC impact analysis related to small business must include the basis for the agency's decision not to implement proposed alternatives to reduce adverse impacts.

The bill requires that any rule that has an adverse impact or regulatory cost exceeding the criteria of the economic analysis must be submitted to the President of the Senate and the Speaker of the House of Representatives. The rule must be submitted no later than 30 days before the next regular legislative session, and it is prohibited from taking effect until ratified by the Legislature.

The bill amends rule challenge provisions in the Administrative Procedure Act to reflect the expanded timeframe for challenging a proposed rule after a SERC or revised statement has been prepared and made available. It also deletes an unnecessary prohibition relating to the impairment of contracts.

Finally, the bill gives agencies authority to establish, by rule, the time period within which any requested information regarding an application for a license or permit must be submitted to the agency, and requires agencies to grant a request for an extension of that time for good cause shown. The bill also provides that if the applicant for licensure believes that the request for additional information is not authorized by law or rule, the agency must proceed with processing the application at the applicant's request.

Vetoed by the Governor on 05/28/10 – The Legislature will consider overriding the Governor's veto of this bill during Special Session on 11/16/10.

Senate Bill 2020

RELATING TO INFORMATION TECHNOLOGY

The bill amends s. 14.204, F.S., to expand the role of the Agency for Information Technology (AEIT) in information technology (IT) purchases for IT products, including software and hardware, used by multiple agencies to better leverage the state's purchasing power. The AEIT is also provided additional authority to establish IT standards for statewide email, information technology, and the data center system.

The bill amends s. 282.34, F.S., to establish a competitive solicitation process for procuring a statewide consolidated email service through the joint effort of the AEIT and the Southwood Shared Resource Center (SSRC). The goal is to centralize state-wide email services, where practical, at one location to generate cost savings and efficiencies.

The bill amends s. 282.203, F.S., to require the state primary data centers; which include the Norwest Regional Data Center, the Northwood Shared Resource Center, and the SSRC; to report more detailed cost and financial information twice a year, as well as projected costs and billings for legislative budget request issues. The Boards of Trustees for the primary data centers are required to develop and implement an annual performance evaluation process for their respective data center directors.

The bill amends s. 282.703, F.S., to require the Department of Management Services to require standards for telecommunications; require the department maintain a directory of the names, numbers and email addresses for employees, agencies and network services utilizing SUNCOM services; and to require all customers of a state primary data center to use the shared SUNCOM telecommunications services.

The bill provides AEIT with three full-time positions and \$300,000 of General Revenue to implement the provisions of the bill relating to consolidating purchasing for IT products, particularly email services.

Signed by the Governor on 05/28/10 – Chapter 2010-148, Laws of Florida
<http://laws.flrules.org/2010/148>

Senate Bill 2386

RELATING TO STATE FINANCIAL MATTERS

The bill revises statutory provisions related to competitive solicitation processes, coordination of contracted services, contract management and oversight, and collections of delinquent accounts.

The bill also revises provisions relating to identification and collection of delinquent accounts. It sets a time certain of 120 days for agencies to report delinquent accounts to the Department of Financial Services for collection. The bill requires:

- Agencies to submit an annual report detailing delinquent accounts that were referred for collection, those that were not referred for collection, and a list of all accounts that were waived or written off for any reason; and
- The Chief Financial Officer (CFO) to submit an annual report that includes the amount of claims referred for collection, the number of accounts by age and amount, a listing of agencies that failed to report known delinquent accounts in a timely manner, and the total amount of claims collected.

The bill revises provisions specific to procurement. It increases threshold amounts based upon the consumer price index from 1999 forward and then rounding to the nearest \$5,000 amount. The bill also revises current exemptions to the competitive solicitation process. It retains statutory requirements for business cases for outsourcing projects more than \$10 million and requires those business cases to go through the legislative budget request process.

The bill requires state agencies to provide specific information to the Department of Financial Services when an agency elects not to use the competitive solicitation process to award a contract for commodities or services. It also directs the CFO's office to provide contract training to agencies in order to ensure better monitoring and documentation of contractor performance.

The bill increases contractual requirements relating to protection of state interests regarding intellectual property. State purchasing agreements and state term contracts must include provisions that:

- Define the scope of work that a contractor must perform;
- Identify quantifiable, measurable and verifiable units of deliverables and require those deliverables to be accepted in writing prior to payment;
- Specify the financial consequences for contractor noncompliance; and
- Specify the ownership rights of any intellectual property related to the contract.

The bill updates and expands upon the conflict of interest provisions. Updates are based upon similar criteria used at the federal level.

The bill requires coordination of contract management for health and human services between agencies and their contracted service providers.

State agencies are directed to review and renegotiate current contract renewals and reprocurements in an effort to realize savings of at least three percent. If savings are found, then those savings must be placed in reserve by the Executive Office of the Governor. In addition, agencies are directed to enforce any preferred-pricing clause in state contracts. Agencies may terminate a contract for failure to comply with the preferred-pricing clause.

The bill revises provisions specific to payment of services by:

- Directing all agencies and the judicial branch to use electronic payment disbursements and receipts for all state payments where possible; and
- Authorizing the CFO and agencies to adopt rules requiring electronic funds transfers for payment of services and goods and by requiring that those rules provide alternate means for payment to accommodate persons with certain hardships.

The bill repeals the Council on Efficient Government, a statutorily created advisory body, charged with reviewing business plans for outsourcing. Five FTEs and \$311,915 in salaries and benefits from General Revenue are appropriated to the Department of Financial Services in order to carry out the provisions of this act.

Signed by the Governor on 05/28/10 – Chapter 2010-151, Laws of Florida

<http://laws.flrules.org/2010/151>
