

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 2364

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Criminal Statutes

DATE: March 26, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cannon	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill is a staff work product generated from extensive research from the Division of Statutory Revision (DSR) this past summer. The DSR identified items in the statutes that in their opinion needed some sort of technical and/or slightly substantive correction beyond what the DSR is authorized to do in its annual reviser's bill. Substantive staff in both the House of Representatives and the Senate disseminated and reviewed the list of statutes relevant to criminal justice, consulted with relevant stakeholders and agency officials, determined whether an amendment was needed and prepared the proposed revisions. Predominantly, the statutory errors or ambiguities were related to obsolete provisions, references to repealed or transferred statutes, transferred statutes which did not include all of the cross references, and conflicting versions of laws.

This bill substantially amends the following sections of the Florida Statutes: s. 775.0877, s. 775.25, s. 784.07, s. 815.03, s. 817.554, s. 828.17, s. 831.16, s. 831.17, s. 831.18, s. 831.21, s. 831.27, s. 831.30, s. 838.021, s. 860.13, s. 865.09, s. 877.22, s. 893.02, s. 893.10, s. 914.24, s. 916.12, s. 916.3012, s. 918.0155, s. 921.0022, s. 921.20, s. 932.704, s. 933.18, s. 933.40, s. 934.03, s. 938.15, s. 943.051, s. 943.053, s. 943.0581, s. 944.023, s. 944.053, s. 944.474,

s. 944.708, s. 944.801, s. 945.10, s. 947.16, s. 949.071, s. 951.23, s. 951.231, s. 957.07, s. 960.003, s. 984.225, s. 985.486, and s. 985.632.

The bill reenacts the following sections of the Florida Statutes: s. 847.0125, s. 921.141, s. 943.0582, s. 943.135, s. 944.28, s. 947.06, and s. 985.686.

## II. Present Situation:

The Division of Statutory Revision identified the following conflicts or ambiguities which are corrected by this bill<sup>1</sup>:

Section 1. (s. 775.0877, F.S.) Procedures relating to the criminal transmission of HIV are specified in this section. In that statute there is a cite to the lewd and lascivious statute s. 800.04 (1)-(3), F.S. This statute was substantially reworded in 1999 and material was relocated.

Section 2. (s. 775.25, F.S.) Prosecutions for acts by sexual predators are specified in the section. This section cites to a repealed s. 947.177, F.S. There is no obvious substitute section, and it is unclear how this might affect any actions dating from when s. 947.177, F.S., was still valid.

Section 3. (s. 784.07, F.S.) Provisions relating to the assault and battery of law enforcement officers are specified in the section. "Intake officer" was changed to "intake counselor" by s. 3, ch. 90-208. At the time, there were three occurrences of "intake officer" still existing in s. 39.047(5), F.S., and DSR was hesitant to revise.

Section 4. (s. 815.03, F.S.) Reference to definition of property in repealed s. 812.011, F.S. Research identified a definition of "property" in s. 812.012(3), F.S., but a comparison of the two definitions concludes they are different.

Section 5. (s. 817.554, F.S.) An obsolete term "Organized fraud" is still referenced in s. 817.034, F.S., and penalties for it are given in s. 817.034(4)(a), F.S. The definition in s. 817.034, F.S., is more expansive than the one in former s. 817.036, F.S.

Section 6. (s. 828.17, F.S.) The statute cites to s. 828.04, F.S., which was transferred to s. 827.03, F.S.

Section 7. (s. 831.16, F.S.) Reference to "the preceding section" is ambiguous and language archaic.

Section 8. (s. 831.17, F.S.) Reference to "the preceding section" is incorrect since this section was created in 1868 by s. 16, ch. 1637, and the preceding section was s. 15, ch. 1637, which is codified at s. 831.16, F.S.

Section 9. (s. 831.18, F.S.) Reference made to language which is confusing and archaic.

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<sup>1</sup> However, the statutory changes in sections 7, 22 and 44 of the bill were derived from other legislative staff research and from recommendations from the Auditor General.

Section 10 (s. 831.21, F.S.) Reference made to language which is confusing and archaic.

Section 11. (s. 831.27, F.S.) This provision dates from 1868 and includes a reference to the “laws of either of the British provinces in North America.” The intent is most likely to refer to Canada.

Section 12. (s. 831.30, F.S.) Reference to a definition of “prescription” in s. 465.031, F.S., was repealed. There is a definition of prescription in s. 465.003(13), F.S., but the two are not the same.

Section 13. (s. 838.021, F.S.) This section contains incomplete statements.

Section 14. (s. 847.0125, F.S.) This section presents a conflict between two 1986 laws.

Section 15. (s. 860.13, F.S.) Research indicates the reference may be archaic.

Section 16. (s. 865.09, F.S.) Reference to “this part” is not appropriate since ch. 865, is not divided into parts.

Section 17. (s. 877.22, F.S.) Reference to part II of ch. 39, is not appropriate since the parts have been reorganized and redesignated.

Section 18. (s. 893.02, F.S.) Contains a reference to repealed s. 465.031(5), F.S., regarding the definition of “medicinal drugs” or “drugs.”

Section 19. (s. 893.10, F.S.) Contains a reference to repealed s. 893.14(1), F.S.

Section 20. (s. 914.24, F.S.) The language in “914.22, other than an offense consisting of misleading conduct, or to prevent and restrain an offense under” was inadvertently dropped out of the statute when the statute was reenacted in 1992.

Section 21. (s. 916.12, F.S.) This section contains grammatically incorrect sentences which are confusing.

Section 22. (s. 916.3012, F.S.) This section contains grammatically incorrect sentences which are confusing.

Section 23. (s. 918.0155, F.S.) The last sentence requesting adoption of “emergency” rules (in 1985 law) implies a short duration or may be obsolete.

Section 24. (s. 921.0022 (3)(b) and (d), F.S.) Reference in sentencing guidelines list to text of catchline of s. 590.28, F.S.--was changed to “Intentional or reckless burning of lands” by s. 33, ch. 2000-308. Subsection (3)(d) was inadvertent omission.

Section 25. (s. 921.141, F.S.) Conflicting versions by two 1996 laws.

Section 26. (s. 921.20, F.S.) Reference to transferred s. 947.14, F.S., (s. 947.14(1), (2), (4), and (6), F.S., were transferred in part to s. 945.25, F.S., by s. 81, ch. 77-120, and s. 947.14(3) and (5),

F.S., were transferred to s. 947.13, F.S., by the reviser). Section 947.14, F.S., dealt with records re persons subject to parole, but it did not specifically mention classification summaries, the subject of s. 921.20, F.S.

Section 27. (s. 932.704, F.S.) The 12/31/1995 deadline for certifying compliance with the Contraband Forfeiture Act has passed. Deletion of this sentence wouldn't appear to affect any continuing duty to comply.

Section 28. (s. 933.18, F.S.) Reference to misdemeanor child abuse offenses, but list of them includes interference with custody in s. 787.03, F.S., which is a felony of the third degree (as amended by s. 1, ch. 88-244).

Section 29. (s. 933.40, F.S.) Reference to "magistrates" is inconsistent elsewhere in statutes.

Section 30.(s. 934.03, F.S.) Reference to s. 365.01--defined public utilities. The definition in s. 365.01, F.S., was created in 1949 and repealed in 1989.

Section 31. (s. 938.15, F.S.) Subsection (2) references "The commission" without defining what commission is meant. It is probably the Criminal Justice Standards and Training Commission. Section 943.10, F.S., defines it so for ss. 943.085-943.255, F.S., and s. 938.15, F.S., was transferred from former s. 943.25, F.S., without fixing the reference.

Section 32. (s. 943.051, F.S.) Cite to s. 827.05, F.S., re negligent treatment of children--the section was repealed by s. 11, ch. 96-322, and s. 31, ch. 96-388; 1996 law "moved" negligence material to s. 827.03, F.S., although it is not worded the same way.

Section 33. (s. 943.053, F.S.) Reference to the Florida Department of Revenue Child Support Enforcement--may be as intended. The reference was added by s. 74, ch. 97-170. Another law, ch. 97-287 deleted references to divisions (including the Division of Child Support Enforcement) from the Department of Revenue at s. 20.21. If there are no divisions or equivalent subunits, there may be no choice but to reference as done here.

Section 34. (s. 943.0581, F.S.) As amended by s. 4, ch. 2008-249, it seems something is missing.

Section 35.(s. 943.0582, F.S.) Conflicts between two 2001 laws.

Section 36. (s. 943.135, F.S.) Language in one sentence in s. 11, ch. 98-251, appears written differently and in two sentences in s. 3, ch. 98-249. It's not clear if they mean exactly the same thing.

Section 37. (s. 944.023, F.S.) Cite to s. 944.095(2)(a)-(k), F.S., repealed by s. 17, ch. 95-283.

Section 38. (s. 944.053, F.S.) References to an obsolete s. 917.012, F.S., which related to mentally disordered sex offenders.

Section 39. (s. 944.28(1), F.S.). The statute specifies circumstances in which the Department of Corrections may declare a forfeiture of gain-time earned by a prisoner. Chapter 91-280, L.O.F.,

purported to reenact s. 944.28(1), F.S., but did not include the version as amended by ch. 89-531, L.O.F. As a result, a reference to control release was omitted.

Section 40. (s. 944.474, F.S.) Unclear if reference to s. 112.0455(5)(a), F.S., is as intended.

Section 41. (s. 944.708, F.S.) Reference to Department of Labor and Employment Security (no longer exists).

Section 42. (s. 944.801, F.S.) Reference to Department of Labor and Employment Security (no longer exists).

Section 43. (s. 945.10, F.S.) Reference to Department of Labor and Employment Security (no longer exists).

Section 44. (s. 947.06, F.S.) Conflicting versions by two 1990 laws.

Section 45. (s. 947.16, F.S.) Reference to repealed s. 944.16, F.S.

Section 46. (s. 949.07, F.S.) Cite to s. 111(b) redesignated as 4 U.S.C. s. 112(b) by Pub. L. No. 89-554, s. 2(c), 80 Stat. 608.

Section 47. (s. 951.23, F.S.) The erroneous reference to “paragraph (1)(b)” was added at s. 31, p. 1462, 1996 H.J. in H.B. 1411.

Section 48. (s. 951.231, F.S.) The cited “s. 958.04(4)” was repealed by s. 101, ch. 94-209, and the repeal ratified by s. 31, ch. 97-94, and subunits were renumbered. The paragraph needs to be reworded.

Section 49. (s. 957.07, F.S.) Reference to the commission is obsolete (it was eliminated).

Section 50. (s. 960.003, F.S.) Section 381.004(3)(e), F.S., was repealed by s. 2, ch. 98-171.

Section 51. (s. 984.225, F.S.) Provisions formerly in parts II and III of ch. 39 were, for the most part, repealed or transferred to other locations by ch. 98-403.

Section 52. (s. 985.486, F.S.) Section 985.483, F.S., referenced doesn't establish the intensive residential treatment program for offenders less than 13--it lists criteria for being eligible for the program. Substantive expert indicates “as established in s. 985.483” needs to be “under s. 985.483.”

Section 53. (s. 985.632 (4)(a) and (7), F.S.) Contains an obsolete provision by citing to a repealed section.

Section 54. (s. 985.686, F.S.) Possible conflict in language between two 2006 laws re “that is entirely within” by s. 4, ch. 2006-229, vs. “within” by s. 3, ch. 2006-62. Paragraph (4)(a) is tied to 10/1/04 date.

### III. Effect of Proposed Changes:

Section 1. (s. 775.0877(1)(c), F.S.) The statute is changed to make reference to all of s. 800.04, F.S.

Section 2. (s. 775.25, F.S.) The statute is changed to insert the word “former” before s. 947.177, F.S.

Section 3. (s. 784.07(2), F.S.) The statute is changed by removing any reference to “intake counselor” since the term no longer exists in statutes.

Section 4. (s. 815.03(11), F.S.) The statute is changed to refer to s. 812.012, F.S., rather than the current reference to the repealed statute s. 812.011, F.S.

Section 5. (s. 817.554(4), F.S.) The statute is changed to refer to s. 817.034, F.S., rather than the obsolete provision of s. 817.036, F.S.

Section 6. (s. 828.17, F.S.) Removes the unnecessary citation to s. 828.04, F.S., since the elements of the crime are subsumed in the current s. 827.03, F.S.

Section 7. (s. 831.16, F.S.) The statute is changed to remove “preceding section” and instead refer to s. 831.15, F.S. The statute is also changed to remove archaic language and instead refer to a felony of the third degree to conform to current convention.

Section 8. (s. 831.17, F.S.) The statute is changed to remove “preceding section” and instead refer to s. 831.16, F.S. The statute is also changed to remove archaic language and instead refer to a felony of the second degree to conform to current convention.

Section 9. (s. 831.17, F.S.) This statute provides that a person who commits a second or subsequent violation of s. 831.16, F.S., and is at the same term of the court convicted upon three distinct charges of s. 831.16, F.S., is a common utterer of counterfeit coins and shall be punished by imprisonment in the state prison not to exceed 20 years. The bill removes the existing penalty language and replaces it by specifying that a person who commits a second or subsequent violation of s. 831.16, F.S., and is at the same term of the court convicted upon three distinct charges of s. 831.16, F.S., commits a 2nd degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Section 10. (s. 831.18, F.S.) This statute provides that a person who makes or possess instruments for forging bills shall be punished by imprisonment in the state prison not exceeding 10 years or by a fine not exceeding \$1,000. The bill removes the existing penalty language and replaces it by specifying that a person who makes or possess instruments for forging bills commits a 3rd degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Section 11. (s. 831.27, F.S.) The statute is changed to refer to Canada and remove an obsolete reference.

- Section 12. (s. 831.30(1), F.S.) The statute is changed to remove reference to a repealed statute and instead refer to s. 465.003, F.S.
- Section 13. (s. 838.021(1), F.S.) The statute is changed to correct a grammatical error.
- Section 14. (s. 847.0125, F.S.) The statute is reenacted to clarify legislative intent.
- Section 15. (s. 860.13(4), F.S.) This statute is changed to remove an obsolete provision and instead refer to the Federal Aviation Administration.
- Section 16. (865.09, F.S.) This statute is changed to remove an erroneous reference to “this part” and instead refer to “this section.”
- Section 17. (s. 877.22(4), F.S.) This statute is changed to remove an erroneous reference to “part II” and instead refer to “part V.”
- Section 18. (s. 893.02 (21), F.S.) This statute is changed to remove a reference to a repealed section and instead refer to s. 465.003(8), F.S.
- Section 19. (s. 893.10(2), F.S.) This statute is changed to remove reference to a repealed section. Prior to its repeal in 1980 the law authorized a court to withhold adjudication of guilt in certain circumstances. There does not appear to be a similar provision in current law. Consequently, the bill repeals subsection (2) in its entirety.
- Section 20. (s. 914.24(2)(a), F.S.) The statute is changed to restore language which was inadvertently removed in 1992.
- Section 21. (s. 916.12(3)(g), F.S.) The statute is changed to make it grammatically correct and clarify intent.
- Section 22. (s. 916.3012(3)(g), F.S.) The statute is changed to make it grammatically correct and clarify intent.
- Section 23. (s. 918.0155, F.S.) The statute is changed to remove the directive to adopt emergency rules. Rule 3.190(k) appears adequate.
- Section 24. (s. 921.0022(3)(b) and (d), F.S.) The sentencing guidelines statutory list is changed to reflect changes made in 2000 to “intentional burning of lands.” Also, a reference to “intake officer” is removed in paragraph (d).
- Section 25. (s. 921.141(5)(a), F.S.) The conflict between two 1996 laws is remedied by reenacting current law to clarify the intent of the Legislature.
- Section 26. (s. 921.20, F.S.) The statute is changed to correct a reference to a transferred section. The new reference is to s. 945.25, F.S.

Section 27. (s. 932.704(11)(a), F.S.) The statute is changed to remove an obsolete deadline for filing civil forfeiture actions.

Section 28. (s. 933.18(7)(a), F.S.) The statute is changed to remove the reference to the word “misdemeanor” since the relevant offenses are felonies.

Section 29. (s. 933.40(5),(8), F.S.) The statute is changed to remove an archaic reference to “magistrates” and instead refer solely to “trial court” judge.

Section 30. (s. 934.03(2)(g)1., F.S.) The statute is changed by removing the faulty reference to a repealed statute and inserting the definition of “public utilities.”

Section 31. (s. 938.15(2), F.S.) The statute is clarified to refer to the Criminal Justice Standards and Training Commission. It is clear that the “commission:” referred to in the provision prior to renumbering was this commission.

Section 32. (s. 943.051(3)(b)5., F.S.) The statute is changed to clarify that the reference to the repealed statute is a reference to the “former” statute.

Section 33. (s. 943.053(6), F.S.) The statute is changed to remove a reference to “Child Support Enforcement” and retain a reference to “Department of Revenue.”

Section 34. (s. 943.0581(6), F.S.) The statute is changed to correct grammatical error and make clear the intent.

Section 35.(s. 943.0582, F.S.) The conflict between two 2001 laws is remedied by reenacting current law to clarify the intent of the Legislature.

Section 36. (s. 943.135(4)(b), F.S.) The conflict between two 1998 laws is remedied by reenacting current law to clarify the intent of the Legislature.

Section 37.(s. 944.023(5), F.S.) The statute is changed by removing the faulty reference to a repealed statute and instead referencing to s. 944.095, F.S., which provides a general definition of how to project the need for new prison beds.

Section 38 (s. 944.053, F.S.) This statute provides that forestry work camps shall house minimum custody inmates and medium custody inmates who are not serving a sentence for, or who have not been previously convicted of, sexual battery or any sexual offender specified in s. 917.012(1), F.S., unless they have successfully completed a treatment program pursuant to s. 917.012, F.S. The references to s. 917.012, F.S., which related to mentally disordered sex offenders, are obsolete in that the statute was repealed in 1991. The bill removes the obsolete references to s. 917.012, F.S., and specifies that sexual battery offenses are listed in s. 794.011, F.S.

Section 39. (s. 944.28(1), F.S.) The statute specifies circumstances in which the Department of Corrections may declare a forfeiture of gain-time earned by a prisoner. Chapter 91-280, L.O.F., purported to reenact s. 944.28(1), F.S., but did not include the version as amended by ch. 89-531,

L.O.F. As a result, a reference to control release was omitted. The bill reenacts s. 944.28(1), F.S., to clarify legislative intent that the statute include a reference to control release.

Section 40. (s. 944.474(2), F.S.) The statute is changed to remove reference to paragraph (5)(a). This eliminates the confusion since the citation refers to employee drug testing in general.

Section 41. (s. 944.708, F.S.) The statute is changed to remove reference to an obsolete entity and instead refer to the Agency for Workforce Innovation.

Section 42. (s. 944.801(3)(h), F.S.) The statute is changed to remove reference to an obsolete entity and instead refer to the Agency for Workforce Innovation.

Section 43. (s. 945.10, F.S.) The statute is changed to remove reference to an obsolete entity and instead refer to the Agency for Workforce Innovation.

Section 44. (s. 947.06, F.S.) The conflict between two 1990 laws is remedied by reenacting current law to clarify the intent of the Legislature.

Section 45. (s. 947.16(4)(a), F.S.) The statute is changed to remove the reference to the repealed section and instead refer to s. 944.17, F.S., which addresses inmate commitments and classifications.

Section 46. (s. 949.07 (2), F.S.) The statute is changed to update the references to the correct federal citation.

Section 47. (s. 951.23(9)(e), F.S.) The statute is changed to remove the erroneous reference to paragraph (1)(b) and instead refer to paragraph (9)(b) which relates to the pricing in canteens.

Section 48. (s. 951.231(1)(c), F.S.) The statute is changed to remove reference to the repealed statute and instead cite to s. 958.045, F.S.

Section 49. (s. 957.07, F.S.) The statute is changed to remove the reference to the repealed "Correctional Privatization Commission" and instead refer to the "Department of Management Services."

Section 50. (s. 960.003(3)(b), F.S.) The statute is changed to remove reference to the repealed subsection and paragraph and instead cite to s. 381.004, F.S., in its entirety.

Section 51. (s. 984.225(6),(7), F.S.) The statute is changed to remove reference to former or transferred parts of ch. 39. Instead, the reference is made to the "relevant provisions" of ch. 39.

Section 52. (s. 985.486, F.S.) The statute is changed to remove a faulty subsection reference and instead refer to the section in its entirety and remove the phrase "as established."

Section 53. (s. 985.632(4)(a) and (7), F.S.) The statute is changed to remove reference to the repealed statute and to delete subsection (7) which contains obsolete language relating to the submission of a proposal.

Section 54. (s. 985.686(2)(b), F.S.) The conflict between two 2006 laws is remedied by reenacting current law to clarify the intent of the Legislature.

Section 55. Provides a July 1, 2010 effective date for this act.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 26, 2010:**

Five sections that appear in the House Companion (HB 7131) are added to the Senate Bill to make the two bills identical:

- 1) Section 831.17, F.S., provides that a person who commits a second or subsequent violation of s. 831.16, F.S., and is at the same term of the court convicted upon three distinct charges of s. 831.16, F.S., is a common utterer of counterfeit coins and shall be punished by imprisonment in the state prison not to exceed 20 years. The bill removes the existing penalty language and replaces it by specifying that a person who commits a second or subsequent violation of s. 831.16, F.S., and is at the same term of the court convicted upon three distinct charges of s. 831.16, F.S., commits a 2nd degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.
- 2) Section 831.18, F.S., provides that a person who makes or possess instruments for forging bills shall be punished by imprisonment in the state prison not exceeding 10 years or by a fine not exceeding \$1,000. The bill removes the existing penalty language and replaces it by specifying that a person who makes or possess instruments for forging bills commits a 3rd degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.
- 3) Section 944.053, F.S., provides that forestry work camps shall house minimum custody inmates and medium custody inmates who are not serving a sentence for, or who have not been previously convicted of, sexual battery or any sexual offender specified in s. 917.012(1), F.S., unless they have successfully completed a treatment program pursuant to s. 917.012, F.S. The references to s. 917.012, F.S., which related to mentally disordered sex offenders, are obsolete in that the statute was repealed in 1991. The bill removes the obsolete references to s. 917.012, F.S. and specifies that sexual battery offenses are listed in s. 794.011, F.S.
- 4) Section 944.28(1), F.S., specifies circumstances in which the Department of Corrections may declare a forfeiture of gain-time earned by a prisoner. Chapter 91-280, L.O.F., purported to reenact s. 944.28(1), F.S., but did not include the version as amended by ch. 89-531, L.O.F. As a result, a reference to control release was omitted. The bill reenacts s. 944.28(1), F.S., to clarify legislative intent that the statute include a reference to control release.
- 5) Section 945.10, F.S., contains a reference to the Department of Labor and Employment Security. The bill replaces this reference with the Agency for Workforce Innovation.

**B. Amendments:**

None.