CS/CS/SB 532 by **FT, HP, Grimsley**; (Compare to CS/CS/H 0281) Ordering of Medication

213236	A	S	L	RCS	AP, Grimsley	btw L.232 - 233:	04/23 11:05 AM

SB 718 by **Lee**; (Similar to CS/CS/CS/1ST ENG/H 0435) Administrative Procedures

187540	D	S		RCS	AP, Lee	Delete everything after	04/23 07:52 PM

CS/CS/SB 896 by **TR, CA, Brandes**; (Similar to CS/CS/CS/H 0391) Location of Utilities

774714	D	S			AP, Hays	Delete everything after	04/20 09:38 AM

CS/SB 914 by **BI, Richter**; (Similar to CS/CS/CS/H 0275) Intrastate Crowdfunding

706156	PCS	S		RCS	AP, AGG		04/23 11:06 AM

CS/SB 1554 by **TR, Brandes**; (Compare to CS/1ST ENG/H 7039) Transportation

511078	PCS	S			AP, ATD		04/16 06:14 PM
777084	PCS:A	S		WD	AP, Hays	btw L.617 - 618:	04/22 01:22 PM
461634	PCS:AA	S		WD	AP, Hays	Delete L.20 - 22:	04/22 01:23 PM
850140	PCS:A	S		WD	AP, Hays	btw L.617 - 618:	04/22 11:01 AM
327768	PCS:A	S			AP, Hays	btw L.661 - 662:	04/20 12:28 PM
866326	PCS:A	S			AP, Hays	btw L.818 - 819:	04/20 12:27 PM
317554	PCS:A	S			AP, Hays	btw L.1786 - 1787:	04/20 03:35 PM
487104	PCS:A	S			AP, Garcia	Delete L.1859 - 1905:	04/20 09:33 AM

SB 1582 by **Richter**; (Similar to CS/CS/H 1209) Public Records/High-pressure Well Stimulation Chemical Disclosure Registry

859002	D	S		WD	AP, Joyner	Delete everything after	04/21 09:20 AM

SB 7056 by **GO**; (Similar to 1ST ENG/H 7023) Administrative Procedures

755960	PCS	S		RCS	AP, AGG		04/23 07:51 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Lee, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, April 23, 2015
TIME: 8:00 —10:00 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Lee, Chair; Senator Benacquisto, Vice Chair; Senators Altman, Flores, Gaetz, Galvano, Garcia, Grimsley, Hays, Hukill, Joyner, Latvala, Margolis, Montford, Negron, Richter, Ring, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/CS/SB 532** Finance and Tax / Health Policy / Grimsley (Compare CS/CS/H 281)	Ordering of Medication; Revising the term "prescription" to exclude an order for drugs or medicinal supplies by a licensed practitioner that is dispensed for certain administration; revising the term "administer" to include the term "administration"; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for a specified patient under certain circumstances, etc. HP 03/31/2015 Fav/CS FT 04/13/2015 Fav/CS AP 04/21/2015 Not Considered AP 04/23/2015 Fav/CS	Fav/CS Yeas 18 Nays 0
2	**SB 718** Lee (Similar CS/CS/CS/H 435)	Administrative Procedures; Providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; requiring agencies to set a time for workshops for certain unadopted rules; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; providing criteria for establishing whether a nonprevailing party participated in a proceeding for an improper purpose; revising provisions providing for the award of attorney fees and costs by the appellate court or administrative law judge, etc. JU 03/17/2015 JU 03/24/2015 Favorable AGG 04/02/2015 Not Considered AGG 04/08/2015 Favorable AP 04/21/2015 Not Considered AP 04/23/2015 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation - General Government

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/CS/SB 896** Transportation / Community Affairs / Brandes (Similar CS/CS/CS/H 391)	Location of Utilities; Authorizing the board of county commissioners to grant a license to work on or operate specified communications services within the right-of-way limits of certain county or public highways or roads; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce rules or regulations regarding placing and maintaining specified structures within the right-of-way limits of roads or publicly owned rail corridors under their respective jurisdictions; prohibiting a municipality or county from requiring a utility to provide proprietary maps of facilities under certain circumstances, etc. CA 03/23/2015 Fav/CS TR 04/02/2015 Fav/CS AP 04/21/2015 Not Considered AP 04/23/2015 Not Considered	Not Considered

A proposed committee substitute for the following bill (CS/SB 914) is available:

4	**CS/SB 914** Banking and Insurance / Richter (Similar CS/CS/CS/H 275)	Intrastate Crowdfunding; Defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; exempting offers or sales of securities by certain issuers from registration requirements; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing registration requirements for an intermediary; requiring an intermediary to comply with specified recordkeeping requirements; including an intermediary in the disciplinary provisions, etc. BI 03/31/2015 Fav/CS AGG 04/14/2015 Fav/CS AP 04/21/2015 Not Considered AP 04/23/2015 Fav/CS With subcommittee recommendation - General Government	Fav/CS Yeas 17 Nays 0

A proposed committee substitute for the following bill (CS/SB 1554) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 1554** Transportation / Brandes (Compare CS/H 7039, CS/H 7055, CS/CS/H 7075, CS/S 918, CS/S 1186, S 1456, S 7054)	Transportation; Deleting the requirement that the Secretary of Transportation appoint an inspector general pursuant to s. 20.055, F.S.; increasing the minimum amount that shall be made available annually from the State Transportation Fund to fund the Florida Seaport Transportation and Economic Development Program; providing that provisions prohibiting a driver from following certain vehicles within a certain distance do not apply to truck tractor-semitrailer combinations under certain conditions; authorizing certain counties to form the Northwest Florida Regional Transportation Finance Authority to construct, maintain, or operate transportation projects in a given region of the state, etc. TR 03/19/2015 Fav/CS ATD 04/02/2015 Not Considered ATD 04/08/2015 Temporarily Postponed ATD 04/14/2015 Fav/CS AP 04/21/2015 Not Considered AP 04/23/2015 Not Considered	Not Considered
	With subcommittee recommendation - Transportation, Tourism, and Economic Development		
6	**SB 1582** Richter (Similar CS/CS/H 1209, Compare CS/CS/CS/H 1205, Link S 1468)	Public Records/High-pressure Well Stimulation Chemical Disclosure Registry; Providing an exemption from public records requirements for proprietary business information relating to high pressure well stimulations obtained by the Department of Environmental Protection in connection with the department's online high pressure well stimulation chemical disclosure registry; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. EP 03/31/2015 Favorable GO 04/07/2015 Favorable AP 04/21/2015 Not Considered AP 04/23/2015 Favorable	Favorable Yeas 11 Nays 7
	A proposed committee substitute for the following bill (SB 7056) is available:		
7	**SB 7056** Governmental Oversight and Accountability (Similar H 7023)	Administrative Procedures; Revising requirements for the annual review of agency rules; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws, etc. AGG 04/14/2015 Fav/CS AP 04/21/2015 Not Considered AP 04/23/2015 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - General Government		
	Other Related Meeting Documents		

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 Committee on Appropriations

BILL:	CS/CS/CS/SB 532
INTRODUCER:	Appropriations Committee; Finance and Tax Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Access to Health Care Services
DATE:	April 24, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper/Stovall	Stovall	HP	**Fav/CS**
2.	Gross	Diez-Arguelles	FT	**Fav/CS**
3.	Gross	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 532 provides express authority for an advanced registered nurse practitioner to order any medication for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility within the framework of an established protocol. The bill provides express authority in chapter 893, Florida Statutes, the Florida Comprehensive Drug Abuse Prevention and Control Act, for a supervisory physician to authorize a physician assistant or an advanced registered nurse practitioner to order controlled substances for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility.

The bill makes changes to chapter 465, Florida Statutes, relating to pharmacy, and chapter 893, Florida Statutes, relating to drug abuse prevention and control, to clarify the distinction between a prescription and an order for administration.

The bill creates a site selection process for new state veterans' nursing homes to be administered by the Florida Department of Veterans' Affairs (FDVA).

The bill provides that a direct primary care agreement is not insurance and is not subject to the Florida Insurance Code.

The bill authorizes a free clinic to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of the contracted services by volunteer

health care providers, which may include employing providers to supplement, coordinate, or support the volunteers.

The bill also clarifies that employees and agents of a health care provider fall within the sovereign immunity protections of the contracted health care provider when providing health care services pursuant to the Access to Health Care Act.

The bill provides for an effective date of July 1, 2015.

II. Present Situation:

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of medicine by the Board of Medicine. Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine. Physician assistants (PAs) are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.[1]

Physician assistants are required by statute to work under the supervision and control of medical physicians or osteopathic physicians.[2] The Board of Medicine and the Board of Osteopathic Medicine have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[3] and indirect[4] supervision. A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.[5] Each physician or group of physicians supervising a licensed PA must be qualified in the medical areas in which the PA is to perform and must be individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[6]

Current law allows a supervisory physician to delegate to a licensed PA the authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.[7] However, Florida law does allow a supervisory physician to delegate to a licensed PA the authority to order any medication, which

[1] The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (*See* ss. 458.347(9) and 459.022(9), F.S.)
[2] Sections 458.347 and 459.022, F.S.
[3] "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.)
[4] "Indirect supervision" refers to the easy availability of the supervising physician to the physician assistant, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (*See* Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)
[5] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[6] Sections 458.347(3) and 459.022(3), F.S.
[7] Sections 458.347(4)(e) and (f)1. and 459.022(4)(e)., F.S.

would include controlled substances, general anesthetics, and radiographic contrast materials, for a patient of the physician during the patient's stay in a facility licensed under ch. 395, F.S.[8,9]

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health and are regulated by the Board of Nursing.[10] An advanced registered nurse practitioner (ARNP) is a licensed nurse who is certified in advanced or specialized nursing.[11] Florida recognizes three types of ARNPs: nurse practitioner (NP), certified registered nurse anesthetist (CRNA), and certified nurse midwife (CNM).[12] To be certified as an ARNP, a nurse must hold a current license as a registered nurse[13] and submit proof to the Board of Nursing that he or she meets one of the following requirements:[14]

- Satisfactory completion of a formal postbasic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;[15] or
- Graduation from a master's degree program in a nursing clinical specialty area with preparation in specialized practitioner skills.

Advanced or specialized nursing acts may only be performed under protocol of a supervising physician. Within the established framework of the protocol, an ARNP may:[16]

- Monitor and alter drug therapies.
- Initiate appropriate therapies for certain conditions.
- Order diagnostic tests and physical and occupational therapy.

[8] Section 458.347(4)(g)
[9] *See* s. 395.002(16), F.S. The facilities licensed under ch. 395, F.S., are hospitals, ambulatory surgical centers, and mobile surgical facilities.
[10] The Board of Nursing is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. (*See* s. 464.004(2), F.S.)
[11] "Advanced or specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the Board of Nursing which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an advanced registered nurse practitioner. (*See* s. 464.003(2), F.S.)
[12] Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from advanced registered nurse practitioners. (*See* ss. 464.003(7) and 464.0115, F.S.)
[13] Practice of professional nursing. (See s. 464.003(20), F.S.)
[14] Section 464.012(1), F.S.
[15] Specialty boards expressly recognized by the Board of Nursing include: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (*See* Rule 64B9-4.002(2), F.A.C.)
[16] Section 464.012(3), F.S.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).[17]

Advanced registered nurse practitioners must meet financial responsibility requirements, as determined by rule of the Board of Nursing, and the practitioner profiling requirements.[18] The Board of Nursing, currently, requires ARNPs to carry professional liability coverage of at least $100,000 per claim with a minimum annual aggregate of at least $300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.[19]

Florida does not allow ARNPs to prescribe controlled substances.[20] However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances "to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed."

Definitions related to the Ordering of Medicinal Drugs

Chapter 464, F.S., does not contain a definition of the terms "order" or "prescribe." Chapter 465, F.S., relating to pharmacy, defines "prescription" as "any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.[21] "Dispense" is defined as "the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent."[22] "Administration" is defined as "the obtaining and giving of a single dose of medicinal drugs by a legally authorized person to a patient for her or his consumption."[23] Chapter 893, F.S., relating to drug abuse prevention and control, contains similar definitions.[24]

ARNP Petition for Declaratory Statement

On January 22, 2014, a petition for declaratory statement[25] was filed with the Board of Nursing which asked "Can ARNPs legally order narcotics for patients we treat in the institution with written protocols from our attending Doctors [sic]?"[26] The petition noted that prior to January 1, 2014, ARNPs ordered controlled substances for patients. Effective January 1, 2014, the hospital disallowed the practice and required all ARNPs to get an order from a physician. The hospital cited passage of legislation in 2013 which clarified the authority of physician assistants to order controlled substances, but did not address the authority of ARNPs.[27] The Board of Nursing

[17] Section 464.012(4), F.S.
[18] Sections 456.0391 and 456.041, F.S.
[19] Rule 64B9-4.002(5), F.A.C.
[20] Sections 893.02(21) and 893.05(1), F.S.
[21] Section 465.003(14), F.S.
[22] Section 465.003(6), F.S.
[23] Section 465.003(1), F.S.
[24] See ss. 893.02(1), 893.02(7), and 893.02(22), F.S.
[25] A declaratory statement is an agency's opinion regarding the applicability of a statutory provision, rule, or agency order to a petitioner's set of circumstances. (*See* s. 120.565(1), F.S.)
[26] Petition for Declaratory Statement filed by Carolann Robley ARNP, MSN, BC, FNP (on file with the Senate Committee on Health Policy).
[27] *See* ch. 2013-127, Laws of Fla.

dismissed the petition finding that it failed to comply with the requirements of ch. 120, F.S., and that it sought an opinion regarding the scope of practice of a category of licensees based on an employer's policies.

Drug Enforcement Agency Registration

An individual practitioner[28] who is an agent or employee of another practitioner (other than a mid-level practitioner)[29] registered to dispense controlled substances, may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of a prescription) controlled substances if and to the extent authorized by state law, under the registration of the employer or principal practitioner in lieu of being registered himself or herself.[30]

Health care practitioners who are agents or employees of a hospital or other institution, may, when acting in the usual course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in which he or she is employed, in lieu of individual registration, provided that:

- The dispensing, administering, or prescribing is in the usual course of professional practice;
- The practitioner is authorized to do so by the state in which he or she practices;
- The hospital or other institution has verified that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner acts only within the scope of employment in the hospital or other institution;
- The hospital or other institution authorizes the practitioner to administer, dispense, or prescribe under its registration and assigns a specific internal code number for each practitioner; and
- The hospital or other institution maintains a current list of internal codes and the corresponding practitioner.[31]

State Veterans' Homes Program

The Florida Department of Veterans' Affairs (FDVA) operates the State Veterans' Homes Program (Program) as authorized by chs. 292 and 296, F.S.[32] The Program provides care to eligible veterans in need of either long-term skilled nursing care or assisted living services. Care is provided to veterans with qualifying war or peacetime service, who are residents of Florida

[28] "Practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States of the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research. (21 U.S.C. s.802(21))

[29] Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.

[30] 21 C.F.R. 1301.22.

[31] *Id.*; *See also* U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, 27 (2006), *available at* http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf (last visited Mar. 27, 2015).

[32] Section 292.05(7), F.S. "The Department shall administer this chapter and shall have the authority and responsibility to apply for and administer any federal programs and develop and coordinate such state programs as may be beneficial to the particular interests of the veterans of this state."; part II of ch. 296, F.S., titled "The Veterans' Nursing Home of Florida Act" provides for the establishment of basic standards by FDVA for the operation of veteran's nursing homes for eligible veterans in need of such services."

and who require skilled care as certified by a U.S. Department of Veterans' Affairs (USDVA) physician.[33] There are approximately 697,000 veterans aged 65 years and older in the state.[34]

Currently, there are six state veterans' nursing homes in Florida. The six nursing homes are located in Daytona Beach, Land O' Lakes, Pembroke Pines, Panama City, Port Charlotte, and St. Augustine with a total of 720 skilled-nursing beds and an average occupancy rate of 97.8 percent for FY 2013-14.[35] In 2014, St. Lucie County became the seventh site for a veterans' nursing home.

Veterans' Homes Funding

Construction of a new nursing home is subject to approval by the Governor and Cabinet and shall not exceed a federal-state funding ratio of 65 percent to 35 percent, respectively.[36] The state's cost will be paid from the FDVA Operations and Maintenance Trust Fund.

Site Selection Process for Recently Authorized State Veterans' Nursing Homes

In 2013, the Legislature appropriated funds for FDVA to contract with a private entity to conduct a Site Selection Study (Study). The purpose of the Study was to identify five communities, defined as single-county or multi-county areas, to be given priority for development of a new state veterans' nursing home.

The Study used the following criteria to score the counties, rank ordered from greatest to least value assigned:

- Number of elderly veterans in the county;
- Ratio of existing nursing home beds per/1,000 elderly male residents in the county;
- County poverty rate;
- Distance to an existing state veterans' nursing home;
- Presence of an existing veterans' health care facility in the county; and
- Presence of nursing education programs in the county.

St. Lucie County was selected as the site for the seventh nursing home, and approved by the Governor and Cabinet on September 23, 2014.

Direct Primary Care

Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee to the primary care provider for defined primary care services. These primary care services may include:

- Office visits;
- Annual physical examination;

[33] S. 296.36, F.S.
[34] Florida Department of Veterans' Affairs, Annual Report: Fiscal Year 2013-14, page 15, *available at* http://floridavets.org/about-us/annual-report/ (last visited Apr. 23, 2015).
[35] Id.
[36] 38 CFR §59.80

- Routine laboratory tests;
- Vaccinations;
- Wound care;
- Splinting or casting of fractured or broken bones;
- Other routine testing, e.g. echocardiogram and colon cancer screening; or
- Other medically necessary primary care procedures.

After paying the fee, a patient can utilize all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, such as lab tests, mammograms, Pap screenings, and vaccinations. A primary care provider DPC model can be designed to address the large majority of health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management.

The Patient Protection and Affordable Care Act (PPACA)[37] addresses the DPC practice model as part of health care reform. A qualified health plan under PPACA is permitted to offer coverage through a DPC medical home plan if it provides essential health benefits and meets all other criteria in the law.[38] Patients who are enrolled in a DPC medical home plan are exempt from the individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy to cover treatment for serious illnesses, such as cancer, or severe injuries that require lengthy hospital stays and rehabilitation.[39]

Access to Health Care Act

The Access to Health Care Act (the act) was enacted in 1992 to encourage health care providers to provide care to low-income persons.[40] The act is administered by the Department of Health (department) through the Volunteer Health Services Program.[41]

The act extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill

[37] Pub. L. No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[38] 42 U.S.C. §1802 (a)(3); 45 C.F.R. §156.245
[39] 42 U.S.C. §18021(a)(3)
[40] Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $23,540 is at 200 percent of the federal poverty level using Medicaid data. *See 2015 Poverty Guidelines, Annual Guidelines, available at* http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2015-Federal-Poverty-level-charts.pdf (last visited Mar. 7, 2015).
[41] *See* Florida Department of Health, *Volunteerism Volunteer Opportunities*, (last visited Mar. 7, 2015) *available at* http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html; Rule Chapter 64I-2, F.A.C.

or accept compensation from the recipient or any public or private third-party payer for the specific services provided to the low-income recipients covered by the contract.[42]

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.[43]

In 2014, the Legislature amended the act to authorize dentists providing services as an agent of the governmental contractor to allow a patient to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided under the contract to the patient.[44]

Legislative Appropriation to Free and Charitable Clinics

The Florida Association of Free and Charitable Clinics received a $4.5 million appropriation in the 2014-2015 General Appropriations Act through the department.[45] The department restricted the use of these funds by free and charitable clinics that were health care providers under the act to clinic capacity building purposes in the contract. The clinic capacity building was limited to products or processes that increase professional skills, infrastructure and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel. The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract.

Sovereign Immunity

Article X, Section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function.

However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[46] The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[47]

[42] Section 766.1115(3)(a), F.S.
[43] Section 766.1115(3)(c), F.S.
[44] Chapter 2014-108, s. 1, Laws of Fla.
[45] Chapter 2014-51, Laws of Fla., line item 461.
[46] Section 768.28(5), F.S.
[47] *Id.*

III. Effect of Proposed Changes:

Section 1 creates a site selection process for new state veterans' nursing homes to be administered by the Florida Department of Veterans' Affairs. The county with the highest ranking must be selected as the site for the new home, subject to approval by the Governor and the Cabinet. The bill requires the next highest ranked county to be selected if a higher ranked county cannot participate.

The bill also requires the FDVA to contract for a study to determine the most appropriate county for construction of a nursing home based on the greatest level of need. The study must be used to determine the site for any state veterans' nursing home authorized before July 1, 2020. For any veterans' nursing home authorized before November 1, 2015, the bill requires the FDVA to use the 2014 Site Selection Study.

Sections 2 and 3 make conforming changes to ss. 458.347(4)(g) and 459.022(4)(f), F.S., related to the authority of a PA to order medications, but does not alter the authority of supervisory physicians or PAs.

Sections 4 and 11 provide express authority for an ARNP to order any medication for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility within the framework of an established protocol. The bill also provides express authority in ch. 893, F.S., for a supervisory physician to authorize a PA or ARNP to order controlled substances for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility.

Sections 5, 9, and 10 clarify the distinction between a prescription and an order for administration by amending the definition of "prescription" in chs. 465 and 893, F.S., to exclude an order that is dispensed for administration and making conforming changes in s. 893.04, F.S. The bill also revises the definition of "administer" in ch. 893, F.S., to include the term "administration."

Section 6 creates s. 624.27, F.S., relating to the application of the Florida Insurance Code (Code) to direct primary care agreements. Several new definitions are created under this section:

- *Direct primary care agreement* means a contract between a primary care provider or a primary care group practice and a patient, the patient's legal representative, or an employer which must satisfy certain requirements within the bill and does not indemnify for services provided by a third party.
- *Primary care provider* means a licensed health care provider under ch. 458 (medical doctor), ch. 459 (osteopathic doctor), or ch. 464 (nurses) who provides medical services which are commonly provided without referral from another health care provider.
- *Primary care service* means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

The bill provides that direct primary care agreements are not insurance products and are not subject to Code. The bill also exempts a primary care provider, or his or her agent, from

certification or licensing requirements under the Code to market, sell, or offer to sell a direct primary care agreement.

Section 7 authorizes a free clinic[48] to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act (the act) without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act.

The bill states that the receipt and use of the appropriation or grant does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill also authorizes a free clinic to allow a patient, or a parent or guardian of the patient, to pay a nominal fee for administrative costs related to the services provided to the patient under the contract without jeopardizing the sovereign immunity protections afforded in the act.

The bill inserts the phrase "employees or agents" in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract.

Section 8 amends the limited waiver of sovereign immunity to specifically include a health care provider's employees or agents.

Sections 12-17 reenact various sections of Florida law as required to incorporate amendments made thereto.

Section 18 provides a July 1, 2015, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[48] A free clinic for purposes of this provision is a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/CS/SB 532, physicians who utilize advanced registered nurse practitioners to serve hospitalized patients, physicians who supervise ARNPs with a hospital practice, and hospitals that employ ARNPs, may see increased efficiencies if ARNPs can order controlled substances directly without the need for obtaining a physician's order. These efficiencies include time savings for the practitioners and better utilization of potentially limited space, such as emergency room beds where patients might otherwise wait while a supervising physician is located.

The bill removes regulatory uncertainty for health care providers as to whether the direct primary care agreement is insurance. Additional primary care providers may elect to pursue this option and establish direct primary care practices in this state which could increase access to affordable primary care services.

Contracted free clinics may receive or continue to receive governmental funding in the form of an appropriation or grant without being concerned that restrictions on such funding may be imposed by the Access to Health Care Act.

C. Government Sector Impact:

The impact described in Section V. B., above, would also apply to public hospitals and physicians employed in public hospitals.

The bill requires the Florida Department of Veterans' Affairs to contract for a study to rank each county according to greatest need to determine the most appropriate site for a new veterans' nursing home.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 296.42 and 624.27.

This bill substantially amends the following sections of the Florida Statutes: 458.347, 459.022, 464.012, 465.003, 766.1115, 768.28, 893.02, 893.04, and 893.05.

This bill reenacts the following sections of the Florida Statutes: 112.0455(5)(i), 381.986(7)(b), 400.462(26), 401.445(1), 409.906(18), 409.9201(1)(a), 440.102(1)(l), 458.331(1)(pp), 459.015(1)(rr), 465.014(1), 465.015(2)(c), 465.015(3), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 465.1901, 499.003(43), 499.0121(14), 766.103(3), 768.36(1)(b), 810.02(3)(f), 812.014(2)(c), 831.30(1), 856.015(1)(c), 893.0551(3)(d), 893.0551(3)(e), 944.47(1)(a), 951.22(1), 985.711(1)(a), 1003.57(1)(i), and 1006.09(8).

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 23, 2015:
The CS/CS/CS creates a site selection process for new state veterans' nursing homes to be administered by the Florida Department of Veterans' Affairs. The bill also requires FDVA to contract for a study to determine the most appropriate county for construction of a nursing home.

The committee substitute provides that direct primary care agreements are not insurance products and are not subject to the Florida Insurance Code.

The committee substitute expands sovereign immunity protections currently afforded to free clinics under certain circumstances and clarifies that certain employees and agents of health care providers operating pursuant to contracts with free clinics are also afforded those sovereign immunity protections under certain conditions.

CS/CS by Finance and Tax on April 13, 2015:
The CS/CS deletes Section 1 of the bill to remove changes made to the sales and use tax exemption for medication.

CS by Health Policy on March 31, 2015:
The committee substitute amends s. 212.08, F.S., related to medical sales tax exemptions, to conform to changes made elsewhere in the bill. The CS revises the definition of "prescription" and clarifies that any medical products and supplies or medicine dispensed according to "an order for administration" are exempt from sales tax under ch. 212, F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2015	.	
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	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 232 and 233
insert:

Section 8. Section 296.42, Florida Statutes, is created to read:

296.42 Site selection process for state veterans' nursing homes.—

(1) The department shall contract for a study to determine the need for new state veterans' nursing homes and the most

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appropriate counties in which to locate the homes based on the greatest level of need. The department shall submit the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2015.

(2) The study shall use the following criteria to rank each county according to need:

(a) The distance from the geographic center of the county to the nearest existing state veterans' nursing home.

(b) The number of veterans age 65 years or older residing in the county.

(c) The presence of an existing federal Veterans' Health Administration medical center or outpatient clinic in the county.

(d) Elements of emergency health care in the county, as determined by:

1. The number of general hospitals.

2. The number of emergency room holding beds per hospital. The term "emergency room holding bed" means a bed located in the emergency room of a hospital licensed under ch. 395 which is used for a patient admitted to the hospital through the emergency room, but is waiting for an available bed in an inpatient unit of the hospital.

3. The number of employed physicians per hospital in the emergency room 24 hours per day.

(e) The number of existing community nursing home beds per 1,000 males age 65 years or older residing in the county.

(f) The presence of an accredited educational institution offering health care programs in the county.

(g) The county poverty rate.

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(3) For each new nursing home, the department shall select the highest-ranked county in the applicable study under this section which does not have a veterans' nursing home. If the highest-ranked county cannot serve as the site, the department shall select the next-highest ranked county. The selection is subject to the approval of the Governor and Cabinet.

(4) The department shall use the 2014 site selection study to select a county for any new state veterans' nursing home authorized before November 1, 2015.

(5) The department shall use the November 2015 site selection study ranking to select each new state veterans' nursing home site authorized before July 1, 2020.

(6) The department shall contract for and submit a new site selection study to the Governor, the President of the Senate, and the Speaker of the House of Representatives using the county ranking criteria in paragraph (3) by November 1, 2019 for site selections on or after July 1, 2020. The department must conduct new site selection studies every 4 years using the county ranking criteria under paragraph (3) with each report due by November 1st for the selection period that begins the following July 1st.

Section 9. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care agreements.—

(1) As used in this section, the term:

(a) "Direct primary care agreement" means a contract between a primary care provider or primary care group practice and a patient, the patient's legal representative, or an


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employer which must satisfy the criteria in subsection (4) and does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care provider licensed under chapter 458, chapter 459, or chapter 464 who provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A direct primary care agreement does not constitute insurance and is not subject to this code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to this code.

(3) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under this code to market, sell, or offer to sell a direct primary care agreement.

(4) For purposes of this section, a direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient or the patient's legal representative.

(c) Allow a party to terminate the agreement by written notice to the other party after a period specified in the agreement.

(d) Describe the scope of the primary care services that are covered by the monthly fee.

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(e) Specify the monthly fee and any fees for primary care services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient of monthly fees paid in advance if the primary care provider ceases to offer primary care services for any reason.

(h) State that the agreement is not health insurance.

Section 10. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows the health care provider, or any employee or agent of the health care provider, to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services~~, except as provided in paragraph (4)(g).~~ For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract except as provided in paragraph (4)(g). A free clinic as described in subparagraph


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(3)(d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of such contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. Such an appropriation or grant does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt and use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician or physician assistant licensed under chapter 458.

5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatric physician licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this


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section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association ~~and its employees~~ or a corporate medical group ~~and its employees~~.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. A dentist or dental hygienist licensed under chapter 466.

14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.


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(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services ~~on or after April 17, 1992,~~ as an agent of the governmental contractor, or any employee or agent of such health care provider, is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider, or any employee or agent of such health care provider, shall continue to be an agent for purposes of s. 768.28(9) for 30 days after a determination of ineligibility to allow for treatment until the individual transitions to treatment by another health care provider. A health care provider under contract with the state, or any employee or agent of such health care provider, may not be named as a defendant in any action arising out of medical care or treatment ~~provided on or after April 17, 1992,~~ under contracts entered into under this section. The contract must provide that:

(a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.

(b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.

(c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident

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involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Patient selection and initial referral must be made by the governmental contractor or the provider. Patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

(e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.

(f) The provider is subject to supervision and regular inspection by the governmental contractor.

(g) ~~As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract,~~ A health care provider licensed under chapter 466, as an agent of the governmental contractor for purposes of s.768.28(9), may allow a patient, or a parent or guardian of the

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patient, to voluntarily contribute a monetary amount to cover costs of dental laboratory work related to the services provided to the patient within the scope of duties under the contract. This contribution may not exceed the actual cost of the dental laboratory charges.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.—The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing at the initial visit, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the ~~provisions of~~ s. 768.28. Thereafter, and with respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the health care provider ~~federally funded community health center~~ is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to ~~the provisions of~~ s. 768.28.

Section 11. Paragraph (b) of subsection (9) of section

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768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)

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

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider, and its employees or agents, when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

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

And the title is amended as follows:

Delete lines 2 - 24

and insert:

An act relating to the access to health care services; amending ss. 458.347 and 459.022, F.S.; revising the authority of a licensed physician assistant to order medication under the direction of a supervisory physician for a specified patient; amending s. 464.012, F.S.; authorizing an advanced registered nurse practitioner to order medication for

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administration to a specified patient; amending s. 465.003, F.S.; revising the term "prescription" to exclude an order for drugs or medicinal supplies by a licensed practitioner that is dispensed for certain administration; amending s. 893.02, F.S.; revising the term "administer" to include the term "administration"; revising the term "prescription" to exclude an order for drugs or medicinal supplies by a licensed practitioner that is dispensed for certain administration; amending s. 893.04, F.S.; conforming provisions to changes made by act; amending s. 893.05, F.S.; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for a specified patient under certain circumstances; creating s. 296.42, F.S.; directing the Department of Veterans' Affairs to contract for a study to determine the need and location for additional state veterans' nursing homes; directing the department to submit the study to the Governor and Legislature; providing study criteria for ranking each county according to need; providing site selection criteria; requiring approval of the Governor and Cabinet for site selection; requiring the department to use specified studies to select new nursing home sites; directing the department to contract for subsequent studies and submit the studies to the Governor and Legislature; creating s. 624.27, F.S.; providing definitions; specifying that a direct primary care agreement does

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not constitute insurance and is not subject to the Florida Insurance Code; specifying that entering into a direct primary care agreement does not constitute the business of insurance and is not subject to the code; providing that a health care provider is not required to obtain a certificate of authority to market, sell, or offer to sell a direct primary care agreement; specifying criteria for a direct primary care agreement; amending s. 766.1115, F.S.; redefining terms relating to agency relationships with governmental health care contractors; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; redefining the term "officer, employee, or agent" to include employees or agents of a health care provider;

By the Committees on Finance and Tax; and Health Policy; and Senator Grimsley

593-04002-15 2015532c2

A bill to be entitled

An act relating to the ordering of medication; amending ss. 458.347 and 459.022, F.S.; revising the authority of a licensed physician assistant to order medication under the direction of a supervisory physician for a specified patient; amending s. 464.012, F.S.; authorizing an advanced registered nurse practitioner to order medication for administration to a specified patient; amending s. 465.003, F.S.; revising the term "prescription" to exclude an order for drugs or medicinal supplies by a licensed practitioner that is dispensed for certain administration; amending s. 893.02, F.S.; revising the term "administer" to include the term "administration"; revising the term "prescription" to exclude an order for drugs or medicinal supplies by a licensed practitioner that is dispensed for certain administration; amending s. 893.04, F.S.; conforming provisions to changes made by act; amending s. 893.05, F.S.; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for a specified patient under certain circumstances; reenacting ss. 400.462(26), 401.445(1), 409.906(18), and 766.103(3), F.S., to incorporate the amendments made to ss. 458.347 and 459.022, F.S., in references thereto; reenacting ss. 401.445(1) and 766.103(3), F.S., to incorporate the amendment made to s. 464.012, F.S., in references thereto; reenacting ss.

593-04002-15 2015532c2

409.9201(1)(a), 458.331(1)(pp), 459.015(1)(rr), 465.014(1), 465.015(2)(c), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 465.1901, 499.003(43), and 831.30(1), F.S., to incorporate the amendment made to s. 465.003, F.S., in references thereto; reenacting ss. 112.0455(5)(i), 381.986(7)(b), 440.102(1)(l), 458.331(1)(pp), 459.015(1)(rr), 465.015(3), 465.016(1)(s), 465.022(5)(j), 465.023(1)(h), 499.0121(14), 768.36(1)(b), 810.02(3)(f), 812.014(2)(c), 856.015(1)(c), 944.47(1)(a), 951.22(1), 985.711(1)(a), 1003.57(1)(i), and 1006.09(8), F.S., to incorporate the amendment made to s. 893.02, F.S., in references thereto; reenacting s. 893.0551(3)(e), F.S., to incorporate the amendment made to s. 893.04, F.S., in a reference thereto; reenacting s. 893.0551(3)(d), F.S., to incorporate the amendment made to s. 893.05, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory

physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395~~,~~ ~~notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation~~. ~~For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 may order any medication under the direction of the supervisory physician.~~

Section 2. Paragraph (f) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(f) A supervisory physician may delegate to a licensed physician assistant the authority to, and the licensed physician assistant acting under the direction of the supervisory physician may, order any medication ~~medications~~ for administration to the supervisory physician's patient ~~during his or her care~~ in a facility licensed under chapter 395~~,~~ ~~notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation~~. ~~For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 may order any medication under the direction of the supervisory physician.~~

Section 3. Paragraph (a) of subsection (3) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies and order any medication for administration to a patient in a facility licensed under chapter 395.

Section 4. Subsection (14) of section 465.003, Florida Statutes, is amended to read:

465.003 Definitions.—As used in this chapter, the term:

(14) "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a ~~duly~~ licensed practitioner authorized by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist, except for an order that is dispensed for administration. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner;~~. The term also includes~~ an order written or transmitted by a practitioner licensed to practice in

a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness; and~~. The term "prescription" also includes~~ a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

Section 5. Subsections (1) and (22) of section 893.02, Florida Statutes, are amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Administer" or "administration" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(22) "Prescription" ~~means and~~ includes any ~~an~~ order for drugs or medicinal supplies which is written~~, signed,~~ or transmitted by any ~~word of mouth, telephone, telegram, or other~~ means of communication by a ~~duly~~ licensed practitioner authorized ~~licensed~~ by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of professional practice, is intended to be ~~filled, compounded, or~~ dispensed by a ~~another~~ person authorized ~~licensed~~ by the laws of this ~~the~~ state to do so, and meets ~~meeting~~ the requirements of s. 893.04.

(a) The term also includes an order for drugs or medicinal supplies ~~so~~ transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies ~~so~~ ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness.

(b) The term does not include an order that is dispensed for administration by a licensed practitioner authorized by the laws of this state to administer such drugs or medicinal supplies.

(c) ~~However,~~ If the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of the ~~said~~ prescription.

(d) A prescription ~~order~~ for a controlled substance may ~~shall~~ not be issued on the same prescription blank with another prescription ~~order~~ for a controlled substance that ~~which~~ is named or described in a different schedule or with another~~, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a~~ prescription ~~order~~ for a medicinal drug, as defined in s. 465.003(8), that is ~~which does~~ not ~~fall within the definition of~~ a controlled substance ~~as defined in this act~~.

Section 6. Paragraphs (a), (d), and (f) of subsection (2) of section 893.04, Florida Statutes, are amended to read:

893.04 Pharmacist and practitioner.—

(2)(a) A pharmacist may not dispense a controlled substance listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the prescription ~~order~~ is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(d) Each ~~written~~ prescription written ~~prescribed~~ by a practitioner in this state for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include ~~both~~ a written and a numerical notation of the quantity of the controlled substance prescribed and a notation of the date in numerical, month/day/year format, or with the abbreviated month written out, or the month written out in whole. A pharmacist may, upon verification by the prescriber, document any information required by this paragraph. If the prescriber is not available to verify a prescription, the pharmacist may dispense the controlled substance, but may insist that the person to whom the controlled substance is dispensed provide valid photographic identification. If a prescription includes a numerical notation of the quantity of the controlled substance or date, but does not include the quantity or date written out in textual format, the pharmacist may dispense the controlled substance without verification by the prescriber of the quantity or date if the pharmacy previously dispensed another prescription for the person to whom the prescription was written.

(f) A pharmacist may not knowingly dispense ~~fill~~ a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

Section 7. Subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1)(a) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the controlled substance ~~same~~ to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only.

(b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s. 464.012(3), as applicable, a practitioner who supervises a licensed physician assistant or advanced registered nurse practitioner may authorize the licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to a patient in a facility licensed under chapter 395.

(c) A veterinarian may ~~so~~ prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause the controlled substance ~~it~~ to be administered by an assistant or orderly under the veterinarian's direction and supervision only.

(d) A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 8. Subsection (26) of s. 400.462, subsection (1) of s. 401.445, subsection (18) of s. 409.906, and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to ss. 458.347 and 459.022, Florida Statutes, in references thereto.

Section 9. Subsection (1) of s. 401.445 and subsection (3) of s. 766.103, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 464.012, Florida Statutes, in references thereto.

Section 10. Paragraph (a) of subsection (1) of s. 409.9201, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (1) of s. 465.014, paragraph (c) of subsection (2) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, s. 465.1901, subsection (43) of s. 499.003, and subsection (1) of s. 831.30, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 465.003, Florida Statutes, in references thereto.

Section 11. Paragraph (i) of subsection (5) of s. 112.0455, paragraph (b) of subsection (7) of s. 381.986, paragraph (l) of subsection (1) of s. 440.102, paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015, subsection (3) of s. 465.015, paragraph (s) of subsection (1) of s. 465.016, paragraph (j) of subsection (5) of s. 465.022, paragraph (h) of subsection (1) of s. 465.023, subsection (14) of s. 499.0121, paragraph (b) of subsection (1) of s. 768.36, paragraph (f) of subsection (3) of s. 810.02, paragraph (c) of subsection (2) of s. 812.014, paragraph (c) of subsection (1) of

s. 856.015, paragraph (a) of subsection (1) of s. 944.47, subsection (1) of s. 951.22, paragraph (a) of subsection (1) of s. 985.711, paragraph (i) of subsection (1) of s. 1003.57, and subsection (8) of s. 1006.09, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 893.02, Florida Statutes, in references thereto.

Section 12. Paragraph (e) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.04, Florida Statutes, in a reference thereto.

Section 13. Paragraph (d) of subsection (3) of s. 893.0551, Florida Statutes, is reenacted for the purpose of incorporating the amendments made by this act to s. 893.05, Florida Statutes, in a reference thereto.

Section 14. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 9, 2015

I respectfully request that **Senate Bill #532**, relating to Ordering of Medication, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

Both

SB 532
Bill Number (if applicable)

213236
Amendment Barcode (if applicable)

Topic Heath Care

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-445-5367

Email tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Federation of Independent Business (NFIB)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2015
Meeting Date

532
Bill Number (if applicable)

213236
Amendment Barcode (if applicable)

Topic _____

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Peterburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2015
Meeting Date

532
Bill Number (if applicable)

Topic Ordering of Medications

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address _____
Street

Phone 813-624-5117

Tampa FL 33606
City *State* *Zip*

Email Chris@CLFconsultingco.

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Assoc of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

532
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Stan Whittaker

Job Title Chairman Fl Association of Nurse Practitioners

Address 6294 NW Torreya Pk Rd
Street

Phone 850-545-8301

Bristol FL 32321
City *State* *Zip*

Email StanWhitt@Aol.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

SB 532
Bill Number (if applicable)

Topic Ordering of Medication

Amendment Barcode (if applicable)

Name Brittney Burch

Job Title Policy Director

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Street

Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 521-1279

Email bburch@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-15
Meeting Date

532
Bill Number (if applicable)

Topic Ordering of Medication

Amendment Barcode (if applicable)

Name Martha DeCastro

Job Title VP for Nursing

Address 300 E College
Street

Phone 222-9800

TLH FL 32301
City *State* *Zip*

Email martha@fha.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

532
Bill Number (if applicable)

Topic Ordering Medication

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address _____ Phone 443-1319
Street

Tallahassee _____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Free & Charitable Clinics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

532
Bill Number (if applicable)

Topic Ordering Medication

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address
Street

Phone 443-1319

Tallahassee
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Appropriations

BILL:	CS/SB 718
INTRODUCER:	Appropriations Committee and Senator Lee
SUBJECT:	Administrative Procedures
DATE:	April 24, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Favorable**
2.	Davis	DeLoach	AGG	**Favorable**
3.	Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 718 makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules and the provision of notices and information to the public. Among the most notable changes, the bill:

- Generally requires an agency that initiates rulemaking after a public hearing relating to an unadopted rule to file a notice of proposed rule within a time certain.
- Increases the amount of information relating to agency rulemaking which must be published in the Florida Administrative Register.
- Provides that the decision of an administrative law judge on the validity of the rule or unadopted rule is final agency action during a rule challenge that is asserted as a defense to agency action.
- Prohibits an administrative law judge from entering a summary final order with respect to rule challenges asserted as a defense to agency action.
- Authorizes the petitioner in a hearing that does not involve disputed facts to assert a rule challenge as a defense to agency action and have the rule challenge decided by an administrative law judge instead of the agency.
- Authorizes the rules ombudsman in the Executive Office of the Governor to require an agency to review and designate rules the violation of which would be a minor violation.

This bill has an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7]

Notice of Rules

Under current law, the Department of State is required to publish the Florida Administrative Register on the Internet.[8] This document must contain:

- Notices relating to the adoption or repeal of a rule.
- Notices of public meetings, hearing, and workshops.
- Notices of requests for authorization to amend or repeal an existing rule or for the adoption of a new uniform rule.
- Notices of petitions for declaratory statements or administrative determinations.
- Summaries of objections to rules filed by the Administrative Procedures Committee.
- Other material required by law or deemed useful by the department.

Burden of Proof

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving a rule's invalidity.[9] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[10] In addition, a rule may not be filed for adoption until any pending challenge is resolved.[11]

---

[1] Section 120.52(16), F.S.; *Florida Dep't of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.
[7] *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] Section 120.55, F.S.
[9] Section 120.56(3), F.S.
[10] Section 120.56(2), F.S.
[11] Section 120.54(3)(e)2., F.S.

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[12]

Proceedings Involving Rule Challenges

The APA presently applies different procedures in rule challenges when proposed rules, existing rules, and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for the invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that an administrative law judge with the Division of Administrative Hearings (DOAH) may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if it's clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[13] Additionally, in proceedings initiated by agency action, if a DOAH administrative law judge determines that a rule constitutes an invalid exercise of delegated legislative authority, the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejection or modifying such determination.[14]

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH administrative law judge enters a final order that cannot be overturned by the agency. The only appeal is to a District Court of Appeal.

Final Orders

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH administrative law judge enters the final order).

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days after the rendering of the order.[15] An order, however, is rendered when filed with the agency clerk. On occasion, a party might not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule

[12] Section 120.56(4), F.S.
[13] Section 120.57(1)(e)3., F.S.
[14] Section 120.57(1)(k-l), F.S.
[15] Section 120.68(2)(a), F.S.

by appealing its adoption, but the statute authorizes an appeal from a final order in a rule challenge.[16]

Minor Violations

The APA directs agencies to issue a "notice of noncompliance" as the first response when the agency encounters a first minor violation of a rule.[17] The law provides that a violation is a minor violation if it "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm." Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.[18] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

III. Effect of Proposed Changes:

This bill makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules and the provision of notices and information to the public.

Petition to Initiate Rulemaking; Unadopted Rule (Section 1)

Under existing s. 120.54(7)(b), F.S., a person may petition an agency to initiate rulemaking with respect to an unadopted rule. If after a public hearing on the unadopted rule, the agency chooses to initiate rulemaking, the statutes do not establish a timeframe or schedule for the rulemaking activities. Under the bill, an agency, within 30 days after the public hearing, must provide the notice required by the bill through a Notice of Rule Development. Unless the agency publishes a notice in the Florida Administrative Register explaining the reasons it cannot do so, the Notice of

[16] Section 120.68(9), F.S.
[17] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."
[18] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

Proposed Rule must be filed within 180 days after the Notice of Rule Development. Lastly, unless the agency publishes a statement explaining why rulemaking is not feasible or practicable under s. 120.54(1), F.S., the bill prohibits the agency from relying on the unadopted rule until rulemaking is complete.

Distribution of Notices (Section 2)

The bill adds additional items to the list of required contents of the Florida Administrative Register, including:

- Notices of Rule Development Workshops.
- A listing of all rules filed for adoption within the previous 7 days.
- A listing of rules pending ratification by the Legislature.

The bill also requires agencies that provide notices by email to licensees or other interested persons to include within those email messages, notices of rule development workshops and notices of the intent to adopt, amend, or repeal a rule.

Rule Challenges (Section 3)

Burdens of Proof

The bill amends s. 120.56(1), (2) and (4), F.S., relating to petitions challenging the validity of rules, proposed rules and statements defined as rules ("unadopted rules"). The changes clarify the pleading requirements for the petitions. It also clarifies the parties' respective burdens of proof in challenges to proposed or unadopted rules.

Time Period for Issuance of Final Order (Section 4)

Under existing law, an agency must issue a final order within 90 days after a DOAH administrative law judge issues a recommended order. The bill, however, contemplates that a DOAH administrative law judge's decision on a rule challenge is final agency action, reversible only by an appellate court. But the bill, consistent with existing law, provides that the DOAH administrative law judge's decision with respect to other disputed matters in the same proceeding is a recommended decision. As a result, the agency might not as a practical matter be able to issue a final order until an appellate court rules on the validity of a challenged rule. For those cases, the bill provides that an agency must issue its final order within ten days after the appellate court issues its mandate.

Rule Challenges in Proceedings Involving Disputed Facts (Section 5)

Section 5 amends s. 120.57, F.S., relating to DOAH hearings of agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the rule challenge provisions of s. 120.56, F.S., allowing the administrative law judge to enter a final order on a challenge to the validity of a rule or to an unadopted rule in all contests before DOAH. This treats a challenge to a rule in defending against or attacking an agency action much as a challenge in an action initiated solely to challenge the rule. Notably, the decision on the rule challenge in the DOAH proceeding is binding on the agency.

The bill allows the agency, within 15 days after notice of the rule challenge in such matters, to waive its reliance on an unadopted rule or a rule alleged to be invalid and, thereby, eliminate that aspect of the litigation, without prejudice to the agency reasserting its position in another matter or rule challenge.

The bill specifies that a petitioner may pursue a separate, collateral challenge under s. 120.56, F.S., even if an adequate remedy exists through a hearing involving disputed issues of material fact. The administrative law judge may consolidate the proceedings.

The bill also revises the procedures for raising challenges to the validity of rules and unadopted rules in many proceedings where there is no dispute of material fact, staying the agency's non-DOAH proceeding during a related DOAH challenge to a rule.

Judicial Review (Section 6)

Existing law requires an agency to notify the Administrative Procedures Committee of the appeal of orders from a rule challenge proceeding. The bill requires an agency to report to the committee the appeal of orders relating to the assertion of a rule challenge as a defense to agency action. The section also allows ten additional days to file an appeal if the appellant did not receive notice of the rendering of the final order within 25 days. Section 6 also contains provisions conforming to other provisions of the bill which allow the direct appeal of a decision of a DOAH administrative law judge ruling on a rule challenge asserted as a defense to agency action.

Designation of Minor Violation of Rules (Section 7)

Section 7 amends s. 120.695, F.S., to direct each agency to timely review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the Administrative Procedures Committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation no later than June 30, 2016, and after such date within three months after any request of the rules ombudsman. Each agency that fails to timely complete the review and file the certification will be reported by the rules ombudsman to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Administrative Procedures Committee.

Beginning July 1, 2016, each agency will be required to publish all rules of that agency designated as rules the violation of which would be a minor violation either as a complete list on the agency’s website or by incorporation of the designations in the agency’s disciplinary guidelines adopted as a rule. Each agency must ensure that all investigative and enforcement personnel are knowledgeable of the agencies designations of these rules. The agency head must certify for each rule filed for adoption whether any part of the rule is designated as one the violation of which would be a minor violation and update the listing on the webpage or disciplinary guidelines.

Effective Date (Section 8)

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not apply to counties or municipalities. As such, the bill is not subject to the constitutional restrictions on the Legislature to enact mandates.

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:

CS/SB 718 may require an agency to provide precise guidance through more precise rules to those regulated before the agency may sanction a regulated entity for a rule or statutory violation.

C. Government Sector Impact:

The bill has an insignificant, indeterminate fiscal impact. The bill may require some additional workload on state agencies and a minimal increase in expenditures related to state agencies filing more frequently in the Florida Administrative Register. However, the impact is likely insignificant and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As the Administrative Procedure Act has evolved over time through amendments by the Legislature, it has become more complex. At some point, the Legislature may wish to simplify the structure of the act to ensure that persons regulated by an agency can easily understand their rights to challenge agency actions.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.54, 120.55, 120.56, 120.569, 120.57, 120.68, and 120.695.

IX. Additional Information:

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

CS by Appropriations on April 23, 2015:
The committee substitute:

- Deletes sections relating to declaratory statements, mediation, and attorney fees.
- Specifies that a petitioner in a hearing on an agency-initiated action involving disputed issues of material fact may pursue a separate, collateral rule challenge.
- Specifies that a final order entered in a rule challenge that is collateral to another proceeding will be directly appealable just as an order in a rule challenge under s. 120.56, F.S.
- Adds ten days to the 30 day time to appeal if a party does not receive notice of the final order until after the 25th day.
- Extends the effective date (from July 1, 2015, to July 1, 2016) of the provision requiring agencies to timely review and certify those rules that have been designated as minor violations.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2015	.	
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	.	

The Committee on Appropriations (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) If the agency does not initiate rulemaking or otherwise comply with the requested action within 30 days after ~~following~~

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the public hearing provided for in ~~by~~ paragraph (b), ~~if the agency does not initiate rulemaking or otherwise comply with the requested action,~~ the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(d) If the agency initiates rulemaking after a public hearing provided for in paragraph (b), the agency shall publish a notice of rule development within 30 days after the hearing and file a notice of proposed rule within 180 days after the notice of rule development unless, before the 180th day, the agency publishes in the Florida Administrative Register a statement explaining its reasons for not having filed the notice. If rulemaking is initiated under this paragraph, the agency may not rely on the unadopted rule unless the agency publishes in the Florida Administrative Register a statement explaining why rulemaking under paragraph (1)(a) is not feasible or practicable until conclusion of the rulemaking proceeding.

Section 2. Section 120.55, Florida Statutes, is amended to

read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with

an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida

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Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A list of rules filed for adoption in the previous 7 days.

7. A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be taken off the list once notice of ratification or withdrawal of such rule is received.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register Internet website does not preclude publication of such material on an agency’s website or

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by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform licensees or other registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6) ~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~ (a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

Section 3. Subsection (1), paragraph (a) of subsection (2),

and subsection (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition challenging the validity of a proposed or adopted rule under this section ~~seeking an administrative determination~~ must state: ~~with particularity~~

1. The particular provisions alleged to be invalid and a statement ~~with sufficient explanation~~ of the facts or grounds for the alleged invalidity. ~~and~~

2. Facts sufficient to show that the petitioner ~~person challenging a rule~~ is substantially affected by the challenged adopted rule ~~it,~~ or ~~that the person challenging a proposed rule~~ would be substantially affected by the proposed rule ~~it~~.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited

to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the

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division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule ~~and is not limited to challenging the change to the proposed rule~~.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement that is an unadopted rule may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a


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description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes an unadopted ~~a~~ rule ~~under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54~~.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule.

(c) The petitioner has the burden of going forward with evidence sufficient to support the petition. The agency then has the burden to prove by a preponderance of the evidence that the statement does not meet the definition of an unadopted rule, the statement was adopted as a rule in compliance with s. 120.54, or ~~If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving~~ that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) ~~(c)~~ The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final


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order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(e) ~~(d)~~ If an administrative law judge enters a final order that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule ~~statement~~ or any substantially similar statement as a basis for agency action.

(f) ~~(e)~~ If proposed rules addressing the challenged unadopted rule ~~statement~~ are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 4. Paragraph (l) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)

(l) Unless the time period is waived or extended with the


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consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, except that, at the election of the agency, the time for rendering the final order may be extended up to 10 days after entry of a mandate from any appeal following entry of a final order under s. 120.57(1)(e)4.; or

3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

Section 5. Paragraphs (e) and (h) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

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2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge shall be pled as a defense using the procedures set forth in s. 120.56(1)(b).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. The agency has 15 days after the date of receipt of a challenge under this subparagraph to serve the challenging party with a notice stating whether the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to timely serve the notice constitutes a binding stipulation that the agency shall not rely upon the rule or unadopted rule further in the proceeding. The agency shall include a copy of this notice upon referral of the matter to the division under s. 120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those

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rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule ~~The agency action~~ shall not be presumed valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. If the agency timely serves notice of continued reliance upon a challenged rule or an alleged unadopted rule under sub-subparagraph 2.d., the administrative law judge shall determine

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whether the challenged rule is an invalid exercise of delegated legislative authority or whether the challenged agency statement constitutes an unadopted rule and if that unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

6. A petitioner may pursue a separate, collateral challenge under s. 120.56 even if an adequate remedy exists through a proceeding under this section. The administrative law judge may consolidate the proceedings.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final

order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order. This paragraph does not apply to proceedings authorized in paragraph (e).

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines

the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2. for presenting material in opposition to the agency's proposed action or refusal to act, the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule upon which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge. The final order shall provide additional notice that the stay of the pending agency action is terminated and that any further stay pending appeal of the final order must be sought from the appellate court.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 6. Subsections (1), (2), and (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(1)(a) A party who is adversely affected by final agency

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action is entitled to judicial review.

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings, or a final order under s. 120.57(1)(e)4., is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.

(b) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date that ~~rendition of~~ the order being appealed is filed with the agency clerk. If a party receives notice of the filing of the order later than the 25th day after the filing of the order with the agency clerk, the time by which the party must file a notice of appeal or petition for review is extended for 10 days after the date that the party received the notice of the filing of the order. If the appeal is of an order rendered in a proceeding initiated under s. 120.56 or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(c) ~~(b)~~ When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by

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stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority shall not be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 7. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall

issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index~~


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~~of the rules and information on how the rules may be obtained.~~

(c)1. No later than June 30, 2016, and after such date within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). The rules ombudsman shall promptly report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the committee the failure of any agency to timely complete the review and file the certification as required by this section.

2. Beginning July 1, 2016, each agency shall:

a. Publish all rules that the agency has designated as rules the violation of which would be a minor violation, either as a complete list on the agency's website or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the

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violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

Section 8. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; providing procedures for agencies to follow when initiating rulemaking after certain public hearings; limiting reliance upon an unadopted rule in certain circumstances; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing

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for additional notice of rule development, proposals, and adoptions in the Florida Administrative Register; requiring certain agencies to provide additional e-mail notifications concerning specified rulemaking and rule development activities; amending s. 120.56, F.S.; specifying the burden of proof necessary for a petitioner to challenge a proposed rule or unadopted agency statement; amending s. 120.569, F.S.; granting agencies additional time to render final orders in certain circumstances; amending s. 120.57, F.S.; conforming proceedings that oppose agency action based on an invalid or unadopted rule to proceedings used for challenging rules; requiring the agency to issue a notice stating whether the agency will rely on the challenged rule or alleged unadopted rule; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; authorizing the administrative law judge to issue a separate final order on certain rules and alleged unadopted rules; prohibiting agencies from rejecting specific conclusions of law in certain final orders rendered by an administrative law judge; authorizing a petitioner to file certain collateral challenges regarding the validity of a rule; authorizing the administrative law judge to consolidate proceedings in such rule challenges; providing for the stay of proceedings not involving disputed issues of fact upon timely filing of a rule challenge; providing that the final order terminates the stay; amending s. 120.68,

F.S.; providing for judicial review of orders rendered in challenges to specified rules or unadopted rules; authorizing extensions for filing certain appeals or petitions for review under certain circumstances; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; requiring agency review and certification of minor violation rules by a specified date; requiring the reporting of an agency's failure to complete the review and file certification of such rules; requiring minor violation certification for all rules adopted after a specified date; requiring public notice; providing applicability; conforming provisions to changes made by the act; providing an effective date.

By Senator Lee

24-00407-15 2015718__

A bill to be entitled

An act relating to administrative procedures; amending s. 57.111, F.S.; providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; amending s. 120.54, F.S.; requiring agencies to set a time for workshops for certain unadopted rules; amending s. 120.55, F.S.; providing additional items that must be noticed by an agency in the Florida Administrative Register; requiring agencies to provide such notice to registered recipients under certain circumstances; amending s. 120.56, F.S.; clarifying that petitions for administrative determinations apply to rules and proposed rules; identifying which entities have the burden in hearings in which a rule, proposed rule, or agency statement is at issue; prohibiting an administrative law judge from bifurcating certain petitions; amending s. 120.565, F.S.; authorizing certain parties to state to an agency their understanding of how certain rules apply to specific facts; specifying the timeframe for an agency to provide a declaratory statement; authorizing the award of attorney fees under certain circumstances; amending s. 120.569, F.S.; granting agencies additional time to render final orders under certain circumstances; amending s. 120.57, F.S.; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; requiring an agency to issue a notice regarding its reliance on the

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challenged rule or alleged unadopted rule; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; requiring the administrative law judge to issue a separate final order on certain rules and alleged unadopted rules; prohibiting agencies from rejecting specific conclusions of law; limiting situations under which an agency may reject or modify conclusions of law; providing for stay of proceedings not involving disputed issues of fact upon timely filing of a rule challenge; providing that the final order terminates the stay; amending s. 120.573, F.S.; providing additional situations in which a party may request mediation; amending s. 120.595, F.S.; providing criteria for establishing whether a nonprevailing party participated in a proceeding for an improper purpose; revising provisions providing for the award of attorney fees and costs by the appellate court or administrative law judge; providing exceptions; removing a provision authorizing an agency to demonstrate its actions were substantially justified; requiring notice of a proposed challenge by the petitioner as a condition precedent to filing a challenge and being eligible for the reimbursement of attorney fees and costs; authorizing the recovery of attorney fees and costs incurred in litigating rights to attorney fees and costs in certain actions; providing such attorney fees and costs are not limited in amount; amending s. 120.68, F.S.; requiring

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

specified agencies to provide notice of appeal to the Administrative Procedures Committee under certain circumstances; amending s. 120.695, F.S.; removing obsolete provisions; requiring agency review and certification of minor rule violations by a specified date; requiring the reporting of agency failure to complete such review and certification; requiring certification of minor violations for all rules adopted after a specified date; requiring public notice; providing for nonapplicability; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorney ~~attorneys'~~ fees and costs.—

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not "substantially justified" if the law, rule, or order at issue in the current agency action is the subject upon which the prevailing party previously petitioned the agency for a declaratory statement under s. 120.565; the current agency action involves identical or substantially similar facts and circumstances as those raised in the previous petition; and:

1. The agency action contradicts the declaratory statement issued by the agency upon the previous petition; or

2. The agency denied the previous petition under s. 120.565 before initiating the current agency action against the substantially affected party.

Section 2. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) Within 30 days following the public hearing provided for in ~~by~~ paragraph (b), if the petition's requested action requires rulemaking and the agency initiates rulemaking, the agency shall establish a time certain for rulemaking workshops and shall discontinue reliance upon the agency statement or unadopted rule until it adopts rules pursuant to subsection (3). If the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise

modifying the authority of the agency.

Section 3. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or

effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating

reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A listing of rules filed for adoption in the previous 7 days.

7. A listing of all rules filed for adoption pending legislative ratification under s. 120.541(3). Each rule on the list shall be taken off the list once it is ratified or withdrawn.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on

the Florida Administrative Register Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3)(a) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6) ~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~ (a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any

excess shall be transferred to the General Revenue Fund.

Section 4. Subsections (1), (3), and (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination of the invalidity of a rule or proposed rule must state the facts and ~~with particularity the~~ provisions alleged to be invalid with sufficient explanation of the ~~facts or~~ grounds for the alleged invalidity and facts sufficient to show that the petitioner ~~person~~ challenging a rule is substantially affected by it, or that the petitioner ~~person~~ challenging a proposed rule would be substantially affected by it.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw

the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. The petitioner has the burden of going forward with the evidence. The agency has the burden of proving by a preponderance of the evidence that the rule, proposed rule, or agency statement is not an invalid exercise of delegated legislative authority. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. The petitioner has the ~~a~~ burden of going forward with the evidence as set forth in paragraph (1)(b), and the agency has the burden of proving by a preponderance of the evidence that the existing rule is not an invalid exercise of delegated legislative authority as to the objections raised.

(b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Register in the first available issue after the rule has become void.

(c) If an existing agency rule is declared invalid, the agency may no longer rely on the rule for final agency action, including any final action on cases pending under s. 120.57.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

(b) The administrative law judge may extend the hearing

date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(c) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(d) If an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.

(e) If proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the statement

and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(f) If a petitioner files a petition challenging agency action and a part of that petition alleges the presence of or reliance upon agency statements or unadopted rules, the administrative law judge may not bifurcate the petition into two cases but shall consider the challenge to the proposed agency action and the allegation that such agency action was based upon the presence of or reliance upon agency statements or unadopted rules.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 5. Subsection (2) of section 120.565, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

120.565 Declaratory statement by agencies.—

(2) The petition seeking a declaratory statement shall state ~~with particularity~~ the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(4) The petitioner may submit to the agency clerk a statement that describes or asserts the petitioner's understanding of how the statutory provision, rule, or order

applies to the set of circumstances. The agency has 60 days to review the petitioner's statement and to either accept the statement or offer changes and other clarifications to establish the plain meaning of how the statutory provision, rule, or order applies to the set of circumstances described in the petitioner's statement.

(5) If the agency denies a request for a declaratory statement and the petitioner appeals the denial and it is determined that the agency improperly denied the request, the petitioner is entitled to an award of reasonable attorney fees and costs.

Section 6. Paragraph (l) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, except that, at the election of the agency, the time for rendering the final order may be extended up to 10 days after the entry of a mandate on any appeal from a final order under s. 120.57(1)(e)4.; or

3. After the agency has received the written and oral

material it has authorized to be submitted, if there has been no hearing.

Section 7. Paragraphs (e), (h), and (l) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, a party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge shall be pled as a defense using the procedures set forth in s. 120.56(1)(b).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. The agency has 15 days from the date of receipt of a challenge under this subparagraph to serve the challenging party with a notice as to whether the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to serve or to timely serve the notice constitutes a binding determination that the agency may not rely upon the rule or unadopted rule further in the proceeding. The agency shall include a copy of the notice, if one was served, when it refers the matter to the division under s. 120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule is ~~The agency action shall~~ not ~~be~~ presumed to be valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State

Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. If the agency timely serves notice of continued reliance upon a challenged rule or an alleged unadopted rule under sub-subparagraph 2.d., the administrative law judge shall determine whether the challenged rule is an invalid exercise of delegated legislative authority or whether the challenged agency statement constitutes an unadopted rule and if that unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete~~

~~record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order. This paragraph does not apply to proceedings set forth in paragraph (e).

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may only reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction if the agency

determines that the conclusions of law are clearly erroneous. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as reasonable as, or more reasonable than, that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a

convenient time and place, to present to the agency or administrative law judge ~~hearing officer~~ written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2., the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule upon which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge. The final order shall provide notice that the stay of the pending agency action is terminated and any further stay pending appeal of the final order must be sought from the appellate court.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 8. Section 120.573, Florida Statutes, is amended to read:

120.573 Mediation of disputes.—

(1) Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days after ~~of~~ such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

(2) A party in a proceeding conducted pursuant to a petition seeking an administrative determination of the invalidity of an existing rule, proposed rule, or agency statement under s. 120.56 or a proceeding conducted pursuant to a petition seeking a declaratory statement under s. 120.565 may request mediation of the dispute under this section.

Section 9. Section 120.595, Florida Statutes, is amended to read:

120.595 Attorney ~~Attorney's~~ fees.—

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney fees ~~attorney's fee~~ to the prevailing party if the administrative law judge determines ~~only where~~ the nonprevailing adverse party ~~has been determined by the administrative law judge to have~~ participated in the proceeding for an improper purpose.

1.~~(c)~~ Other than as provided in paragraph (d), in proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. ~~In making such determination, the administrative law judge shall consider whether~~ The nonprevailing adverse party shall be presumed to have participated in the pending proceeding for an improper purpose

if:

a. Such party was an adverse party ~~has participated~~ in three ~~two~~ or more ~~other such~~ proceedings involving the same prevailing party and the same subject;

b. In those ~~project as an adverse party and in which such two or more~~ proceedings, the nonprevailing adverse party did not establish either the factual or legal merits of its position;~~, and shall consider whether~~

c. The factual or legal position asserted in the pending ~~instant~~ proceeding would have been cognizable in the previous proceedings; and

d. The nonprevailing adverse party has not rebutted the presumption of participating~~. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated~~ in the pending proceeding for an improper purpose.

2.~~(d)~~ If ~~In any proceeding in which the administrative law judge determines that~~ a party is determined to have participated in the proceeding for an improper purpose, the recommended order shall include such findings of fact and conclusions of law to establish the conclusion ~~so designate~~ and shall determine the award of costs and attorney ~~attorney's~~ fees.

(c)~~(c)~~ For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(d) For challenges brought under s. 120.57(1)(e), when the agency relies on a challenged rule or an alleged unadopted rule pursuant to s. 120.57(1)(e)2.d., if the appellate court or the administrative law judge declares the rule or portion of the rule to be invalid or that the agency statement is an unadopted rule that does not meet the requirements of s. 120.57(1)(e)4., a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney fees. An award of attorney fees as provided by this paragraph may not exceed $50,000.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist

which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the petitioner before ~~prior to~~ the date the notice was published~~, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an~~

~~unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7)~~. An award of attorney ~~attorney's~~ fees as provided by this paragraph may not exceed $50,000.

(c) Notwithstanding ~~the provisions of~~ chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency is ~~shall~~ not ~~be~~ entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(c) ~~(1)(c)~~ or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney ~~attorney's~~ fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the

appellate process, or that the agency action that ~~which~~ precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney ~~attorney's~~ fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) NOTICE OF INVALIDITY.—A party failing to serve a notice of proposed challenge under this subsection is not entitled to an award of reasonable attorney fees and reasonable costs under this section.

(a) Before filing a petition challenging the validity of a proposed rule under s. 120.56(2), an adopted rule under s. 120.56(3), or an agency statement defined as an unadopted rule under s. 120.56(4), a substantially affected person shall serve the agency head with notice of the proposed challenge. The notice shall identify the proposed or adopted rule or the unadopted rule that the person proposes to challenge and a brief explanation of the basis for that challenge. The notice must be received by the agency head at least 5 days before the filing of a petition under s. 120.56(2) and at least 30 days before the filing of a petition under s. 120.56(3) or s. 120.56(4).

(b) This subsection does not apply to defenses raised and challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of reasonable attorney fees and reasonable costs, the prevailing party shall also recover reasonable

attorney fees and reasonable costs incurred in litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter. Reasonable attorney fees and reasonable costs awarded for litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

(8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing in~~ This section does not ~~shall~~ affect the availability of attorney ~~attorney's~~ fees and costs as provided in those sections.

Section 10. Paragraph (a) of subsection (2) and subsection (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56 or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority may not ~~shall~~ be

instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 11. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with

a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c)1. Within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the

House of Representatives, the Administrative Procedures Committee, and the rules ombudsman any designated rules, ~~have been designated as rules~~ the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). The rules ombudsman shall promptly report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Administrative Procedures Committee each failure of an agency to timely complete the review and file the certification as required by this section.

2. Beginning July 1, 2015, each agency shall:

a. Publish all rules that the agency has designated as rules that the violation of which would be a minor violation, either as a complete list on the agency's Internet web page or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule that the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not

apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

Section 12. This act shall take effect July 1, 2015.

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 Committee on Appropriations

BILL:	CS/CS/SB 896
INTRODUCER:	Transportation Committee; Community Affairs Committee; and Senator Brandes
SUBJECT:	Location of Utilities
DATE:	April 20, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	**Fav/CS**
2.	Price	Eichin	TR	**Fav/CS**
3.	Sneed	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 896 addresses the responsibility for the cost of relocating utility facilities in a public easement. Easements dedicated to the public for utilities are typically located along existing road or highway rights-of-way and are available for use by a variety of utility providers. The bill revises the responsibility to bear relocation costs from the utility owner to the state or local government requiring the facilities to be relocated, effectively shifting such costs currently borne by the utility and its users to taxpayers. Under the bill, the owner of a utility that requires relocation will be liable for relocation costs only if their lines and facilities are across, on or "*within"* the right-of-way, rather than "*along*" any right-of-way.

Additionally, the bill prohibits a municipality or county from requiring utilities to resubmit proprietary maps of facilities if the facilities have previously been subject to a permit.

According to the Florida Department of Transportation (DOT), the bill would have an indeterminate negative fiscal impact on state expenditures relating to the cost of utility relocation on state roads. To the extent funds are expended for such relocations, projects currently planned in the Work Program may need to be adjusted.

The bill is also expected to have an indeterminate negative fiscal impact on local governments that may now be responsible for the cost of relocation on roads within their jurisdictions.

The bill provides that it becomes effective upon becoming law.

II. Present Situation:

Specific Grant of Authority to Counties to Issue Licenses to Utilities

Section 125.42, F.S., gives counties specific authority to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove, within the unincorporated areas of a county, water, sewage, gas, power, telephone, other utility, and television transmission lines located "under, on, over, across and along" any county roads or highways.[1] The statutory phrase "under, on, over, across and along" county roads or highways has been in the statute since 1947.[2]

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Lines

Chapter 337, F.S., relates to public contracts and the acquisition, disposal, and use of property. DOT and local governmental entities[3] prescribe and enforce reasonable rules or regulations related to the placement and maintenance of the utility lines along, across, or on any public road or rail corridor.[4] "Utility" in this context means any electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures that the statute refers to as a "utility."[5] Florida local governments have enacted ordinances regulating utilities located within city rights-of-way or easements.[6]

Payment of Moving or Removing Utilities and Exceptions

Since 1957, Florida law expressly has provided that in the event of widening, repair or reconstruction of a county's public road or highway, the licensee, i.e., the utility provider, must move or remove the lines at no cost to the county.[7] In 2009, that requirement was made subject to a provision in s. 337.403(1), F.S., relating to agreements entered into after July 1, 2009.[8] In 2014, it was made subject to an additional requirement that the authority[9] find the utility is "unreasonably interfering" with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor.[10]

Additionally, beginning in 1957, Florida statutorily required utilities to bear the costs of relocating a utility placed upon, under, over, or along any public road the authority finds unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension or expansion of a road.[11] In 1994, that law was amended to include utilities placed upon, under, over, or along any publicly owned rail corridor.[12] Utility

[1] Section 125.42, F.S.
[2] Ch. 23850, ss. 1-3, Laws of Fla., now codified at s. 125.42, F.S.
[3] These are referred in ss. 337.401-337.404, F.S., as an "authority." S. 337.401(1)(a), F.S.
[4] Section 337.401, F.S.
[5] Section 337.401(a), F.S.
[6] *See* City of Cape Coral Code of Ordinances, Ch. 25; City of Jacksonville Code of Ordinances, Title XXI, Ch. 711; City of Orlando Code of Ordinances, Ch. 23.
[7] Ch. 57-777, s. 1, Laws of Fla., now codified at s. 125.42(5), F.S.
[8] Ch. 2009-85, s. 2, Laws of Fla., now codified at s. 125.42(5), F.S.
[9] "[A]uthority" means DOT and local governmental entities. Section 337.401(1), F.S.
[10] Ch. 2014-169, s. 1, Laws of Fla., now codified at s. 125.42, F.S.
[11] Ch. 57-1978, s. 1, Laws of Fla., now codified at s. 337.403, F.S.
[12] Ch. 1994-247, s. 28, Laws of Fla., now codified at s. 337.403, F.S.]

owners, upon 30 days' notice, must eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.[13] The general rule remains that utilities bear the costs of relocating a utility unless governmental participation in such costs is authorized. Since 1987, numerous exceptions to that general rule have been statutorily carved out, and can be found in s. 337.403(1), F.S., as follows:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.[14]
- When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus ten percent of the amount awarded for the utility work in the construction contract.[15]
- When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.[16]
- If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.[17]
- If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation, the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.[18]
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears the cost of the necessary utility work.[19]
- An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located:
    - If the utility was physically located on the particular property before the authority acquired rights in the property,
    - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property, and
    - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility[20] or, pursuant to a 2014 amendment, after due diligence, the utility certifies that it does not have evidence to prove or disprove it has a compensable property right in the particular property where the utility is located.[21]

[13] Section 337.403, F.S.
[14] Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(a), F.S.
[15] Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(b), F.S.
[16] Ch. 1999-385, s. 25, Laws of Fla., now codified at s. 337.403(1)(c), F.S.
[17] Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(d), F.S.
[18] Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(e), F.S.
[19] Ch. 2009-85, s.10, Laws of Fla., now codified at s. 337.403(1)(f), F.S.
[20] Ch. 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g), F.S.
[21] Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.

- If a municipally-owned or county-owned utility is located in a rural area of critical economic concern[22] and DOT determines that the utility is unable, and will not be able within the next ten years to pay for the cost of utility work necessitated by a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.
- If the relocation of utility facilities is needed for the construction of a commuter rail service project or an intercity passenger rail service project, and the cost of the project is reimbursable by the federal government, then the utility that owns or operates the facilities located by permit on a DOT owned rail corridor shall perform all necessary utility relocation work after notice from DOT, and DOT must pay the expense for the utility relocation work in the same proportion as federal funds are expended on the rail project after deducting any increase in the value of a new facility and any salvage value derived from an old facility.[23]

Utility Relocation under Common Law and the *Cape Coral* Decision

Legal scholarship has addressed the common law implications of utility relocation.[24] Generally, under common law, a utility will bear the costs of moving or relocating its utility lines or facilities if they are within the right-of-way or a public utility easement, unless there exists an agreement providing otherwise or a private easement pursuant to which the utility locates and runs its lines or facilities. A right-of-way differs from an easement. The term right-of-way "has been construed to mean … a right of passage over the land of another …. It does not necessarily mean a legal and enforceable incorporeal [or intangible] right such as an easement."[25] An easement gives someone else a reserved right to use property in a specified manner,[26] but "does not involve title to or an estate in the land itself."[27]

In 2014, the Florida Second District Court of Appeal (DCA) ruled in *Lee County Electric Coop., Inc. v. City of Cape Coral* that the requirement for utilities to pay for relocation within a right-of-way is well established in the common law.[28] That court found that, absent another arrangement by agreement between a governmental entity and the utility, or a statute dictating otherwise, the common law principle governs.[29] This case involved a platted public utility easement on each side of the boundary for each home site in the subdivision, in which the electric utility had installed lines and other equipment. The easement was "along" the public right-of-way and was dedicated *to the public*, not to any utility owner, for the purpose of furnishing utilities. No

[22] Section 288.0656(2)(d) defines "rural area of critical economic concern" as "a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact."
[23] Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(i), F.S. The exception expressly provides that in no event is the state required to use state dollars for such utility relocation work and that it does not apply to any phase of the Central Florida Rail Corridor project known as SunRail. Section 337.403(1)(i), F.S.
[24] Michael L. Stokes, *Moving the Lines: The Common Law of Utility Relocation*, 45 Val. U.L. Rev. 457 (Winter, 2011).
[25] *City of Miami Beach v. Carner*, 579 So. 2d 248, 253 (Fla. 3d DCA 1991).
[26] *Southeast Seminole Civic Ass'n v. Adkins*, 604 So. 2d 523, 527 (Fla. 5th DCA 1992) ("[E]asements are mere rights to make certain limited use of lands and at common law, they did not have, and in the absence of contractual provisions, do not have, obligations corollary to the easement rights.").
[27] *Estate of Johnston v. TPE Hotels, Inc.*, 719 So. 2d 22, 26 (Fla. 5th DCA 1998) (citations omitted).
[28] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972, at *4 (Fla. 2d DCA May 23, 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014), quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983).
[29] *Id*.

reserved right to use the property was granted to the Lee County Electric Coop by virtue of the platted public easement. The municipality and the utility had a franchise agreement granting the utility the right to operate its electric utility in the public easement, but the agreement did not address who would be responsible for the cost of moving the utility's equipment if the municipality required the utility to do so. The Second DCA held that the utility would bear the burden of the cost of moving a utility line located within a public utility easement to another public utility easement as part of the municipality's expansion of an existing road.[30]

III. Effect of Proposed Changes:

Section 1 amends s. 125.42, F.S., relating to licenses for water, sewage, gas, power, telephone, other utility and television lines. The bill reduces a county's authority to grant licenses for lines to only locations under, on, over, across, or within the right-of-way limits of a county highway or public road, as opposed to "under, on, over, across and along" such highways or roads. Specifically, the bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other utility, television lines, and other communications services[31] is limited to those lines located within the right-of-way limits of any county roads or highways. Accordingly, this change narrows a county's ability to grant licenses to construct such lines within a public easement, running along a road or highway but not within the actual right-of-way.

The bill also makes a conforming change, substituting a reference to ss. 337.403(1)(d) through (i), F.S., with ss. 337.403(1)(d) through (j), F.S., to correspond with the new exception set forth in Section 3 of the bill.

Section 2 amends s. 337.401, F.S., relating to rules or regulations concerning specified structures within public roads or rail corridors. The bill reduces the ability of defined government authorities to grant licenses to only locations "across, on, or within" the right-of-way limits of a county highway or public road, as opposed to "along, across, or on" such highways or roads. Specifically, the bill narrows the authority of DOT and local governmental entities to prescribe and enforce rules or regulations related to the placing and maintaining of a utility[32] to only across, on, or within the right-of-way limits of any public road or publicly owned rail corridors. By changing the language to "right-of-way," the bill reduces the authority of DOT and local governments to prescribe and enforce rules and regulations regarding the placement and maintenance of utilities within a public easement. The bill also changes the expression "other

[30] *Id.* In reaching this conclusion, the Second District distinguished *Panhandle E. Pipe Line Co.*, noting that case concerned "a private easement the utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property." *Lee County Electric Coop., Inc.*, 2014 WL 2218972, at *3. The Second District in its opinion also distinguished an earlier Second District case, *Pinellas County v. General Tel. Co. of Fla.*, 229 So. 2d 9 (Fla. 2d DCA 1969). In *Pinellas County*, without citing or discussing relevant cases or statutes, the court determined that the utility, which had a franchise agreement with the City, had a property right in the agreement, and held that the County had to pay the utility's costs in moving its telephone lines located within a right-of-way of an alley dedicated to the City and which was within property the County was purchasing as part of a County building construction.

[31] The bill adds "other communications services" to the list of utilities in current law.

[32] Section 337.401(1)(a), F.S., provides that utilities include "electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section as the "utility"."

structures referred to as a utility" to mean those structures referred to in ss. 337.401-337.404, F.S., instead of just those found in s. 337.401, F.S.

Additionally, the bill prohibits municipalities or counties exercising authority over a utility from requiring the utility to provide proprietary maps of facilities if the facilities have previously been subject to a permit from the authority; and separately prohibits municipalities or counties from requiring providers of communication services to provide proprietary maps of such facilities.

Section 3 amends s. 337.403, F.S., relating to alleviating an interference that a utility causes to a public road or publicly owned rail corridor. The bill limits the responsibility of utility providers to pay for relocating their lines and facilities under certain circumstances and requires defined governmental authorities to pay for such relocation. Specifically, the bill establishes that the utility is not required to bear relocation costs if a governmental authority requires relocation:

- For any purpose other than unreasonable interference with the safe continuous use, maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor; or as a condition or result of a project by a different entity;[33] and
- Where the utility is located upon, under, over or *within the right-of-way limits* of the road or rail corridor, rather than upon, under, over, *or along* the road or rail corridor; or where a utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the governmental authority, by dedication, transfer of fee, or otherwise.

The bill further specifies that nothing impairs any rights of the holder of any private railroad right-of-way, including any rights in any agreement between the holder and a utility that otherwise allocates relocation costs.

These changes overturn the results reached by the Second DCA in *Lee County Electric Cooperative, Inc. v. City of Cape Coral,* which held that the cost of relocating utilities from a public easement in the absence of a permit or other agreement is the responsibility of the utility owner.[34] Under the bill, if a utility is located in a public easement and no permit or agreement is in place to address relocation, the state or local government will be required to pay relocation costs because the utility is located *along* a public right-of-way.

The provisions extend beyond the issue before the court in the Lee County case. For example, current law defers to private property rights by requiring the state or local government to pay for relocation when a utility is located on a *private* easement, i.e., on property for which the utility has paid for the right to use or occupy. The bill's provisions seemingly extend private property rights to public property by requiring the governmental entity to pay for utility relocation even when the governmental entity has purchased a *public* easement, i.e., property dedicated *to the public* in general, not to any specific utility owner, effectively bestowing a compensable property right to private users of a public easement, even when such users were granted the right to use the public property without compensation.

[33] The other entity would be responsible for payment.
[34] *Lee County Electric Coop., Inc.,* 2014 WL 2218972, at *4.

Section 4 provides that the Legislature finds that the bill fulfills an important state interest by clarifying a utility's responsibility for relocation of its facilities.

Section 5 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides in pertinent part that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds … unless the legislature has determined that such law fulfills an important state interest and unless: … the expenditure is required to comply with a law that applies to all persons similarly situated."

The bill applies to all persons similarly situated, including the state and local governments. The bill includes a legislative finding that the bill fulfills an important state interest.

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:

CS/CS/SB 896 would have an indeterminate positive impact on the private sector, depending upon the number of eligible reimbursements for relocation made to utilities by DOT, local governments, or other entities.

C. Government Sector Impact:

State and local governments would bear the cost of relocation if they require the relocation of a utility, with certain exceptions. If the relocation is required by an entity other than the state or a local government, the other entity bears the cost of relocation. State and local governments would be required to bear the cost of utility work when a utility is located within an existing and valid utility easement granted by recorded plat, regardless of how such land was subsequently acquired by the local government, even where the state or local government subsequently acquired the property by outright purchase.

While the extent is unknown, potential negative fiscal impacts appear to exist, given that utility facilities are located along the public right-of-way all over the state. The increased responsibility of state and local governments, and nonusers of utilities, to bear the cost of utility relocation previously borne by the utility owner and its users may delay or even prevent needed transportation improvements, particularly for local governments.

According to DOT, the bill would have an indeterminate negative fiscal impact on state expenditures relating to the cost of utility relocation on state roads.[35] To the extent funds are expended for such relocations, projects currently planned in the Work Program may need to be adjusted.

The bill will have an indeterminate negative fiscal impact on local governments, based on the number of situations in which local governments will be responsible for the cost of certain utility relocations on roads within their jurisdictions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill expressly acknowledges the existence, and precludes the impairment of existing agreements between railroads and utility owners allocating utility relocation costs. However, the bill does not acknowledge nor preclude the same with respect to existing permits or agreements between utility owners and the state or a local government. This raises the issue of the extent to which provisions of existing permits and agreements between a utility owner and the state or a local government relating to relocation costs remain valid under the bill. The extent of the expected negative fiscal impact resulting from the bill will depend on how this issue is resolved.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.42, 337.401, and 337.403.

IX. Additional Information:

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

CS/CS by Transportation on April 2, 2015:
The bill is modified to:

- Prohibit impairment of any rights of the holder of any private railroad right-of-way, including any rights in any agreement between the holder and a utility that allocates certain relocation costs;
- Insert a cross-reference to an existing definition;

[35] Florida Dep't of Transportation, *Legislative Bill Analysis of SB 896*, at 3 (Feb. 13, 2015).

- Include interference with drainage directly associated with the maintenance, improvement, extension, or expansion of a public road in currently-required utility work at the utility owner's expense; and
- Clarify that the cost of utility work within a previously dedicated public easement is shifted to the authority only if the utility is lawfully located in the easement.

CS by Community Affairs on March 23, 2015:
Clarifies that proprietary maps are the type of information that local governments may not require from a utility if their facilities have been previously subject to a permit and includes a statement of important state interest.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 125.42, Florida Statutes, is amended to read:

125.42 Water, sewage, gas, power, telephone, other utility, and television lines within the right-of-way limits of ~~along~~ county roads and highways.—

(1) The board of county commissioners, with respect to

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property located without the corporate limits of any municipality, is authorized to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove lines for the transmission of water, sewage, gas, power, telephone, other public utilities, and television, or other communications services as defined in s. 202.11(1) under, on, over, across, or within the right-of-way limits of ~~and along~~ any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription. However, the board of county commissioners shall include in any instrument granting such license adequate provisions:

(a) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public;

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair the road or highway promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury;

(c) Whereby the licensee shall hold the board of county commissioners and members thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating the license; and

(d) As may be reasonably necessary, for the protection of the county and the public.

(2) A license may be granted in perpetuity or for a term of years, subject, however, to termination by the licensor, in the

event the road or highway is closed, abandoned, vacated, discontinued, or reconstructed.

(3) The board of county commissioners is authorized to grant exclusive or nonexclusive licenses for the purposes stated herein for television.

(4) This law is intended to provide an additional method for the granting of licenses and shall not be construed to repeal any law now in effect relating to the same subject.

(5) In the event of widening, repair, or reconstruction of any such road, the licensee shall move or remove such water, sewage, gas, power, telephone, and other utility lines and television lines at no cost to the county should they be found by the county to be unreasonably interfering, except as provided in s. 337.403(1)(d)-(j) ~~337.403(1)(d)-(i)~~.

Section 2. Paragraph (a) of subsection (1), subsection (2), and paragraph (b) of subsection (3) of section 337.401, Florida Statutes, are amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and ss. 337.402-337.404 ~~ss. 337.401-337.404~~ as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining ~~along,~~ across, ~~or~~ on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers;

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water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and ss. 337.402-337.404 ~~this section~~ as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. In exercising its authority over a utility under this section, a municipality or county may not require a utility to provide proprietary maps of facilities that were previously subject to a permit from the authority. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

(3)


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(b) Registration described in paragraph (a) does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a municipality or county. Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county. In exercising its authority over providers of communications services under this section, a municipality or county may not require a communications services provider to provide proprietary maps of facilities that were previously subject to a permit from the authority.

Section 3. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by utility; expenses.—

(1) If a utility that is placed upon, under, over, or within the right-of-way limits of ~~along~~ any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, the utility owner shall, upon 30 days' written notice to the utility or its agent by the authority, initiate the work


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necessary to alleviate the interference at its own expense except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner. If an authority requires the relocation of a utility for purposes not described in this subsection and the utility owner is authorized by state or common law or state or local agreement to place facilities in the public rights-of-way, the authority must bear the cost of relocating the utility. If relocation is required as a condition or result of a project by an entity other than an authority, the entity other than the authority must bear the cost of relocating the utility except to the extent that the relocation would otherwise be required in connection with a transportation improvement identified in the authority's capital improvement schedule and scheduled for construction within 5 years. This subsection does not impair any right of the holder of a private railroad right-of-way or obligate the holder of such private railroad right-of-way to bear the relocation cost in such railroad right-of-way, subject to any agreement between the holder of the private railroad right-of-way and a utility which otherwise allocates such relocation cost. This subsection also does not affect a lawfully issued permit or lawful contract entered into between an authority and a utility before April 15, 2015. To the extent that an authority is required by this subsection to bear the cost of relocating a utility, the authority shall pay the entire expense properly attributable to such work after deducting any increase in the value of a new facility and any salvage value derived from an old facility.

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, is necessitated by the construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of the project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal Aid Highway Act, or any amendment thereof, then in that event the utility owning or operating such facilities shall perform any necessary work upon notice from the department, and the state shall pay the entire expense properly attributable to such work after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility.

(b) When a joint agreement between the department and the utility is executed for utility work to be accomplished as part of a contract for construction of a transportation facility, the department may participate in those utility work costs that exceed the department's official estimate of the cost of the work by more than 10 percent. The amount of such participation is limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility work to be accomplished in advance of a contract for construction of a transportation facility, the department may participate in the cost of clearing and grubbing

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necessary to perform such work.

(d) If the utility facility was initially installed to exclusively serve the authority or its tenants, or both, the authority shall bear the costs of the utility work. However, the authority is not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others. For a county or municipality, if such utility facility was installed in the right-of-way as a means to serve a county or municipal facility on a parcel of property adjacent to the right-of-way and if the intended use of the county or municipal facility is for a use other than transportation purposes, the obligation of the county or municipality to bear the costs of the utility work shall extend only to utility work on the parcel of property on which the facility of the county or municipality originally served by the utility facility is located.

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

(f) If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric


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facility to be placed underground has been transferred from a private to a public utility within the past 5 years, the department shall incur all costs of the necessary utility work.

(g) An authority may bear the costs of utility work required to eliminate an unreasonable interference when the utility is not able to establish that it has a compensable property right in the particular property where the utility is located if:

1. The utility was physically located on the particular property before the authority acquired rights in the property;

2. The utility demonstrates that it has a compensable property right in adjacent properties along the alignment of the utility or, after due diligence, certifies that the utility does not have evidence to prove or disprove that it has a compensable property right in the particular property where the utility is located; and

3. The information available to the authority does not establish the relative priorities of the authority's and the utility's interests in the particular property.

(h) If a municipally owned utility or county-owned utility is located in a rural area of critical economic concern, as defined in s. 288.0656(2), and the department determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

(i) If the relocation of utility facilities is necessitated by the construction of a commuter rail service project or an

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intercity passenger rail service project and the cost of the project is eligible and approved for reimbursement by the Federal Government, then in that event the utility owning or operating such facilities located by permit on a department-owned rail corridor shall perform any necessary utility relocation work upon notice from the department, and the department shall pay the expense properly attributable to such utility relocation work in the same proportion as federal funds are expended on the commuter rail service project or an intercity passenger rail service project after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility. In no event shall the state be required to use state dollars for such utility relocation work. This paragraph does not apply to any phase of the Central Florida Commuter Rail project, known as SunRail.

(j) If a utility is lawfully located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise, the authority must bear the cost of the utility work required to eliminate an unreasonable interference.

Section 4. The Legislature finds that a proper and legitimate state purpose is served by clarifying a utility's responsibility for relocating its facilities within a right-of-way or within a utility easement granted by recorded plat. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 5. This act shall take effect upon becoming a law.

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========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the location of utilities; amending s. 125.42, F.S.; authorizing a board of county commissioners to grant a license to work on, operate, and remove specified communications services lines within the right-of-way limits of certain county or public highways or roads; conforming a cross-reference; amending s. 337.401, F.S.; specifying that the Department of Transportation and certain local governmental entities may prescribe and enforce rules or regulations regarding the placement and maintenance of specified structures and lines within the right-of-ways of roads or publicly owned rail corridors under their respective jurisdictions; prohibiting a municipality or county from requiring a utility or a communications services provider to provide proprietary maps of previously permitted facilities; amending s. 337.403, F.S.; specifying that a utility located within certain right-of-way limits must initiate and pay for the work necessary to alleviate any interference to the use of certain public roads or rail corridors; requiring an authority to pay the cost of requiring the relocation of a utility under certain circumstances; requiring an entity other than the authority to pay the cost of certain relocations of

utilities under certain circumstances; providing applicability; requiring the authority to pay the entire expense if it is required under certain circumstances to bear the cost of relocating a utility after certain deductions; requiring an authority to pay the cost of utility work required to eliminate unreasonable interference within certain existing utility easements; providing a finding of important state interest; providing an effective date.

By the Committees on Transportation; and Community Affairs; and Senator Brandes

596-03453-15 2015896c2

A bill to be entitled

An act relating to the location of utilities; amending s. 125.42, F.S.; authorizing the board of county commissioners to grant a license to work on or operate specified communications services within the right-of-way limits of certain county or public highways or roads; conforming a cross-reference; amending s. 337.401, F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce rules or regulations regarding placing and maintaining specified structures within the right-of-way limits of roads or publicly owned rail corridors under their respective jurisdictions; prohibiting a municipality or county from requiring a utility to provide proprietary maps of facilities under certain circumstances; prohibiting a municipality or county from requiring a provider of communications services to provide proprietary maps of facilities under certain circumstances; amending s. 337.403, F.S.; requiring a utility owner, under certain circumstances, to initiate at its own expense the work necessary to alleviate an interference to a public road, including directly associated drainage, or publicly owned rail corridor which is caused by the utility if the utility is placed within the right-of-way limits of the public road or publicly owned rail corridor; conforming a cross-reference; requiring an authority or an entity other than the authority to bear the costs of relocating a utility in certain

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circumstances; providing applicability; requiring the authority to bear the cost of the utility work necessary to eliminate an unreasonable interference if the utility is lawfully located within a certain utility easement; providing legislative findings; providing an effective date.

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

Section 1. Section 125.42, Florida Statutes, is amended to read:

125.42 Water, sewage, gas, power, telephone, other utility, and television lines within the right-of-way limits of ~~along~~ county roads and highways.—

(1) The board of county commissioners, with respect to property located without the corporate limits of any municipality, is authorized to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove lines for the transmission of water, sewage, gas, power, telephone, other public utilities, ~~and~~ television, or other communications services as defined in s. 202.11 under, on, over, across, or within the right-of-way limits of ~~and along~~ any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription. However, the board of county commissioners shall include in any instrument granting such license adequate provisions:

(a) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling

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

public;

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair the road or highway promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury;

(c) Whereby the licensee shall hold the board of county commissioners and members thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating the license; and

(d) As may be reasonably necessary, for the protection of the county and the public.

(2) A license may be granted in perpetuity or for a term of years, subject, however, to termination by the licensor, in the event the road or highway is closed, abandoned, vacated, discontinued, or reconstructed.

(3) The board of county commissioners is authorized to grant exclusive or nonexclusive licenses for the purposes stated herein for television.

(4) This law is intended to provide an additional method for the granting of licenses and shall not be construed to repeal any law now in effect relating to the same subject.

(5) In the event of widening, repair, or reconstruction of any such road, the licensee shall move or remove such water, sewage, gas, power, telephone, and other utility lines and television lines at no cost to the county should they be found by the county to be unreasonably interfering, except as provided in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

Section 2. Paragraph (a) of subsection (1), subsection (2), and paragraph (b) of subsection (3) of section 337.401, Florida Statutes, are amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining ~~along,~~ across, ~~or~~ on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 ~~this section~~ as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance

with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. In exercising its authority over a utility under this section, a municipality or county may not require a utility to provide proprietary maps of facilities where such facilities have been previously subject to a permit from the authority. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

(3)

(b) Registration described in paragraph (a) does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a municipality or county. Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county. In exercising its

authority over providers of communications services under this section, a municipality or county may not require a provider of communications services to provide proprietary maps of facilities where such facilities have been previously subject to a permit from the authority.

Section 3. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by utility; expenses.—

(1) If a utility that is placed upon, under, over, or within the right-of-way limits of ~~along~~ any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road, including directly associated drainage, or publicly owned rail corridor, the utility owner shall, upon 30 days' written notice to the utility or its agent by the authority, initiate the work necessary to alleviate the interference at its own expense except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner. If an authority requires the relocation of a utility for purposes not described in this subsection, the authority shall bear the cost of relocating the utility. If the relocation is required as a condition or result of a project by an entity other than an authority, the entity other than the authority shall bear the costs of relocating the utility. However, nothing in this subsection shall impair any rights of the holder of any private railroad right-of-way, including any rights in any agreement

between the holder of the private railroad right-of-way and a utility that otherwise allocates such relocation cost.

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, is necessitated by the construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of the project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal Aid Highway Act, or any amendment thereof, ~~then in that event~~ the utility owning or operating such facilities shall perform any necessary work upon notice from the department, and the state shall pay the entire expense properly attributable to such work after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility.

(b) When a joint agreement between the department and the utility is executed for utility work to be accomplished as part of a contract for construction of a transportation facility, the department may participate in those utility work costs that exceed the department's official estimate of the cost of the work by more than 10 percent. The amount of such participation is limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility work to be accomplished in advance of a

contract for construction of a transportation facility, the department may participate in the cost of clearing and grubbing necessary to perform such work.

(d) If the utility facility was initially installed to exclusively serve the authority or its tenants, or both, the authority shall bear the costs of the utility work. However, the authority is not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others. For a county or municipality, if such utility facility was installed in the right-of-way as a means to serve a county or municipal facility on a parcel of property adjacent to the right-of-way and if the intended use of the county or municipal facility is for a use other than transportation purposes, the obligation of the county or municipality to bear the costs of the utility work shall extend only to utility work on the parcel of property on which the facility of the county or municipality originally served by the utility facility is located.

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

(f) If the utility is an electric facility being relocated

underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past 5 years, the department shall incur all costs of the necessary utility work.

(g) An authority may bear the costs of utility work required to eliminate an unreasonable interference when the utility is not able to establish that it has a compensable property right in the particular property where the utility is located if:

1. The utility was physically located on the particular property before the authority acquired rights in the property;

2. The utility demonstrates that it has a compensable property right in adjacent properties along the alignment of the utility or, after due diligence, certifies that the utility does not have evidence to prove or disprove that it has a compensable property right in the particular property where the utility is located; and

3. The information available to the authority does not establish the relative priorities of the authority's and the utility's interests in the particular property.

(h) If a municipally owned utility or county-owned utility is located in a rural area of critical economic concern, as defined in s. 288.0656(2), and the department determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

(i) If the relocation of utility facilities is necessitated by the construction of a commuter rail service project or an intercity passenger rail service project and the cost of the project is eligible and approved for reimbursement by the Federal Government, then in that event the utility owning or operating such facilities located by permit on a department-owned rail corridor shall perform any necessary utility relocation work upon notice from the department, and the department shall pay the expense properly attributable to such utility relocation work in the same proportion as federal funds are expended on the commuter rail service project or an intercity passenger rail service project after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility. In no event shall the state be required to use state dollars for such utility relocation work. This paragraph does not apply to any phase of the Central Florida Commuter Rail project, known as SunRail.

(j) If a utility is lawfully located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise, the authority shall bear the cost of the utility work required to eliminate an unreasonable interference.

Section 4. The Legislature finds that a proper and legitimate state purpose is served by clarifying a utility's responsibility for relocating its facilities within the right-of-way or within a utility easement granted by recorded plat. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 5. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 2, 2015

I respectfully request that **Senate Bill #896**, relating to **Location of Utilities**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

896
Bill Number (if applicable)

Topic ROW/ EASEMENT

Amendment Barcode (if applicable)

Name J.C. FLORES

Job Title VP GOV AFFAIRS

Address 150 S. Monroe
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-577-7700

Email JF323W@att.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AT&T

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2015
Meeting Date

896
Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Jordan Connors

Job Title Consultant

Address 2145 SW Cape Cod Dr.
Street

Phone 772-418-6068

Port St. Lucie FL 34953
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing City of Port St. Lucie

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic UTILITY RELOCATION

Bill Number CS CSSB 896 *(if applicable)*

Name TRACY HATCH

Amendment Barcode _____ *(if applicable)*

Job Title GENERAL ATTORNEY

Address 150 S. MONROE ST SUITE 400 *Street*

Phone 850-425-6360

TALLAHASSEE, FL 32301 *City* *State* *Zip*

E-mail th9467@att.com

Speaking: ☑ For ☐ Against ☐ Information

Representing AT&T

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2015
Meeting Date

SB896
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Relocation of Utilities

Name Bryan Lantz

Job Title Region Rights of Way & Municipal Affairs Mgr.

Address 7701 E Telecom Parkway, MC: FLTDSA3
Street

Phone 813-740-1231

Temple Terrace — *City* | Florida — *State* | 33637 — *Zip*

Email bryan.lantz@core.verizon.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Verizon

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2015
Meeting Date

SB896
Bill Number (if applicable)

Topic Relocation of Utilities

Amendment Barcode (if applicable)

Name Woody Simmons

Job Title VP-Governmental Affairs

Address 106 E College Avenue, Ste. 710
Street

Tallahassee Florida 32301
City *State* *Zip*

Phone 850-222-6304

Email woodrow.simmons@verizon.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Verizon

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2
Meeting Date

SB 896
Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name DAN PETERSON

Job Title Director - Center for Property Rights

Address 2878 S. Osceola Ave
Street

Phone 407-758-2491

Orlando FL 32806
City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing JAMES MADISON INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date	Bill Number (if applicable)
	CS/CS SB 896

Topic Utilities Relocation — Amendment Barcode (if applicable)

Name Jim BRAINERD

Job Title

Address 2814 Rabbit Hill Rd — Phone 8505086710

Street

Tallahassee, FL 32308 — Email BrainerdLaw@comcast.net

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Polk County Board of County Commissioners

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

896
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title _____

Address PO Box 11026 (*Street*)
Tallahassee FL 32302 (*City* / *State* / *Zip*)

Phone 850 681 0496

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Natural Gas Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2015
Meeting Date

896
Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Jim Smith

Job Title Director of Government Affairs

Address 315 S. Calhoun Street, Suite 500
Street

Phone 850-599-1779

TLH FL 32301
City *State* *Zip*

Email James.Smith@centurylink.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CenturyLink

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Location of utilities

Amendment Barcode (if applicable)

Name Katie Kelly

Job Title

Address
Street

Phone

City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Rights of Way

Amendment Barcode (if applicable)

Name Doug Mannheimer

Job Title Attny

Address 215 S. Monroe St. Suite 400 (*Street*)
Tallahassee FL 32301 (*City* / *State* / *Zip*)

Phone 850 681 6810

Email dmannheimer@broadandcassel.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Sprint

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15
Meeting Date

896
Bill Number (if applicable)

Topic Relocation of Utilities

Amendment Barcode (if applicable)

Name Charles Dudley

Job Title

Address 108 S. Monroe St. *Street*

Tallahassee FL 32301 *City* *State* *Zip*

Phone 681-0024

Email cdudley@flatlaw.com

Speaking: ☑ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Cable Telecommunications Assoc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/24/15
Meeting Date

SB 896
Bill Number (if applicable)

Topic Relocation of Utilities

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs Director of St. Lucie County

Address 2300 Virginia Ave
Street

Phone 772-708-3954

Fort Pierce FL 34982
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing St. Lucie County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 896

Meeting Date *Bill Number (if applicable)*

Topic Location of Utilities *Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams St Phone 224-7177

Street

Tallahassee FL 32301 Email bbevis@aif.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2015
Meeting Date

896
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

896
Bill Number (if applicable)

Topic Utility Relocation

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Asst. Leg Director

Address 100 Monroe
Street

Phone 9224300

Tall FL
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Assoc. Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.23.15
Meeting Date

SB 896
Bill Number (if applicable)

Topic LOCATION OF UTILITIES

Amendment Barcode (if applicable)

Name MEGAN SIRJANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. BOX 1757
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850.701.3655

Email MSIRJANESAMPLES@FLCITIES.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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 Committee on Appropriations

BILL:	PCS/CS/SB 914 (706156)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter
SUBJECT:	Intrastate Crowdfunding
DATE:	April 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 914 authorizes intrastate crowdfunding as a mechanism for small businesses to raise up to $1 million annually in crowdfunding securities. Issuers and intermediaries engaging in intrastate crowdfunding would be subject to specified requirements under the Florida Securities and Investor Protection Act, which is administered by the Office of Financial Regulation (OFR).

The bill creates an intrastate exemption for securities meeting certain state and federal requirements. The issuer, intermediary, investor, and transaction must be located in Florida in accordance with the federal intrastate exemption. Like the federal Jumpstart Our Business Startups Act[1] (JOBS Act), as described below, the bill exempts an issuer and the offering for a 12-month period for an offering of up to $1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The bill requires issuer notice filings and intermediary registration with the OFR, disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. The bill also gives authority to the Financial Services Commission to adopt rules relating to notice-filings and registration forms, books and records, and investor protections.

The bill provides a total appropriation of $120,000 from the Regulatory Trust Fund within the OFR for information technology and workload issues. Related to revenues, issuers are subject to

[1] Public Law 112-106.

a $200 notice-filing fee and intermediaries are subject to a $200 registration fee. The impact on state revenues is indeterminate at this time.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

The federal Securities Act of 1933 (Securities Act), requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities and Exchange Commission (SEC), unless an exemption (such as the intrastate exemption) is available. The Securities Act's emphasis on disclosure of important financial information through the registration of securities enables investors to make informed judgments about whether to purchase a company's securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.

Securities Exchange Act of 1934

With the enactment of the Securities Exchange Act of 1934 (act), Congress created the Securities and Exchange Commission. The act provides the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs). The New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options, and the Financial Industry Regulatory Authority (FINRA) are forms of SROs.

The act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The act also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities. Generally, any person acting as a "broker" or "dealer" as defined by Section 3(4), and 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a self-regulatory organization—the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. Broker-dealers must also comply with state laws relating to registration requirements.

Intrastate Exemption

Section 3(a)(11) of the Securities Act of 1933 provides: "Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and business within or, if a corporation, incorporated by and doing business within, such State or Territory."[2] Prior to the enactment of the JOBS Act, states

[2] 15 USC s. 77c(a)(11). SEC Rule 147 (17 CFR s. 230.147) provides a "safe harbor" that guarantees compliance with Section 3(a)(11) if the conditions set forth in the rule are met.

such as Kansas and Georgia had already enacted their own securities offering exemption pursuant to the federal intrastate exemption under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147,[3] in an effort to stimulate state-based offerings.

Issuers may also rely on the SEC's Rule 147, known as the "safe harbor" rule, which provides specific guidance on section 3(a)(11) offerings. For example, Rule 147 specifies that at least 80 percent of the gross revenues and its subsidiaries (on a consolidated basis) be derived from the subject state in order to be deemed "doing business within a state or territory." Rule 147 states that the legislative history of section 3(a)(11) suggests that "the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing to local industries, carried out through local investment."

Unlike the Title III crowdfunding exemption of the JOBS Act, section 3(a)(11) does not limit the size of the offering, and unlike several other exemptions, section 3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that section 3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the Securities Act of 1933.[4] Broker-dealers that conduct their business on a purely intrastate basis are not required to register at the federal level.[5]

On April 10, 2014, the SEC issued interpretive guidance regarding section 3(a)(11) of the Securities Act of 1933 and the Internet.[6] The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented "adequate measures," such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC's interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.[7]

It is also important to note that section 3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

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[3] 17 CFR s. 230.147.
[4] U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate (last visited March 30, 2015).
[5] Section 15(a)(1) of the Securities Exchange Act provides an exemption from broker-dealer registration for a broker-dealer whose business is "exclusively intrastate and who does not make use of any facility of a national securities exchange." 15 U.S.C. 78o(a)(1).
[6] *See* Questions 141.03-141.05 (issued April 10, 2014), *available at* http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm (last visited March 30, 2015).
[7] Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte (last visited March 30, 2015).

JOBS Act and Crowdfunding

Title III of the JOBS Act (Title III) provides an interstate exemption from the registration requirements for crowdfunding transactions. Unlike other securities exemptions, Title III permits the issuer (fundraiser) to advertise and solicit sales of securities from the public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows intermediaries, either registered broker-dealers or a new Internet-based platform entity (funding portals), to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization," as defined in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.[8] If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

Certain companies are not eligible to use the Title III exemption, such as non-U.S. companies, companies that already are SEC reporting companies, certain investment companies, and others as determined by SEC rule. Title III also includes a disqualification provision under which the exemption is unavailable if the issuer or related persons were subject to certain disqualifying events, such as being subject to a state financial regulatory final order barring the individual from the financial industry or a criminal conviction involving the purchase or sale of securities or false filings with the SEC.

In addition to the requirements discussed above, to qualify for the exemption, crowdfunding transactions by an issuer (including all entities controlled by or under common control with the issuer) must meet the following:

- The amount raised must not exceed $1 million in a 12-month period.
- Individual investments in a 12-month period are limited to: the greater of $2,000 or five percent of annual income or net worth, if annual income or net worth of the investor is less than $100,000; and ten percent of annual income or net worth (not to exceed an amount sold of $100,000), if annual income or net worth of the investor is $100,000 or more.
- An offering made in reliance on the exemption must be conducted through an intermediary that is either a registered broker or a registered "funding portal." Transactions must be conducted through an intermediary that either is registered as a broker or is registered as a new type of entity called a "funding portal," which would be subject to an exemption from broker registration.
- Issuers and intermediaries that facilitate transactions between issuers and investors in reliance on the crowdfunding exemption must provide certain disclosures to investors and potential investors and provide notices and other information to the SEC.

The JOBS Act requires the SEC to adopt rules to implement interstate crowdfunding. On October 23, 2013, the SEC proposed rules that would implement Title III. The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.[9]

[8] SEC Proposed Regulation Crowdfunding Section 227.400.

[9] U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm. *See also* JOBS Act Frequently Asked Questions About

Florida Regulation of Securities

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[10] In Florida, the Securities and Investor Protection Act, chapter 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act and Chapter 69W, Florida Administrative Code. [11]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[12] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[13] Failure to meet the requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[14] Civil remedies under the act include rescission and damages.[15] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

Currently, no Florida exemption permits the advertising or solicitation for the offer or sale of unregistered securities to the public, or for securities sold to the public to be sold by an unregistered dealer.

III. Effect of Proposed Changes:

The bill creates an intrastate exemption for crowdfunding transactions from the registration requirements under s. 517.061, F.S., for the offer and sale of certain securities. The bill contains provisions from the JOBS Act and is limited to intrastate offerings under 15 U.S.C. s. 77c(a)(11). The bill provides the securities in crowdfunding transactions may be generally advertised and sold over the Internet and are not required to be sold through a registered broker-dealer when offered to the general public, but may be sold through an intermediary. The bill provides for the offer and sale of up to $1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities.

Crowdfunding Intermediaries, at http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm (last visited March 30, 2015).

[10] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited March 30, 2015).

[11] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

[12] Section. 517.12, F.S.

[13] Section 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

[14] Section 517.302(1), F.S.

[15] Section 517.211(3-5), F.S.

Section 1 amends s. 571.021, F.S., to define an intermediary to mean a natural person residing in this state, or a corporation, trust, partnership, association, or any other legal entity registered with the Secretary of State to do business in Florida, that represents an issuer in a transaction involving the offer or sale of securities under s. 517.061, F.S.

Section 2 amends s. 517.061, F.S., to provide that the offer or sale of a security by an issuer conducted in accordance with s. 517.0611, F.S., is exempt from registration.

Section 3 creates s. 517.0611, F.S., the Florida Intrastate Crowdfunding Exemption. An offer or sale of a security by an issuer is an exempt transaction under s. 517.061, F.S., if the offer or sale meets the requirements of this section. The exemption may not be used in conjunction with any other exemption under ss. 517.051 or 517.061, F.S. The offer or sale of the securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate exemptions in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and U. S. SEC Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933.

Issuer Requirements

The issuer, to qualify for the intrastate crowdfunding exemption, must:

- Be a for-profit business entity formed under the laws of this state and be registered with the Secretary of State.
- Conduct transactions for the offering through a dealer or intermediary registered with the OFR.
- Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).
- Not be subject to a disqualification established by the commission or the OFR, or a disqualification described in s. 517.1611 F.S. or the U.S. SEC Rule 5069d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933.
- Not be a company with an undefined business operation, a company that lacks a business plan, or meets other conditions specified.
- Execute an escrow agreement with a financial institution. The issuer must also provide the OFR with a copy of the escrow agreement with such a financial institution. The escrow agreement must require that offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. The agreement must also provide all investors will receive a full refund of their investment commitment if that target-offering amount is not raised by the date stated in the disclosure statement.
- Allow investors to cancel a commitment to invest within three business days before the offering deadline.

The issuer must submit a notice filing with the OFR at least ten days before the issuer commences an offering or the offering is displayed on a website. The notice must indicate that the issuer is conducting an offering in reliance upon this exemption. The notice must contain the

contact information of the issuer, identify key persons who will be involved in the offer or sale of securities on behalf of the issuer, and disclose the federally insured financial institution authorized to do business in this state in which investor funds will be deposited. Further, the notice must include an attestation under oath that the issuer and other key persons are not currently and have not been within the past ten years the subject of regulatory or criminal actions involving fraud or deceit. The notice must document that the issuer is organized under the laws of Florida and authorized to do business in Florida and include the target offering amount.

The issuer must provide a disclosure statement to investors and the dealer or intermediary, along with a copy to the OFR at the time the notice is filed, and make available to potential investors through the dealer or intermediary. This disclosure would include a description of the business of and financial condition of the issuer and the anticipated business plan of the issuer, information about the offering.

The bill provides that the sum of all cash and other consideration received for all sales of the security in reliance upon this exemption must not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Unless the investor is an accredited investor as defined by Rule 501 of Regulation D under the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this section during a 12-month period may not exceed:

- If the annual income and net worth of the investor are less than $100,000, the greater of $2,000, five percent of the annual income of the investor, or five percent of the net worth of the investor.
- If the annual income or net worth of the investor is $100,000 or more, the greater of $100,000, ten percent of the annual income of the investor, or ten percent of the net worth of the investor.

Intermediary Requirements:

An intermediary is subject to registration requirements as provided in **section 4** of the bill. The bill:

- Provide basic information on its platform regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information shall include:
  - A description of the escrow agreement that the issuer has executed and the conditions for the release of such funds to the issuer in accordance with the agreement.
  - A description of whether financial information provided by the issuer has been audited by an independent certified public accountant.
- Maintain records of the offers and sales of securities made through its platform, as prescribed by commission rule, and provide access to such records upon request by the OIR.
- Verify, pursuant to commission rule, that an investor is a resident of Florida.
- Deposit and release investor funds in escrow pursuant to the escrow agreement executed by the issuer.
- Provide a monthly update for each offering, which is accessible on the intermediary's platform, and includes the date and amount of each sale of securities in the previous calendar month.

- Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 as they apply to brokers.

Sections 4 amends s. 517.12, F.S., by requiring an intermediary to register as a dealer or as an intermediary and pay a registration fee of $200 to the OFR. An intermediary or persons associated with an intermediary are subject to a criminal background check. Further, an intermediary or persons associated with an intermediary may not be subject to any disqualification described in s. 517.1611, F.S., or the SEC Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933.

Section 5 amends s. 517.121, F.S., to provide that an intermediary is subject to examination by the OFR and must maintain certain books and records.

Section 6 amends s. 517.161, F.S**.,** to provide the OFR with enforcement authority to take regulatory actions against an intermediary.

Section 7 provides a technical conforming change to s. 626.9911, F.S.

Section 8 appropriates $120,000 in nonrecurring funds from the Regulatory Trust Fund within the OFR to implement the bill.

Section 9 provides the act will take effect October 1, 2015.

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:

PCS/CS/SB 914 creates a $200 notice-filing fee for issuers and a $200 registration fee for intermediaries.

B. Private Sector Impact:

The bill will provide start-up and small companies with another option for raising capital that would not be subject to securities registration with the OFR if certain requirements were met.

C. Government Sector Impact:

The bill provides a total appropriation of $120,000 in nonrecurring funds from the Regulatory Trust Fund to implement the provisions of this bill. This includes an estimated $63,150 to update the licensure system and provide additional data storage, along with $56,850 for Other Personnel Services for temporary employees related to workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.061, 517.12, and 626.9911.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute provides $120,000 in nonrecurring funds from the Regulatory Trust Fund to implement the act, in addition to a technical, clarifying change.

Banking and Insurance on March 31, 2015:
The CS provides the following changes:

- Clarifies provisions to be consistent with the requirements of the federal JOBS Act and the intrastate exemption authorized under the Securities Act of 1933.
- Requires the issuer to file an irrevocable written consent to service of civil process with the OFR.
- Requires the issuer to provide a disclosure statement and a copy of the escrow agreement to the OFR that meets certain requirements.
- Clarifies intermediary registration requirements.
- Requires intermediary to maintain certain books and records as prescribed by commission rule and be subject to examination by the OFR.

- Provides technical and conforming changes.

B. Amendments:

None.

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to intrastate crowdfunding; amending s. 517.021, F.S.; conforming a cross-reference; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting offers or sales of securities by certain issuers from registration requirements; creating s. 517.0611, F.S.; providing a short title; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing applicability; providing registration and reporting requirements for issuers and intermediaries offering such securities; requiring the issuer to provide to the office a copy of a specified escrow agreement; limiting the aggregate amount of sales of such securities within a specified period; limiting the aggregate amount of sales to specified investors; requiring an issuer to produce and distribute an annual report to investors; requiring a notice-filing to be suspended under certain circumstances; specifying that fees collected become revenue of the state; requiring a qualified third party to hold certain funds in escrow; amending s. 517.12, F.S.; providing registration requirements for an intermediary; conforming a cross-reference; amending s. 517.121, F.S.; requiring an intermediary to comply with specified recordkeeping requirements;

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amending s. 517.161, F.S.; including an intermediary in the disciplinary provisions; amending s. 626.9911, F.S.; conforming a cross-reference; providing an appropriation; providing an effective date.

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

Section 1. Subsection (9) of section 517.021, Florida Statutes, is amended, subsections (13) through (23) are redesignated as subsections (14) through (24), respectively, and a new subsection (13) is added to that section, to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8. ~~(13)(b)1.-8.~~.

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership, association, or other legal entity registered with the Secretary of State to do business in the state which represents an issuer in a transaction involving the offer or sale of securities under s. 517.061.

Section 2. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—Except as otherwise provided

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in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before ~~prior to~~ claiming the ~~such~~ exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of her or his own property for her or his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection,

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isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a vendor of securities not the issuer or underwriter of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security


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holders or creditors.

(6) Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporations each have assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to


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a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before ~~Prior to~~ the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission

Regulation 230.501 (17 C.F.R. s. 230.501).

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months before ~~prior to~~ an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such

offers and sales are made.

(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of

its controlled subsidiaries.

(16) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment

Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption shall not be available for any securities which have been denied registration pursuant to s.

517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17).

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

(20) Any nonissuer transaction by a registered associated person of a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction:

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell


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company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(d) A nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with the Securities and Exchange Commission that is publicly available through the commission's electronic data gathering and retrieval system contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income


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statement, a pro forma income statement; and

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

2. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

3. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.

Section 3. Section 517.0611, Florida Statutes, is created to read:

517.0611 Intrastate crowdfunding.—

(1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption

under s. 517.051 or s.517.061.

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United States Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933.

(4) An issuer must:

(a) Be a for-profit business entity formed under the laws of this state, be registered with the Secretary of State, maintain its principal place of business in this state, and derive its revenues primarily from operations in this state.

(b) Conduct transactions for the offering through a dealer registered with the office or an intermediary registered under s. 517.12(20).

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

(d) Not be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the

Securities Act of 1933. Each director, officer, person occupying a similar status or performing a similar function, or person holding more than 20 percent of the shares of the issuer, is subject to this requirement.

(f) Execute an escrow agreement with a federally insured financial institution authorized to do business in this state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.

(g) Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt of the completed form, filing fee, and an irrevocable written consent to service of civil process, as provided for in s. 517.101, by the office. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is

displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information of the issuer.

(d) Identify any predecessors, owners, officers, directors, and control persons or any person occupying a similar status or performing a similar function of the issuer, including that person's title, his or her status as a partner, trustee, sole proprietor or similar role, and his or her ownership percentage.

(e) Identify the federally insured financial institution, authorized to do business in this state, in which investor funds will be deposited, in accordance with the escrow agreement.

(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.

(g) Include documentation verifying that the issuer is organized under the laws of this state and authorized to do business in this state.

(h) Include the intermediary's website address where the issuer's securities will be offered.

(i) Include the target offering amount.

(6) The issuer must amend the notice form within 30 days after any information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments

with the office.

(7) The issuer must provide to investors and the dealer or intermediary, along with a copy to the office at the time the notice is filed, and make available to potential investors through the dealer or intermediary, a disclosure statement containing material information about the issuer and the offering, including:

(a) The name, legal status, physical address, and website address of the issuer.

(b) The names of the directors, officers, and any person occupying a similar status or performing a similar function, and the name of each person holding more than 20 percent of the shares of the issuer.

(c) A description of the business of the issuer and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount.

(f) The price to the public of the securities or the method for determining the price, provided that before the sale each investor receives in writing the final price and all required disclosures, with an opportunity to rescind the commitment to purchase the securities.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of security of the issuer, including how those terms may be

modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer;

2. A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.

(h) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period,

have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the office, by rule, for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(i) The following statement in boldface, conspicuous type on the front page of the disclosure statement:

These securities are offered under and will be sold in reliance upon an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and

state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding shares of any class or classes of securities or to an officer, director, partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection in a 12-month period may not

exceed:

(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.

(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000.

(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days of its fiscal year end, until no securities under this offering are outstanding. The annual reports must meet the following requirements:

(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.

(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.

(12)(a) A notice-filing under this section shall be summarily suspended by the office if the payment for the filing is dishonored by the financial institution upon which the funds

are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.

(b) A notice-filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including titles; status as a partner, trustee, sole proprietor, or similar roles; and ownership percentage.

(13) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

(14) An intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to transactions, including

verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering.

(b) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information must include:

1. A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and subsection (4).

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of this state.

(d) Obtain and verify, pursuant to commission rule, a valid Florida driver license number or official identification card number from each investor before purchase of a security or other information, as defined by commission rule, to confirm that the investor is a resident of the state.

(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).

(f) Direct the release of investor funds in escrow in accordance with subsection (4).

(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor.

(h) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest in the previous calendar month.

(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:

I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible

for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.

(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.

(k) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(l) Prohibit its directors and officers from having any financial interest in the issuer using its services.

(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements


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of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 as they apply to brokers.

(15) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation or based on the sale of securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor.

(f) Engage in any other activities set forth by commission rule.

(16) All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.

Section 4. Section 517.12, Florida Statutes, is amended to


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read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).

(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19), the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(12), (14), and (15).

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice-filing with the office pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the office pursuant to this section. The office shall not register any person or an associated person

of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the applicant seeks registration is in compliance with the notice-filing requirements of s. 517.1201 or is lawfully registered with the office pursuant to this chapter. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to and approval from the office.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice-filed with the office pursuant to s. 517.1202.

(6) A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant’s form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant’s proposed method of doing business and

financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(7) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants,

including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15), submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

(8) The commission or office may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any associated person applicant

to successfully pass oral or written examinations. Because any principal, manager, supervisor, or person exercising similar functions shall be responsible for the acts of the associated persons affiliated with a dealer, the examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory associated person. The commission may waive the examination process when it determines that such examinations are not in the public interest. The office shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 that relates to the position to be filled by the applicant.

(9)(a) All dealers, except securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, shall comply with the net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. The commission may by rule require a dealer to file with the office any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

(b) The commission may by rule require the maintenance of a minimum net capital for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public. The provisions of this section shall not apply to any investment adviser that


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maintains its principal place of business in a state other than this state, provided such investment adviser is registered in the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may


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request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

(13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the commission may specify. In any case in which a person or

a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a registered dealer or investment adviser, such person or group shall submit an initial application for registration as a dealer or investment adviser prior to such purchase or acquisition. The commission shall adopt rules providing for waiver of the application required by this subsection where control of a registered dealer or investment adviser is to be acquired by another dealer or investment adviser registered under this chapter or where the application is otherwise unnecessary in the public interest.

(14) Every dealer or investment adviser registered or required to be registered or branch office notice-filed or required to be notice-filed with the office shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the

provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.

2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

(b) In lieu of filing with the office the applications specified in subsection (6), the fees required by subsection (10), the renewals required by subsection (11), and the termination notices required by subsection (12), the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(16) Except for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers

of securities, every applicant for initial or renewal registration as a securities dealer and every person registered as a securities dealer shall be registered as a broker or dealer with the Securities and Exchange Commission and shall be subject to insurance coverage by the Securities Investor Protection Corporation.

(17)(a) A dealer that is located in Canada, does not have an office or other physical presence in this state, and has made a notice-filing in accordance with this subsection is exempt from the registration requirements of this section and may effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

1. A person from Canada who is present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or

2. A person from Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) A notice-filing under this subsection must consist of documents the commission by rule requires to be filed, together with a consent to service of process and a nonrefundable filing fee of $200. The commission may establish by rule procedures for the deposit of fees and the filing of documents to be made by electronic means, if such procedures provide the office with the information and data required by this section.

(c) A Canadian dealer may make a notice-filing under this subsection if the dealer provides to the office:

1. A notice-filing in the form the commission requires by

rule.

2. A consent to service of process.

3. Evidence that the Canadian dealer is registered as a dealer in the jurisdiction in which the dealer's main office is located.

4. Evidence that the Canadian dealer is a member of a self-regulatory organization or stock exchange in Canada.

(d) The office may issue a permit to evidence the effectiveness of a notice-filing for a Canadian dealer.

(e) A notice-filing is effective upon receipt by the office. A notice-filing expires on December 31 of the year in which the filing becomes effective unless the Canadian dealer has renewed the filing on or before that date. A Canadian dealer may annually renew a notice-filing by furnishing to the office such information as the office requires together with a renewal fee of $200 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any Canadian dealer who has not renewed a notice-filing by the time a current notice-filing expires may request reinstatement of such notice-filing by filing with the office, on or before January 31 of the year following the year the notice-filing expires, such information as the commission requires by rule, together with the payment of $200 and a late fee of $200. A reinstatement of a notice-filing granted by the office during the month of January is effective retroactively to January 1 of that year.

(f) An associated person who represents a Canadian dealer who has made a notice-filing under this subsection is exempt from the registration requirements of this section and may effect transactions in securities in this state as permitted for

a dealer under paragraph (a) if such person is registered in the jurisdiction from which he or she is effecting transactions into this state.

(g) A Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing.

2. Provide the office upon request with its books and records relating to its business in this state as a dealer.

3. Provide the office upon request notice of each civil, criminal, or administrative action initiated against the dealer.

4. Disclose to its clients in this state that the dealer and its associated persons are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days after the information contained in the notice-filing becomes inaccurate for any reason.

(h) An associated person representing a Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office upon request with notice of each civil, criminal, or administrative action initiated against such person.

(i) A notice-filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office.

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for under s. 517.131(1), until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not returnable if a notice-filing is withdrawn.

(18) Every dealer or associated person registered or required to be registered with the office shall satisfy any continuing education requirements established by rule pursuant to law.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

(20) An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The

commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided for in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall

be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, that are required to be reported on a form adopted by commission rule submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person concerning such matters as:

1. His or her full name and any other names by which he or she may have been known and his or her age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts that

would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary may not be subject to any disqualification described in s. 517.1611 or the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the intermediary is subject to this requirement.

(e) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of the fee of $200 and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by filing with the office on or before January 31 of the year following the year of expiration must submit the information that may be required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration

granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(21)~~(20)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 5. Subsections (1) and (2) of section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.—

(1) A dealer, investment adviser, branch office, or associated person, or intermediary shall maintain such books and records as the commission may prescribe by rule.

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, associated person, intermediary, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

Section 6. Section 517.161, Florida Statutes, is amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer, broker, or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering

for sale securities through any associated person not registered in compliance with the provisions of this chapter;

(h) Has demonstrated unworthiness to transact the business of dealer, investment adviser, intermediary, or associated person;

(i) Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, intermediary, or investment adviser, insolvent;

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(k) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

(l) Is of bad business repute;

(m) Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option

exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; or

(n) Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution.

(2) The payment or anticipated payment of any amount from the Securities Guaranty Fund in settlement of a claim or in satisfaction of a judgment against an applicant or registrant constitutes prima facie grounds for the denial of the applicant's application for registration or the revocation of the registrant's registration.

(3) In the event the office determines to deny an

application or revoke a registration, it shall enter a final order with its findings on the register of dealers and associated persons; and denial, suspension, or revocation of the registration of a dealer, intermediary, or investment adviser shall also deny, suspend, or revoke the registration of all her or his associated persons.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

(6) Registration under s. 517.12 may be denied or any

registration granted may be suspended or restricted if an applicant or registrant is charged, in a pending enforcement action or pending criminal prosecution, with any conduct that would authorize denial or revocation under subsection (1). Registration under s. 517.12 may be suspended or restricted if a registrant is arrested for any conduct that would authorize revocation under subsection (1).

(a) Any denial of registration ordered under this subsection shall be without prejudice to the applicant's ability to reapply for registration.

(b) Any order of suspension or restriction under this subsection shall:

1. Take effect only after a hearing, unless no hearing is requested by the registrant or unless the suspension or restriction is made in accordance with s. 120.60(6).

2. Contain a finding that evidence of a prima facie case supports the charge made in the enforcement action or criminal prosecution.

3. Operate for no longer than 10 days beyond receipt of notice by the office of termination with respect to the registrant of the enforcement action or criminal prosecution.

(c) For purposes of this subsection:

1. The term "enforcement action" means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory Authority, the National Futures Association, or any other similar self-

regulatory organization.

2. An enforcement action is pending at any time after notice to the applicant or registrant of such action and is terminated at any time after entry of final judgment or decree in the case of judicial proceedings, final agency action in the case of administrative proceedings, and final disposition by a self-regulatory organization in the case of disciplinary proceedings.

3. A criminal prosecution is pending at any time after criminal charges are filed and is terminated at any time after conviction, acquittal, or dismissal.

Section 7. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(24) ~~s. 517.021(23)~~; or

Section 8. For the 2015-2016 fiscal year, the sum of $120,000 in nonrecurring funds from the Regulatory Trust Fund is appropriated to the Office of Financial Regulation for the purpose of implementing this act.

Section 9. This act shall take effect October 1, 2015.

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 Committee on Appropriations

BILL:	CS/CS/SB 914
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter
SUBJECT:	Intrastate Crowdfunding
DATE:	April 24, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 914 authorizes intrastate crowdfunding as a mechanism for small businesses to raise up to $1 million annually in crowdfunding securities. Issuers and intermediaries engaging in intrastate crowdfunding would be subject to specified requirements under the Florida Securities and Investor Protection Act, which is administered by the Office of Financial Regulation (OFR).

The bill creates an intrastate exemption for securities meeting certain state and federal requirements. The issuer, intermediary, investor, and transaction must be located in Florida in accordance with the federal intrastate exemption. Like the federal Jumpstart Our Business Startups Act[1] (JOBS Act), as described below, the bill exempts an issuer and the offering for a 12-month period for an offering of up to $1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The bill requires issuer notice filings and intermediary registration with the OFR, disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. The bill also gives authority to the Financial Services Commission to adopt rules relating to notice-filings and registration forms, books and records, and investor protections.

The bill provides a total appropriation of $120,000 from the Regulatory Trust Fund within the OFR for information technology and workload issues. Related to revenues, issuers are subject to

[1] Public Law 112-106.

a $200 notice-filing fee and intermediaries are subject to a $200 registration fee. The impact on state revenues is indeterminate at this time.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

The federal Securities Act of 1933 (Securities Act), requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities and Exchange Commission (SEC), unless an exemption (such as the intrastate exemption) is available. The Securities Act's emphasis on disclosure of important financial information through the registration of securities enables investors to make informed judgments about whether to purchase a company's securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.

Securities Exchange Act of 1934

With the enactment of the Securities Exchange Act of 1934 (act), Congress created the Securities and Exchange Commission. The act provides the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs). The New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options, and the Financial Industry Regulatory Authority (FINRA) are forms of SROs.

The act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The act also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities. Generally, any person acting as a "broker" or "dealer" as defined by Section 3(4), and 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a self-regulatory organization—the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. Broker-dealers must also comply with state laws relating to registration requirements.

Intrastate Exemption

Section 3(a)(11) of the Securities Act of 1933 provides: "Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and business within or, if a corporation, incorporated by and doing business within, such State or Territory."[2] Prior to the enactment of the JOBS Act, states

[2] 15 USC s. 77c(a)(11). SEC Rule 147 (17 CFR s. 230.147) provides a "safe harbor" that guarantees compliance with Section 3(a)(11) if the conditions set forth in the rule are met.

such as Kansas and Georgia had already enacted their own securities offering exemption pursuant to the federal intrastate exemption under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147,[3] in an effort to stimulate state-based offerings.

Issuers may also rely on the SEC's Rule 147, known as the "safe harbor" rule, which provides specific guidance on section 3(a)(11) offerings. For example, Rule 147 specifies that at least 80 percent of the gross revenues and its subsidiaries (on a consolidated basis) be derived from the subject state in order to be deemed "doing business within a state or territory." Rule 147 states that the legislative history of section 3(a)(11) suggests that "the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing to local industries, carried out through local investment."

Unlike the Title III crowdfunding exemption of the JOBS Act, section 3(a)(11) does not limit the size of the offering, and unlike several other exemptions, section 3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that section 3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the Securities Act of 1933.[4] Broker-dealers that conduct their business on a purely intrastate basis are not required to register at the federal level.[5]

On April 10, 2014, the SEC issued interpretive guidance regarding section 3(a)(11) of the Securities Act of 1933 and the Internet.[6] The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented "adequate measures," such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC's interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.[7]

It is also important to note that section 3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

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[3] 17 CFR s. 230.147.

[4] U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate (last visited March 30, 2015).

[5] Section 15(a)(1) of the Securities Exchange Act provides an exemption from broker-dealer registration for a broker-dealer whose business is "exclusively intrastate and who does not make use of any facility of a national securities exchange." 15 U.S.C. 78o(a)(1).

[6] *See* Questions 141.03-141.05 (issued April 10, 2014), *available at* http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm (last visited March 30, 2015).

[7] Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte (last visited March 30, 2015).

JOBS Act and Crowdfunding

Title III of the JOBS Act (Title III) provides an interstate exemption from the registration requirements for crowdfunding transactions. Unlike other securities exemptions, Title III permits the issuer (fundraiser) to advertise and solicit sales of securities from the public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows intermediaries, either registered broker-dealers or a new Internet-based platform entity (funding portals), to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization," as defined in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.[8] If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

Certain companies are not eligible to use the Title III exemption, such as non-U.S. companies, companies that already are SEC reporting companies, certain investment companies, and others as determined by SEC rule. Title III also includes a disqualification provision under which the exemption is unavailable if the issuer or related persons were subject to certain disqualifying events, such as being subject to a state financial regulatory final order barring the individual from the financial industry or a criminal conviction involving the purchase or sale of securities or false filings with the SEC.

In addition to the requirements discussed above, to qualify for the exemption, crowdfunding transactions by an issuer (including all entities controlled by or under common control with the issuer) must meet the following:

- The amount raised must not exceed $1 million in a 12-month period.
- Individual investments in a 12-month period are limited to: the greater of $2,000 or five percent of annual income or net worth, if annual income or net worth of the investor is less than $100,000; and ten percent of annual income or net worth (not to exceed an amount sold of $100,000), if annual income or net worth of the investor is $100,000 or more.
- An offering made in reliance on the exemption must be conducted through an intermediary that is either a registered broker or a registered "funding portal." Transactions must be conducted through an intermediary that either is registered as a broker or is registered as a new type of entity called a "funding portal," which would be subject to an exemption from broker registration.
- Issuers and intermediaries that facilitate transactions between issuers and investors in reliance on the crowdfunding exemption must provide certain disclosures to investors and potential investors and provide notices and other information to the SEC.

The JOBS Act requires the SEC to adopt rules to implement interstate crowdfunding. On October 23, 2013, the SEC proposed rules that would implement Title III. The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.[9]

[8] SEC Proposed Regulation Crowdfunding Section 227.400.

[9] U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm. *See also* JOBS Act Frequently Asked Questions About

Florida Regulation of Securities

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[10] In Florida, the Securities and Investor Protection Act, chapter 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act and Chapter 69W, Florida Administrative Code. [11]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[12] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[13] Failure to meet the requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[14] Civil remedies under the act include rescission and damages.[15] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

Currently, no Florida exemption permits the advertising or solicitation for the offer or sale of unregistered securities to the public, or for securities sold to the public to be sold by an unregistered dealer.

III. Effect of Proposed Changes:

The bill creates an intrastate exemption for crowdfunding transactions from the registration requirements under s. 517.061, F.S., for the offer and sale of certain securities. The bill contains provisions from the JOBS Act and is limited to intrastate offerings under 15 U.S.C. s. 77c(a)(11). The bill provides the securities in crowdfunding transactions may be generally advertised and sold over the Internet and are not required to be sold through a registered broker-dealer when offered to the general public, but may be sold through an intermediary. The bill provides for the offer and sale of up to $1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities.

Crowdfunding Intermediaries, at http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm (last visited March 30, 2015).

[10] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited March 30, 2015).

[11] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

[12] Section. 517.12, F.S.

[13] Section 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

[14] Section 517.302(1), F.S.

[15] Section 517.211(3-5), F.S.

Section 1 amends s. 517.021, F.S., to define an intermediary to mean a natural person residing in this state, or a corporation, trust, partnership, association, or any other legal entity registered with the Secretary of State to do business in Florida, that represents an issuer in a transaction involving the offer or sale of securities under s. 517.061, F.S.

Section 2 amends s. 517.061, F.S., to provide that the offer or sale of a security by an issuer conducted in accordance with s. 517.0611, F.S., is exempt from registration.

Section 3 creates s. 517.0611, F.S., the Florida Intrastate Crowdfunding Exemption. An offer or sale of a security by an issuer is an exempt transaction under s. 517.061, F.S., if the offer or sale meets the requirements of this section. The exemption may not be used in conjunction with any other exemption under ss. 517.051 or 517.061, F.S. The offer or sale of the securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate exemptions in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and U. S. SEC Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933.

Issuer Requirements

The issuer, to qualify for the intrastate crowdfunding exemption, must:

- Be a for-profit business entity formed under the laws of this state and be registered with the Secretary of State.
- Conduct transactions for the offering through a dealer or intermediary registered with the OFR.
- Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).
- Not be subject to a disqualification established by the commission or the OFR, or a disqualification described in s. 517.1611 F.S. or the U.S. SEC Rule 5069d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933.
- Not be a company with an undefined business operation, a company that lacks a business plan, or meets other conditions specified.
- Execute an escrow agreement with a financial institution. The issuer must also provide the OFR with a copy of the escrow agreement with such a financial institution. The escrow agreement must require that offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. The agreement must also provide all investors will receive a full refund of their investment commitment if that target-offering amount is not raised by the date stated in the disclosure statement.
- Allow investors to cancel a commitment to invest within three business days before the offering deadline.

The issuer must submit a notice filing with the OFR at least ten days before the issuer commences an offering or the offering is displayed on a website. The notice must indicate that the issuer is conducting an offering in reliance upon this exemption. The notice must contain the

contact information of the issuer, identify key persons who will be involved in the offer or sale of securities on behalf of the issuer, and disclose the federally insured financial institution authorized to do business in this state in which investor funds will be deposited. Further, the notice must include an attestation under oath that the issuer and other key persons are not currently and have not been within the past ten years the subject of regulatory or criminal actions involving fraud or deceit. The notice must document that the issuer is organized under the laws of Florida and authorized to do business in Florida and include the target offering amount.

The issuer must provide a disclosure statement to investors and the dealer or intermediary, along with a copy to the OFR at the time the notice is filed, and make available to potential investors through the dealer or intermediary. This disclosure would include a description of the business of and financial condition of the issuer and the anticipated business plan of the issuer, information about the offering.

The bill provides that the sum of all cash and other consideration received for all sales of the security in reliance upon this exemption must not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Unless the investor is an accredited investor as defined by Rule 501 of Regulation D under the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this section during a 12-month period may not exceed:

- If the annual income and net worth of the investor are less than $100,000, the greater of $2,000, five percent of the annual income of the investor, or five percent of the net worth of the investor.
- If the annual income or net worth of the investor is $100,000 or more, the greater of $100,000, ten percent of the annual income of the investor, or ten percent of the net worth of the investor.

Intermediary Requirements:

An intermediary is subject to registration requirements as provided in **section 4** of the bill. The bill requires an intermediary to:

- Provide basic information on its platform regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information shall include:
  - A description of the escrow agreement that the issuer has executed and the conditions for the release of such funds to the issuer in accordance with the agreement.
  - A description of whether financial information provided by the issuer has been audited by an independent certified public accountant.
- Maintain records of the offers and sales of securities made through its platform, as prescribed by commission rule, and provide access to such records upon request by the OIR.
- Verify, pursuant to commission rule, that an investor is a resident of Florida.
- Deposit and release investor funds in escrow pursuant to the escrow agreement executed by the issuer.
- Provide a monthly update for each offering, which is accessible on the intermediary's platform, and includes the date and amount of each sale of securities in the previous calendar month.

- Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 as they apply to brokers.

Sections 4 amends s. 517.12, F.S., by requiring an intermediary to register as a dealer or as an intermediary and pay a registration fee of $200 to the OFR. An intermediary or persons associated with an intermediary are subject to a criminal background check. Further, an intermediary or persons associated with an intermediary may not be subject to any disqualification described in s. 517.1611, F.S., or the SEC Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933.

Section 5 amends s. 517.121, F.S., to provide that an intermediary is subject to examination by the OFR and must maintain certain books and records.

Section 6 amends s. 517.161, F.S**.,** to provide the OFR with enforcement authority to take regulatory actions against an intermediary.

Section 7 provides a technical conforming change to s. 626.9911, F.S.

Section 8 appropriates $120,000 in nonrecurring funds from the Regulatory Trust Fund within the OFR to implement the bill.

Section 9 provides the act will take effect October 1, 2015.

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:

CS/CS/SB 914 creates a $200 notice-filing fee for issuers and a $200 registration fee for intermediaries.

B. Private Sector Impact:

The bill will provide start-up and small companies with another option for raising capital that would not be subject to securities registration with the OFR if certain requirements were met.

C. Government Sector Impact:

The bill provides a total appropriation of $120,000 in nonrecurring funds from the Regulatory Trust Fund to implement the provisions of this bill. This includes an estimated $63,150 to update the licensure system and provide additional data storage, along with $56,850 for Other Personnel Services for temporary employees related to workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.061, 517.12, and 626.9911.

IX. Additional Information:

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

CS/CS by Appropriations on April 23, 2015:
The committee substitute provides $120,000 in nonrecurring funds from the Regulatory Trust Fund to implement the act, in addition to a technical, clarifying change.

CS by Banking and Insurance on March 31, 2015:
The CS provides the following changes:

- Clarifies provisions to be consistent with the requirements of the federal JOBS Act and the intrastate exemption authorized under the Securities Act of 1933.
- Requires the issuer to file an irrevocable written consent to service of civil process with the OFR.
- Requires the issuer to provide a disclosure statement and a copy of the escrow agreement to the OFR that meets certain requirements.
- Clarifies intermediary registration requirements.
- Requires intermediary to maintain certain books and records as prescribed by commission rule and be subject to examination by the OFR.
- Provides technical and conforming changes.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Richter

597-03200-15 2015914c1

A bill to be entitled

An act relating to intrastate crowdfunding; amending s. 517.021, F.S.; conforming a cross-reference; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting offers or sales of securities by certain issuers from registration requirements; creating s. 517.0611, F.S.; providing a short title; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing applicability; providing registration and reporting requirements for issuers and intermediaries offering such securities; requiring the issuer to provide to the office a copy of a specified escrow agreement; limiting the aggregate amount of sales of such securities within a specified period; limiting the aggregate amount of sales to specified investors; requiring an issuer to produce and distribute an annual report to investors; requiring a notice-filing to be suspended under certain circumstances; specifying that fees collected become revenue of the state; requiring a qualified third party to hold certain funds in escrow; amending s. 517.12, F.S.; providing registration requirements for an intermediary; conforming a cross-reference; amending s. 517.121, F.S.; requiring an intermediary to comply with specified recordkeeping requirements; amending s. 517.161, F.S.; including an intermediary in the disciplinary provisions; amending s. 626.9911,

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F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (9) of section 517.021, Florida Statutes, is amended, subsections (13) through (23) are redesignated as subsections (14) through (24), respectively, and a new subsection (13) is added to that section, to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8. ~~(13)(b)1.-8.~~.

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership, association, or other legal entity registered with the Secretary of State to do business in the state which represents an issuer in a transaction involving the offer or sale of securities under s. 517.061.

Section 2. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing

and does not require any filing with the office before ~~prior to~~ claiming the ~~such~~ exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of her or his own property for her or his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a vendor of

securities not the issuer or underwriter of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) Any transaction involving the distribution of the

securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporations each have assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate

statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before ~~Prior to~~ the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection

is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501).

(c)1. For purposes of determining which offers and sales of

securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months before ~~prior to~~ an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(12) The sale of securities by a bank or trust company

organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(16) The sale by or through a registered dealer of any

securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is

defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption shall not be available for any securities which have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal

covered security, by order published in such manner as the office finds proper.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17).

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

(20) Any nonissuer transaction by a registered associated person of a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction:

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any

unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(d) A nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with the Securities and Exchange Commission that is publicly available through the commission's electronic data gathering and retrieval system contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(e) The issuer of the security has a class of equity

securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

2. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

3. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.

Section 3. Section 517.0611, Florida Statutes, is created to read:

517.0611 Intrastate crowdfunding.—

(1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s.517.061.

(3) The offer or sale of securities under this section must

be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United States Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933.

(4) An issuer must:

(a) Be a for-profit business entity formed under the laws of this state, be registered with the Secretary of State, maintain its principal place of business in this state, and derive its revenues primarily from operations in this state.

(b) Conduct transactions for the offering through a dealer registered with the office or an intermediary registered under s. 517.12(20).

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

(d) Not be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, person occupying a similar status or performing a similar function, or person

holding more than 20 percent of the shares of the issuer, is subject to this requirement.

(f) Execute an escrow agreement with a federally insured financial institution authorized to do business in this state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.

(g) Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt of the completed form, filing fee, and an irrevocable written consent to service of civil process, as provided for in s. 517.101, by the office. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information of the issuer.

(d) Identify any predecessors, owners, officers, directors, and control persons or any person occupying a similar status or performing a similar function of the issuer, including that person's title, his or her status as a partner, trustee, sole proprietor or similar role, and his or her ownership percentage.

(e) Identify the federally insured financial institution, authorized to do business in this state, in which investor funds will be deposited, in accordance with the escrow agreement.

(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.

(g) Include documentation verifying that the issuer is organized under the laws of this state and authorized to do business in this state.

(h) Include the intermediary's website address where the issuer's securities will be offered.

(i) Include the target offering amount.

(6) The issuer must amend the notice form within 30 days after any information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer must provide to investors and the dealer or

intermediary, along with a copy to the office at the time the notice is filed, and make available to potential investors through the dealer or intermediary, a disclosure statement containing material information about the issuer and the offering, including:

(a) The name, legal status, physical address, and website address of the issuer.

(b) The names of the directors, officers, and any person occupying a similar status or performing a similar function, and the name of each person holding more than 20 percent of the shares of the issuer.

(c) A description of the business of the issuer and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount.

(f) The price to the public of the securities or the method for determining the price, provided that before the sale each investor receives in writing the final price and all required disclosures, with an opportunity to rescind the commitment to purchase the securities.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being

offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer;

2. A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.

(h) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements

prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the office, by rule, for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(i) The following statement in boldface, conspicuous type on the front page of the disclosure statement:

These securities are offered under and will be sold in reliance upon an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss

of their entire investment.

(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding shares of any class or classes of securities or to an officer, director, partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection in a 12-month period may not exceed:

(a) The greater of $2,000 or 5 percent of the annual income

or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.

(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000.

(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days of its fiscal year end, until no securities under this offering are outstanding. The annual reports must meet the following requirements:

(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.

(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.

(12)(a) A notice-filing under this section shall be summarily suspended by the office if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious

danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.

(b) A notice-filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including titles; status as a partner, trustee, sole proprietor, or similar roles; and ownership percentage.

(13) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

(14) An intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to transactions, including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to

its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering.

(b) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information must include:

1. A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and subsection (4).

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of this state.

(d) Obtain and verify, pursuant to commission rule, a valid Florida driver license number or official identification card number from each investor before purchase of a security or other information, as defined by commission rule, to confirm that the investor is a resident of the state.

(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).

(f) Direct the release of investor funds in escrow in accordance with subsection (4).

(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold

the funds for the benefit of the investor.

(h) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest in the previous calendar month.

(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:

I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.

(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.

(k) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(l) Prohibit its directors and officers from having any financial interest in the issuer using its services.

(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 as they

apply to brokers.

(15) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation or based on the sale of securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor.

(f) Engage in any other activities set forth by commission rule.

(16) All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.

Section 4. Section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons,

intermediaries, and investment advisers.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).

(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19), the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(12), (14), and (15).

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice-filing with the office pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the office pursuant to this section. The office shall not register any person or an associated person of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the

applicant seeks registration is in compliance with the notice-filing requirements of s. 517.1201 or is lawfully registered with the office pursuant to this chapter. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to and approval from the office.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice-filed with the office pursuant to s. 517.1202.

(6) A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including

contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(7) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to

subsection (15), submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

(8) The commission or office may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any associated person applicant to successfully pass oral or written examinations. Because any principal, manager, supervisor, or person exercising similar

functions shall be responsible for the acts of the associated persons affiliated with a dealer, the examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory associated person. The commission may waive the examination process when it determines that such examinations are not in the public interest. The office shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 that relates to the position to be filled by the applicant.

(9)(a) All dealers, except securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, shall comply with the net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. The commission may by rule require a dealer to file with the office any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

(b) The commission may by rule require the maintenance of a minimum net capital for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public. The provisions of this section shall not apply to any investment adviser that maintains its principal place of business in a state other than this state, provided such investment adviser is registered in

the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year

of expiration, such information as may be required by the commission, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

(13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the commission may specify. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a

controlling interest in a registered dealer or investment adviser, such person or group shall submit an initial application for registration as a dealer or investment adviser prior to such purchase or acquisition. The commission shall adopt rules providing for waiver of the application required by this subsection where control of a registered dealer or investment adviser is to be acquired by another dealer or investment adviser registered under this chapter or where the application is otherwise unnecessary in the public interest.

(14) Every dealer or investment adviser registered or required to be registered or branch office notice-filed or required to be notice-filed with the office shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not

limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.

2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

(b) In lieu of filing with the office the applications specified in subsection (6), the fees required by subsection (10), the renewals required by subsection (11), and the termination notices required by subsection (12), the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(16) Except for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, every applicant for initial or renewal registration as a securities dealer and every person registered

as a securities dealer shall be registered as a broker or dealer with the Securities and Exchange Commission and shall be subject to insurance coverage by the Securities Investor Protection Corporation.

(17)(a) A dealer that is located in Canada, does not have an office or other physical presence in this state, and has made a notice-filing in accordance with this subsection is exempt from the registration requirements of this section and may effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

1. A person from Canada who is present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or

2. A person from Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) A notice-filing under this subsection must consist of documents the commission by rule requires to be filed, together with a consent to service of process and a nonrefundable filing fee of $200. The commission may establish by rule procedures for the deposit of fees and the filing of documents to be made by electronic means, if such procedures provide the office with the information and data required by this section.

(c) A Canadian dealer may make a notice-filing under this subsection if the dealer provides to the office:

1. A notice-filing in the form the commission requires by rule.

2. A consent to service of process.

3. Evidence that the Canadian dealer is registered as a dealer in the jurisdiction in which the dealer's main office is located.

4. Evidence that the Canadian dealer is a member of a self-regulatory organization or stock exchange in Canada.

(d) The office may issue a permit to evidence the effectiveness of a notice-filing for a Canadian dealer.

(e) A notice-filing is effective upon receipt by the office. A notice-filing expires on December 31 of the year in which the filing becomes effective unless the Canadian dealer has renewed the filing on or before that date. A Canadian dealer may annually renew a notice-filing by furnishing to the office such information as the office requires together with a renewal fee of $200 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any Canadian dealer who has not renewed a notice-filing by the time a current notice-filing expires may request reinstatement of such notice-filing by filing with the office, on or before January 31 of the year following the year the notice-filing expires, such information as the commission requires by rule, together with the payment of $200 and a late fee of $200. A reinstatement of a notice-filing granted by the office during the month of January is effective retroactively to January 1 of that year.

(f) An associated person who represents a Canadian dealer who has made a notice-filing under this subsection is exempt from the registration requirements of this section and may effect transactions in securities in this state as permitted for a dealer under paragraph (a) if such person is registered in the jurisdiction from which he or she is effecting transactions into

this state.

(g) A Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing.

2. Provide the office upon request with its books and records relating to its business in this state as a dealer.

3. Provide the office upon request notice of each civil, criminal, or administrative action initiated against the dealer.

4. Disclose to its clients in this state that the dealer and its associated persons are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days after the information contained in the notice-filing becomes inaccurate for any reason.

(h) An associated person representing a Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office upon request with notice of each civil, criminal, or administrative action initiated against such person.

(i) A notice-filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office.

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for

under s. 517.131(1), until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not returnable if a notice-filing is withdrawn.

(18) Every dealer or associated person registered or required to be registered with the office shall satisfy any continuing education requirements established by rule pursuant to law.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

(20) An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures

provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided for in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal

history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, that are required to be reported on a form adopted by commission rule submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person concerning such matters as:

1. His or her full name and any other names by which he or she may have been known and his or her age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any

information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary may not be subject to any disqualification described in s. 517.1611 or the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the intermediary is subject to this requirement.

(e) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of the fee of $200 and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by filing with the office on or before January 31 of the year following the year of expiration must submit the information that may be required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(21)~~(20)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 5. Subsections (1) and (2) of section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.—

(1) A dealer, investment adviser, branch office, or associated person, or intermediary shall maintain such books and records as the commission may prescribe by rule.

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, associated person, intermediary, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

Section 6. Section 517.161, Florida Statutes, is amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by

the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer, broker, intermediary, or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering for sale securities through any associated person not registered in compliance with the provisions of this chapter;

(h) Has demonstrated unworthiness to transact the business of dealer, investment adviser, intermediary, or associated person;

(i) Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, intermediary, or investment adviser, insolvent;

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(k) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

(l) Is of bad business repute;

(m) Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state

securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; or

(n) Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution.

(2) The payment or anticipated payment of any amount from the Securities Guaranty Fund in settlement of a claim or in satisfaction of a judgment against an applicant or registrant constitutes prima facie grounds for the denial of the applicant's application for registration or the revocation of the registrant's registration.

(3) In the event the office determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers and

associated persons; and denial, suspension, or revocation of the registration of a dealer, intermediary, or investment adviser shall also deny, suspend, or revoke the registration of all her or his associated persons.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

(6) Registration under s. 517.12 may be denied or any registration granted may be suspended or restricted if an applicant or registrant is charged, in a pending enforcement

action or pending criminal prosecution, with any conduct that would authorize denial or revocation under subsection (1). Registration under s. 517.12 may be suspended or restricted if a registrant is arrested for any conduct that would authorize revocation under subsection (1).

(a) Any denial of registration ordered under this subsection shall be without prejudice to the applicant's ability to reapply for registration.

(b) Any order of suspension or restriction under this subsection shall:

1. Take effect only after a hearing, unless no hearing is requested by the registrant or unless the suspension or restriction is made in accordance with s. 120.60(6).

2. Contain a finding that evidence of a prima facie case supports the charge made in the enforcement action or criminal prosecution.

3. Operate for no longer than 10 days beyond receipt of notice by the office of termination with respect to the registrant of the enforcement action or criminal prosecution.

(c) For purposes of this subsection:

1. The term "enforcement action" means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory Authority, the National Futures Association, or any other similar self-regulatory organization.

2. An enforcement action is pending at any time after

notice to the applicant or registrant of such action and is terminated at any time after entry of final judgment or decree in the case of judicial proceedings, final agency action in the case of administrative proceedings, and final disposition by a self-regulatory organization in the case of disciplinary proceedings.

3. A criminal prosecution is pending at any time after criminal charges are filed and is terminated at any time after conviction, acquittal, or dismissal.

Section 7. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(24) ~~s. 517.021(23)~~; or

Section 8. This act shall take effect October 1, 2015.

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 Committee on Appropriations

BILL:	PCS/CS/SB 1554 (511078)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development), Transportation Committee, and Senator Brandes
SUBJECT:	Transportation
DATE:	April 20, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Sneed	Miller	ATD	**Recommend: Fav/CS**
3.	Sneed	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1554 reflects the Florida Department of Transportation's (FDOT) 2015 Legislative Package, as well as other transportation-related issues. More specifically, the bill:

- Increases from $15 million to $25 million the annual funding for the Florida Seaport Transportation and Economic Development (FSTED) program.
- Removes Port Citrus as an authorized member of the FSTED Council, as well as obsolete provisions regarding a related port feasibility study.
- Grants the Port of Palm Beach authority to apply for designation as a foreign-trade zone, with a proposed service area including certain counties.
- Allows commercial motor vehicle operators to purchase temporary registration permits and provides for a reduced non-registration penalty under certain circumstances.
- Extends the allowable length of a trailer transporting manufactured buildings under a special permit from 54 feet to 80 feet.
- Extends the allowable length of certain semitrailers from 53 feet to 57 feet under certain conditions.
- Provides an exemption from required minimum following distance to users of driver-assistive truck platooning technology, a system that controls inter-vehicle spacing between two truck tractor-semitrailer combinations.
- Directs the Office of Economic and Demographic Research to evaluate and determine the economic benefits of the state's investment in the FDOT Work Program.

- Allows turnpike bonds to be validated at the option of the Division of Bond Finance, and limits the location of publication of bond-validation notices to Leon County.
- Substantially revises chapter 333, Florida Statutes, relating to airport zoning regulations.
- Authorizes the FDOT to assume certain review responsibilities under the National Environmental Policy Act (NEPA) with respect to highway projects, as authorized by federal law, and includes a limited waiver of the state's immunity from lawsuits in federal courts pursuant to the Eleventh Amendment to the U.S. Constitution, which are associated with the assumed responsibilities under NEPA.
- Requires consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology and revises existing statutes with regard to the definition and use of autonomous vehicle technology.
- Clarifies provisions relating to pedestrians and crosswalks in an effort to improve safety.
- Increases from three years to ten years the period after which a dormant prepaid toll account is presumed unclaimed.
- Creates the Shared-Use Nonmotorized Trail (SunTrail) Network as a component of the Florida Greenways and Trail System, provides for the maintenance of the system, and requires the FDOT Work Program to include at least $50 million annually for the SunTrail Network.
- Requires the Center for Urban Transportation Research to conduct a study, design a pilot project, and provide a report regarding the feasibility and means of implementing a vehicle-miles-traveled funding mechanism for transportation projects.
- Creates the Northwest Florida Regional Transportation Finance Authority Act, authorizing Escambia and Santa Rosa Counties, to form a regional transportation finance authority to develop transportation projects in the northwest region of the state.
- Revises provisions relating to staffing and responsibilities of the Fort Meyers Urban Office of the FDOT.
- Modernizes language relating to FDOT's provision of 511 services.
- Removes obsolete language relating to the FDOT secretary's appointment of an inspector general.
- Repeals obsolete language relating to transportation corridors.
- Deletes references to toll facilities no longer owned by the FDOT.
- Repeals obsolete bond language relating to the already-repealed Broward County Expressway Authority.
- Makes other technical and conforming revisions.

The fiscal impact of the bill is indeterminate but likely insignificant. Please see Section V for specific details.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

U.S. Foreign-Trade Zone Program (Section 4)

Present Situation

Authorized by Congress in 1934,[1] the U.S. Foreign Trade Zones Program helps to encourage activity, including value-added functions, at U.S. facilities in competition with foreign alternatives. The Foreign-Trade Zones (FTZ) Board is chaired by the U.S. Secretary of Commerce and the Secretary of Treasury. U.S. Customs and Border Protection monitors zone activity day-to-day.[2] The FTZ Board licenses designated sites at which special customs procedures may be used, allowing domestic activity involving foreign items to take place prior to formal customs entry.[3]

Two types of zone sites exist. A magnet site is usually located at ports or industrial parks and are open to multiple zone users. Subzone or usage-driven sites are for a specific company or use.[4] According to the FTZ Board, assembling, exhibiting, cleaning, manipulating, manufacturing, mixing, processing, relabeling, repackaging, repairing, salvaging, sampling, storing, testing, displaying, and destroying merchandise are allowed in an FTZ. Production activity; i.e., activity involving the substantial transformation of a foreign article or activity that results in a change in the customs classification of the article or in its eligibility for entry for consumption, must be specifically authorized by the FTZ Board. Retail trade is prohibited in an FTZ.[5]

According to the FTZ Board, benefits to a zone user include:

- Duty Exemption - No duties on or quota charges on re-exports.
- Duty Deferral - Customs duties and federal excise tax deferred on imports.
- Inverted Tariff - In situations where zone production results in a finished product that has a lower duty rate than the rates on foreign inputs (inverted tariff), the finished products may be entered at the duty rate that applies to its condition as it leaves the zone (requires prior authorization).
- Logistical Benefits - Companies using FTZ procedures may have access to streamlined customs procedures.
- Other Benefits - Foreign goods and domestic goods held for export are exempt from state/local inventory taxes.[6]

Benefits to the public include:

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[1] 19 U.S.C. 81a-81u (2013).
[2] See the FTZ Board website for additional general information: http://enforcement.trade.gov/ftzpage/info/ftzstart.html. Last visited April 7, 2015.
[3] See the FTZ Board website, *Information Summary*: http://enforcement.trade.gov/ftzpage/info/summary.html. Last visited April 7, 2015.
[4] See the FTZ Board website on the types of zone sites: http://enforcement.trade.gov/ftzpage/info/zonetypes.html. Last visited April 7, 2015.
[5] See the FTZ Board website on activity permitted in zones: http://enforcement.trade.gov/ftzpage/info/activity.html. Last visited April 7, 2015.
[6] See the FTZ Board website on the benefits to a zone user: http://enforcement.trade.gov/ftzpage/info/userbenefits.html. Last visited April 7, 2015. 19 U.S.C. 81o(e) exempts tangible personal property imported from outside the U.S. and held in a zone for specified activities and for export from state and local ad valorem taxation.

- Helping to facilitate and expedite international trade.
- Providing special customs procedures as a public service to help firms conduct international trade related operations in competition with foreign plants.
- Encouraging and facilitating exports.
- Helping to attract offshore activity and encouraging retention of domestic activity.
- Assisting state and local economic development efforts.
- Helping to create employment opportunities.[7]

Up until 2009, applications for FTZ designation involved an "outmoded" traditional site-management framework that tended "to impose a major burden on applicants, to take far too long, and to consume too much in government resources, as well."[8] In response, an "alternative site framework" (ASF) was established, which is "an optional framework for organizing and designating sites that allows zones to use quicker and less complex procedures to obtain FTZ designation for eligible facilities." Under the ASF, a zone grantee proposes a service area. Once approved, a subzone or usage-driven site can be designated anywhere in the service area within 30 days using a simple application form. The process allows zone designation for any company that needs it and eliminates the need for zone grantees to predict where a zone will be needed and to pre-designate sites under the traditional framework.[9]

Current state law authorizes any corporation or government agency to apply to the proper U.S. authority for a trade zone or subzone, to accept a grant of the privilege, and to do all things necessary to establish, operate, and maintain such zones.[10] State law also authorizes any corporation or government agency to select and describe the location of such zones.[11]

At the local level, chapter 74-570, L.O.F., as amended by chapter 90-462, L.O.F., relating to the Port of Palm Beach, provides in part:

> In the event a trade zone site is established outside the boundaries of the port district, the county government, or, if within an incorporated area, the local municipal government, shall have approved the establishment of the trade zone within its jurisdiction, and such trade zone site shall be subject to such local government's applicable codes and ordinances.

Effect of Proposed Changes

Section 4 creates s. 288.365, F.S., which deems the Port of Palm Beach to be eligible, and grants it authority to apply, for approval from the FTZ board through the optional ASF procedure for an FTZ with a proposed service area including Palm Beach, Martin, and St. Lucie Counties, without approval from incorporated municipalities within the service area, notwithstanding chapter 74-570, L.O.F., as amended by chapter 90-462, L.O.F.

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[7] See the FTZ Board website on the public benefits: http://enforcement.trade.gov/ftzpage/info/publicbenefits.html. Last visited April 7, 2015.
[8] See the FTZ Boards Power Point presentation, *Alternative FTZ Site Framework: Introduction for CBP*. On file in the Senate Transportation Committee.
[9] See the FTZ Board website on the ASF: http://enforcement.trade.gov/ftzpage/info/asf.html. Last visited April 7, 2015.
[10] Section 288.36, F.S.
[11] Section 288.36, F.S.

The authorization expressly does not grant an exemption from any law, any local zoning or land use designation or ordinance of any municipality or county, or any tax imposed by the state or by any political subdivision, agency, or instrumentality thereof.

To the extent that this provision is construed to subject tangible personal property imported from outside the U.S. and held in an FTZ for specified purposes to local ad valorem taxation, the provision directly conflicts with 19 U.S.C. 81o(e) (2013), which exempts tangible personal property imported from outside the United States and held in a zone for specified activities and for export from state and local ad valorem taxation.

Florida Seaport Transportation and Economic Development Program (Sections 5 and 6)

Present Situation

Florida has 15 public seaports,[12] and Florida law reflects a number of seaport and seaport-related funding provisions. Section 311.07(2), F.S., requires a minimum of $15 million per year from the State Transportation Trust Fund (STTF) to fund the Florida Seaport Transportation and Economic Development (FSTED) Program.[13] The program represents a collaborative relationship between the Florida Department of Transportation (FDOT) and the seaports. FSTED funds are to be used on approved projects on a 50-50 matching basis.[14] Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port.
- The dredging or deepening of channels, turning basins, or harbors.
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing.
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for port purposes.
- The acquisition, improvement, enlargement, or extension of existing port facilities.
- Environmental protection projects: which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites; or which result from the funding of eligible projects.
- Transportation facilities which are not otherwise part of FDOT's adopted Work Program.[15]
- Intermodal access projects.

[12] Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandina. Listed in s. 311.09(1), F.S.

[13] See also s. 311.09(9), directing the FDOT to include no less than $15 million annually in its legislative budget request for the FSTED Program.

[14] S. 311.07(3)(a), F.S.

[15] DOT's Work Program is adopted pursuant to s. 339.135, F.S.

- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in s. 311.09(1), F.S.,[16] with operating revenues of $5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports.
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.[17]

In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

The FSTED program is managed by the FSTED Council, which consists of the port director, or director's designee of the 15 public seaports, the Secretary of FDOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.[18]

Effect of Proposed Changes

Sections 5 and 6 amend s. 311.07(2) and s. 311.09(9), F.S., respectively, to increase the annual funding from the State Transportation Trust Fund for the FSTED Program from $15 million to $25 million. The bill requires FDOT to include no less than the $25 million in its annual legislative budget request to fund the program.

Port Citrus (Section 6)

Present Situation

The Florida Legislature in 2011 included a representative of Port Citrus as a member of the FSTED Council. Port Citrus was authorized to apply for a grant for a feasibility study through the FSTED Council until July 14, 2014, regarding the establishment of a port in Citrus County.

According to a recent article, by late 2011, Citrus County established a port authority and joined the Florida Ports Council and Gulf Ports Association of the Americas, with annual dues of $15,000. Backers of Port Citrus "envisioned development of a port near a key cut in the Cross Florida Barge Canal."[19] According to the article, the study found that the barge canal would be a good location for a marina, but not for a port, because the canal's 12-foot depth is too shallow. Efforts are underway to pursue a possible marina. However, members of the current Citrus County Commission have raised questions about whether the dues paid for membership in the groups joined are appropriate, noting that a marina does not need to be designated as a port.[20]

[16] Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandina.
[17] Part II of ch. 163, F.S.
[18] S. 311.09(1), F.S.
[19] See *Port Citrus talk: Sink or stay afloat?*, January 24, 2015, Citrus County Chronicle Online: http://www.chronicleonline.com/content/port-citrus-talk-sink-or-stay-afloat. Last visited March 19, 2015.
[20] *Id.*

On January 24, 2015, the Citrus County Board of County Commissions, acting as the Citrus County Port Authority, voted to abolish Port Citrus. The Port Authority has requested statutory revision to reflect the abolishment.[21]

Effect of Proposed Changes

Section 6 amends s. 311.09(1) and repeals s. 311.09(12), F.S., to remove a representative of Port Citrus as an authorized member of the FSTED Council, as well as the dated provisions relating to application for a grant to conduct the feasibility study.

Commercial Motor Vehicles/Ports of Entry/Operating Credentials (Sections 7 and 12)

Present Situation

Interstate operators of commercial motor vehicles (CMVs) are required to obtain a number of credentials. Generally, for example, interstate operators of CMVs are required to obtain an International Fuel Tax Agreement (IFTA) license and decal[22] and, in some cases, to obtain overweight or over-dimensional permits.[23] Some states allow the purchase of some or all necessary credentials at weigh stations located close to routes entering their borders and at other locations, and these states are known as "port of entry" or "POE" states.[24] Because these credentials must be obtained prior to entering Florida, the state is known as a "non-POE" state.[25] If a CMV enters the state without proper credentials and the operator seeks to purchase them at any weigh station, the applicable fine is assessed depending on the type of credential at issue. Only then is the operator allowed to purchase the necessary credential.[26]

Another credential required before entering Florida is registration under the International Registration Plan (IRP). The IRP[27] is a plan for registering vehicles that are operated in two or more IRP-member jurisdictions while displaying just one registration license plate for each vehicle.

> All IRP member jurisdictions have agreed to allow one jurisdiction to collect the registration fees (apportioned fees) for each jurisdiction at one time. These fees are then distributed among the other IRP jurisdictions according to:
> - Percentage of mileage traveled in each jurisdiction;

[21] See Citrus Port Authority correspondence dated January 29, 2015. On file in the Senate Transportation Committee.
[22] See ss. 207.004 and 316.545(4), F.S. The International Fuel Tax Agreement (IFTA) is an agreement among the states and the Canadian provinces to simplify the reporting of interstate fuel taxes. The motor carrier's base jurisdiction issues the IFTA license and decals, allowing the carrier to file one quarterly tax return reflecting the net tax and any refund due on fuel used in all jurisdictions.
[23] See s. 316.550, F.S.
[24] *See* the *Florida Port of Entry Feasibility Study*, September 2014, prepared for the FDOT, at 3.1 and 3.2. Copy on file in the Senate Transportation Committee. According to the study, 28 states are non-POE states, and 22 states and the District of Columbia consider themselves to be POE jurisdictions. Alabama is a POE state; Georgia is not. Further, the definitions of "POE" vary greatly by state.
[25] *Id.* at 1.1.
[26] *See* the FDOT 2015 Legislative Proposal form, *Port-of-Entry*, on file in the Senate Transportation Committee.
[27] Section 320.01(23), F.S., defines the IRP to mean "a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions."

- Vehicle identification information; and
- Maximum weight.

Under the IRP, interstate truck operators are required to file an application with their base jurisdiction. The base jurisdiction, in turn, issues one registration cab card and one tag for the vehicle. In member jurisdictions, the single apportioned license plate and cab card are the only registration credentials required to operate interstate and intrastate.[28]

A "Full Reciprocity Plan" was instituted effective January 1, 2015, under which registrants are billed only for jurisdictions in which actual miles were accrued during the reporting period. If no miles were accrued in a given jurisdiction, registrants are billed based on the average distance of all registrants in each jurisdiction. Upon registration, the cab cards will reflect all jurisdictions.[29]

Section 320.0715(1), F.S., requires all apportionable vehicles[30] domiciled in this state to register under the International Registration Plan and to display the apportioned license plate. If a CMV domiciled elsewhere could be lawfully operated in this state because IRP registration had been obtained prior to entering Florida, but was not, a ten-day Florida trip permit may be obtained for $30. The permit allows the vehicle to be operated in interstate or intrastate commerce for the ten-day period.

A CMV not registered under the application provisions of ch. 320, F.S., is subject to a penalty of five cents per pound on the weight that exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen CMV.[31] Operators of CMVs that fail to obtain the temporary trip permit prior to entering Florida are fined accordingly and then allowed to purchase the temporary trip permit. All such penalties and permit fees are credited to the State Transportation Trust Fund to be used for repair and maintenance of Florida's roads and for enforcement purposes.[32]

Effect of Proposed Changes

The bill defines "port-of-entry" and reduces the existing penalty for IRP registration violations.

Section 7 creates s. 316.003(94), F.S., to define "port-of-entry" as a designated location that allows drivers of commercial motor vehicles to purchase temporary registration permits

[28] See the Florida Department of Highway Safety and Motor Vehicles *International Registration Plan Trucking Manual*, at 5. On file in the Senate Transportation Committee.
[29] *Id.*
[30] Section 320.01(24), F.S., defines "apportionable vehicle" to mean "any vehicle [with certain exceptions] which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and: (a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds; (b) Is a power unit having three or more axles, regardless of weight; or (c) Is sued in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight."
[31] See 316.545(2)(b), F.S.
[32] See s. 316.545(6), F.S.

necessary to operate legally within Florida, and to direct the FDOT to determine the locations and the designated routes to such locations.

Section 12 amends s. 316.545(2)(b), F.S., to provide that if a CMV enters the state at a designated POE or is operating on an FDOT-designated route to a POE, and if the ten-day IRP trip permit is obtained at the POE, the penalty is limited to the difference between the CMV's gross weight and the declared gross vehicle weight at five cents per pound.

The penalty no longer is calculated based on five cents per pound of weight in excess of 35,000 pounds or 10,000 pounds, depending on the type of truck, combination, or whether the truck is laden, but on the difference between declared and actual weight. Existing penalties for failure to obtain other required credentials remain unchanged, including, but not limited to, IFTA violations and overweight and over-dimensional permit violations.

The FDOT advises three potential POE locations are under consideration:
- I-10 at the first eastbound weigh station entering the state;
- I-75 at the first southbound weigh station entering the state; and
- I-95 at the first southbound weigh station entering the state.

The designated route for each location would be the portion of the interstate from the state line to the weigh station.[33]

Commercial Motor Vehicles/Trailer Lengths/Manufactured Building/Special Permits (Section 11)

Present Situation

The Office of Commercial Vehicle Enforcement of the Florida Department of Highway Safety and Motor Vehicles (FDHSMV) administers a Weight Enforcement program. Protection of the public's investment in the highway system is the primary purpose of the program. To prevent heavy trucks from causing unreasonable damage to roads and bridges, maximum weight and size limits are established in ch. 316, F.S.[34] Section 316.515, F.S., sets out the maximum width, height, and length limitations, and s. 316.545, F.S., addresses unlawful weight.

The FDOT or a local authority may issue a special permit to operate or move a vehicle or combination of a size or weight exceeding the maximums specified. Issuance of such a permit must not be contrary to the public interest and is at the discretion of the FDOT or the local authority.[35] Significant penalties can result from failure to obtain a special permit or failure to comply with the specific terms of the permit.[36]

Generally, as to truck tractor-semitrailer combinations and length, the extreme overall outside dimension of the combination may not exceed 48 feet, measured from the front of the unit to the

[33] *Supra*, note 14.
[34] See the FDHSMV website: http://www.flhsmv.gov/fhp/CVE/WeightEnforcment.htm/. Last visited March 3, 2015.
[35] See s. 316.550, F.S.
[36] See s. 316.550(10), F.S.

rear of the unit and the load carried.[37] However, a semitrailer that is more than 48 feet but not more than 53 feet may operate on non-restricted public roads, if the distance between the kingpin and the rear axle or axle group does not exceed a certain number of feet[38] and the vehicle is equipped with required rear end protection.

In addition, the FDOT is authorized to issue a special permit for a truck tractor-semitrailer combination if the total number of over-width deliveries of manufactured buildings may be reduced by permitting the use of an over-length trailer not exceeding 54 feet.[39] Issuance of this type of over-length special permit does not exempt the combination vehicle from existing weight limitations or special permit requirements if the weight of the combination exceeds the maximums specified in ch. 316, F.S.

Effect of Proposed Changes

Section 11 amends s. 316.515(3)(b), F.S., to increase from 53 to 57 feet the allowable extreme overall outside dimension of a semitrailer exceeding 48 feet, if specified conditions are met. The Federal Highway Administration (FHWA) has reviewed the proposed language and deems it compliant with federal regulations.[40]

Section 11 also amends s. 316.515(14), F.S., to insert "multiple sections or single units" with reference to manufactured buildings transported on permitted, over-length trailers, and to increase the allowable over-length trailer from 54 to 80 feet.

The Federal Highway Administration has reviewed the proposed language and opined that it does not appear to conflict with federal regulations, as long as weight restrictions are not exceeded.[41] Transporters of manufactured buildings on truck tractor-semitrailer combinations continue to be required to obtain a permit for such combinations, even with a trailer length of 80 feet. Overweight permits also continue to be required when applicable. Issuance of such permits remains within the discretion of the FDOT.

Driver-Assistive Truck Platooning (Sections 7, 8, and 10)

Present Situation

In August of 2014, the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking, following NHTSA's earlier announcement that the agency will begin working on a regulatory proposal to require vehicle-to-vehicle (V2V) devices in passenger cars and light trucks in a future year. V2V is a crash avoidance technology, relying on communication of information between nearby vehicles to warn drivers about dangerous situations that could lead to a crash.[42] NHTSA advises that, "Using V2V technology, vehicles

[37] Section 316.550(3)(b)1., F.S.
[38] Generally, forty-one feet. For a semitrailer used exclusively or primarily to transportation vehicles in connection with motorsports competition events, 46 feet. Section 316.515(3)(b), F.S.
[39] Section 316.515(14), F.S.
[40] See the FHWA email, March 17, 2015. On filed in the Senate Transportation Committee.
[41] See the FHWA email, February 11, 2015. On file in the Senate Transportation Committee.
[42] See the U.S. Department of Transportation Fact Sheet on Vehicle-To-Vehicle Communication Technology. On file in the Senate Transportation Committee.

ranging from cars to trucks and buses to trains could one day be able to communicate important safety and mobility information to one another that can help save lives, prevent injuries, ease traffic congestion, and improve the environment."[43]

One form of V2V technology is known as driver-assistive truck platooning (DATP), which allows trucks to communicate with each other and to travel as close as thirty feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption.[44]

> The DATP concept is based on a system that controls inter-vehicle spacing based on information from forward-looking radars and direct vehicle-to-vehicle communications. Braking and other operational data is constantly exchanged between the trucks, enabling the control system to automatically adjust engine and brakes in real-time. This allows equipped trucks to travel closer together than manual operations would safely allow. Platooning technology is increasingly a subject of interest in the truck community, with multiple companies developing prototypes.[45]

One such system uses integrated sensors, controls, and wireless communications for "connected" trucks. The system is cloud-based, determining in real time whether specific trucks are clear to engage in platooning operations. The system synchronizes acceleration and braking between tractor-trailers, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver's response time. The following vehicle is provided video showing the lead truck's line of sight while the lead vehicle is provided video showing the area behind the following truck. If another vehicle enters between platooning trucks, the system will automatically increase following distance or delink the trucks and then relink once the cut-in risk has passed. If data transfer between platooning trucks ceases, the driver is immediately notified that manual acceleration and braking control is about to resume.[46]

Section 316.0895(2), F.S., currently deems it unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. That subsection expressly does not prevent overtaking and passing and does not apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.

Effect of Proposed Changes

Section 7 creates s. 316.003(95), F.S., to define driver-assistive truck platooning.

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[43] See the NHTSA website: http://www.safercar.gov/v2v/index.html. Last visited March 16, 2015.
[44] See the GBT Global News website: http://www.gobytrucknews.com/driver-survey-platooning/123. Last visited March 16, 2015.
[45] See the American Transportation Research Institute website: http://atri-online.org/2014/11/17/atri-seeks-input-on-driver-assistive-truck-platooning/. Last visited March 16, 2015.
[46] *See* http://www.peloton-tech.com/faq/. Last visited March 16, 2015.

Section 8 amends s. 316.0895 (2), F.S., to exclude from the 300-foot distance limitation two-truck tractor-semitrailer combinations, equipped and connected with driver-assistive truck platooning technology and operating on a multilane, limited access facility. The exclusion applies only if the owner or operator complies with the financial responsibility requirement of s. 316.86, F.S., which requires submission to the DHSMV of proof of insurance acceptable to the DHSMV in the amount of $5 million. Tandem trailer trucks are not included in the authorized exclusion.

Section 10 amends s. 316.303(1) and (3), respectively, to allow vehicles equipped and operating with driver-assistive truck platooning technology to be equipped with video equipment visible from the driver's seat, and to authorize an electronic display used by the operator of a vehicle equipped and operating with truck platooning technology.

Return on Transportation Investment (Section 40)

Present Situation

Section 334.046, F.S., provides prevailing principles to be considered in planning and developing an integrated, balanced statewide transportation system. The principles are preserving the existing transportation infrastructure, enhancing Florida's economic competitiveness, and improving travel choices to ensure mobility.

As to economic competitiveness, the statute requires the FDOT to ensure a clear understanding of the economic consequences of transportation investments and how such investments affect the state's economic competitiveness. The FDOT is directed to develop a macroeconomic analysis of the linkages between transportation investment and economic performance and a method to quantifiably measure the economic benefits of the district-work-program investments. The FDOT must analyze the state's and districts' economic performance relative to competition, the business environment viewed from the perspective of companies evaluating the state as a place in which to do business, and the state's capacity to sustain long-term growth.[47]

The FDOT in January 2015 completed its "Macroeconomic Analysis of Florida's Transportation Investments,"[48] estimating the economic effects of its Work Program for Fiscal Years 2013-2014 through 2017-2018. The analysis indicates that almost all Work Program spending was covered, including highway, rail, seaport, and transit modes. According to the analysis, "on average, every dollar invested in the Work Program will yield about $4.40 in economic benefits for Florida from the beginning of the Work Program to FY 2043."[49]

[47] Section 334.046(4)(b), F.S.
[48] The analysis is available at: http://www.dot.state.fl.us/planning/weeklybriefs/2015/011915.shtm. Last visited March 16, 2015.
[49] *Id*. at 1.

Effect of Proposed Changes

Section 40 directs the Office of Economic and Demographic Research (EDR) to evaluate and determine the economic benefits[50] of the state's investment in the FDOT Adopted Work Program for Fiscal Year 2015-2016, including the following four fiscal years. At a minimum, a separate return on investment shall be projects for roads and highways, rails, public transit, aviation, and seaports.

The analysis is limited to funding anticipated by the Adopted Work Program but may address the continuing economic impact of the transportation projects in the five years beyond the conclusion of the Adopted Work Program. The number of jobs created, the increase or decrease in personal income, and the impact on gross domestic product from the direct, indirect, and induced effects on the state's investment in each area must be evaluated.

The FDOT and each of its district offices are required to provide the EDR full access to all data necessary to complete the analysis, including any confidential data, and the EDR must provide the analysis to the President of the Senate and Speaker of the House of Representatives by January 1, 2016.

Turnpike Revenue Bonds/Bond Validation (Sections 2 and 33)

Present Situation

The Division of Bond Finance (DBF) is authorized to issue bonds on behalf of the FDOT to finance or refinance the cost of legislatively approved turnpike projects. Such bonds must be validated under ch. 75, F.S., through proceedings instituted by attorneys for the DBF.[51] In any action to validate bonds issued pursuant to s. 338.227, F.S., the complaint must be filed in the circuit court of Leon County; the notice required by s. 75.06, F.S., must be published in a newspaper of general circulation *in Leon County and in two other newspapers of general circulation in the state*;[52] and the complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending (the Second Circuit).

Section 75.06(2), F.S., requires the clerk, before the date set for hearing on a complaint to validate turnpike bonds, to publish a copy of the court's order requiring appearance at the hearing in Leon County at least once each week for two consecutive weeks, commencing with the first publication, which may not be less than 20 days before the date set for hearing, *in a newspaper in each of the counties where the proceeds of the bonds are to be expended, and in a newspaper published in Leon County.*[53]

[50] Defined per the bill in s. 288.005, F.S., meaning the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.
[51] See s. 215.82(1), F.S.
[52] Emphasis added.
[53] Emphasis added.

However, if publication pursuant to s. 215.82, F.S., would require publication in more newspapers than would publication pursuant to s. 75.06, F.S., then publication pursuant to s. 75.06, F.S., controls. [54] The required publication is dependent upon the geographic reach of the project(s) for which funding through bond issuance is sought.

According to the DBF:

> Bond validation is a judicial procedure through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.[55]

Effect of Proposed Changes

The bill in general leaves validation of turnpike bonds to the discretion of the DBF and limits provisions relating to publication of the required notice.

Section 2 amends s. 215.82(2), F.S., to strike the reference to s. 338.227, F.S., in favor of the language in newly created s. 338.227(5), F.S.

Section 33 creates subsection (5) of s. 338.227, F.S., to:
- Provide turnpike bonds issued pursuant to that section are not required to be validated pursuant to ch. 75, F.S., notwithstanding s. 215.82, F.S.;
- Provide for validation at the option of the DBF; and
- Require the notice under s. 75.06, F.S., to be published only in Leon County.

Airport Zoning/Chapter 333 Re-Write (Sections 13 through 27)

Chapter 333, Florida Statutes, contains airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the chapter:
- Addresses permitting for structures exceeding federal obstruction standards;
- Requires adoption of certain airport zoning regulations;
- Provides a process for seeking variances from the zoning regulations;
- Sets out a process for appeal of decisions based on the zoning regulations;
- Requires boards of adjustment to hear and decide appeals;
- Provides for judicial review of any board of adjustment decision; and

[54] See s. 215.82(2), F.S.
[55] See copy of email from Ben Watkins, Director, Florida Division of Bond Finance, to House staff dated January 27, 2015. On file in the Senate Transportation Committee.

- Establishes penalties and remedies for violations.

The FDOT in 2012 created a stakeholder working group to address problems with implementing this chapter. Representatives from airports, local planning and zoning departments, the Florida Defense Alliance, the League of Cities, the Florida Airports Council, the real estate development community, and the FDOT participated in the working group. The FDOT advises the working group determined that ch. 333, F.S., "contains outdated and inconsistent provisions when compared to applicable federal regulations, contains internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing."

As examples, the FDOT reports the need to update current definitions consistent with federal regulations, advises that zoning variances and permitting processes are mixed in the chapter, and notes that required creation of separate boards often duplicate existing local governing body structures and functions. The result is inconsistent local application of the provisions governing airspace and land use at or near airports with outcomes that may be unpredictable.[56]

The FDOT advises it expects no substantive changes as a result of the bill's proposed revisions; e.g., the existing requirements for issuance of permits are substantively unchanged. The number of permits issued or denied is not expected to change. Rather, the changes are designed to facilitate more uniform permitting, appeals, and review processes applied at the local level and provide clarity and predictability for those subject to airport zoning regulations.[57]

Definitions

Present Situation

Section 333.01, F.S., contains definitions related to airport zoning that need updating for internal chapter consistency and for consistency with federal regulations.

Effect of Proposed Changes

Section 13 amends s. 333.01, F.S., to provide, revise, and delete definitions to:
- Reflect terminology used in federal regulations;
- Provide for consistency with Federal Aviation Administration (FAA) advisements;
- Define terms used but undefined elsewhere in the chapter and delete terms not used elsewhere in the chapter;
- Remove antiquated terminology;
- Delete variances from definitions to reflect the streamlined permitting process effected in the bill; and
- Otherwise provide clarity through editorial and grammatical changes.

[56] See the FDOT 2015 Agency Proposal, *Airspace and Land Use at Public Airports*. On file in the Senate Transportation Committee.
[57] Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.

Permitting for Structures Exceeding Federal Obstruction Standards

Present Situation

The Code of Federal Regulations (CFR) sets forth standards for structures that present a hazard within an area in an airport due to obstruction of the airspace required for aircraft to take off, maneuver, or land. Section 333.025, F.S., requires a permit from the FDOT for any proposed construction or alteration of a structure that would exceed the federal standards, if the standards will be exceeded within a 10-nautical mile radius of the geographical center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use.[58] A permit from the FDOT is not required if a political subdivision[59] has adopted adequate airspace protection regulations and filed them with the FDOT. The facilities at airports shown on the airport master plan, or on an airport layout plan submitted to the Federal Aviation Administration (FAA) or comparable military documents, are to be protected. Certain planned or proposed facilities are also protected.

The FDOT must issue or deny a permit within 30 days of receipt of an application for erection, alteration, or modification of any structure that would exceed the federal obstruction standards. The FDOT is required to consider a list of factors in determining whether to issue or deny a permit. As a permit condition, the FDOT is directed to require obstruction and lighting of the permitted structure. The FDOT is prohibited from approving a permit to erect a structure unless the applicant submits both documentation showing compliance with federal notification requirements and a valid aeronautical evaluation.

Effect of Proposed Changes

Section 14 amends s. 333.025, F.S., to replace the term "geographic center" with "airport reference point," which is located at the approximate geometric center of all usable runways and to update references to current federal regulations. Per the FDOT, the airport reference point is not the same as the geographic center of the airport.[60]

When a political subdivision has adopted adequate airport protection zoning regulations which are on file with the FDOT *and* the political subdivision has established a permitting process, a permit from the FDOT is not required for a structure. To evaluate the technical consistency of a permit application submitted to a local government, the bill provides a 15-day FDOT review period concurrent with the established local permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not exceeding 18 consecutive months are exempt from the FDOT review, unless the FDOT requests review.

The FDOT is required to review permit applications in conformity with s. 120.60, F.S., relating to licensing. The list of factors to be considered by the FDOT when granting or denying a permit is revised to remove ambiguity and duplication, and to provide clarity. The FDOT must require the owner of the permitted structure or vegetation to install, operate, and maintain marking and lighting in conformance with FAA standards, at the owner's expense. A reference to aeronautical

[58] Public airports are licensed under the provisions of ch. 330, F.S.
[59] Generally, a local governmental entity. Section 333.03(9), F.s
[60] See the FDOT document provided to staff, *Proposed ch. 333, F.S. Amendments and Legislative Support Documentation*. On file in the Senate Transportation Committee.

"evaluation" is revised to aeronautical "study" in accordance with the new definition. The denial of a permit is subjected to the administrative review provisions of the Administrative Procedures Act.

Adoption of Airport Zoning Regulations

Present Situation

Section 333.03, F.S., requires political subdivisions with an airport hazard area[61] to adopt, administer, and enforce airport zoning regulations for the area. If the airport is owned or controlled by a political subdivisions and has a hazard area outside of its territorial limits, the owning or controlling political subdivision and the political subdivision within which the hazard area is located must either adopt zoning regulations by interlocal agreement or create a joint airport zoning board with the power to do so. The airport zoning regulations must, at a minimum, require:

- A variance for erection, alteration, or modification of any structure that would exceed the federal obstruction standards;
- Obstruction marking and lighting per s. 333.07(3);
- Documentation of compliance with federal proposed construction notification and a valid aeronautical evaluation submitted by each person applying for a variance;
- Consideration of the same list of factors when determining whether to issue or deny a variance as required of the FDOT when considering permit applications; and
- That no variance be approved solely on the basis that a proposed structure will not exceed the federal obstruction standards.

The FDOT is required to issue copies of the federal obstruction standards in the CFR to each political subdivision with an airport hazard area, and issue certain airport zoning maps at no cost.

Interim land use compatibility zoning regulations must be adopted, unless the political subdivision has adopted land development regulations addressing the use of land consistent with this section. Interim land use compatibility zoning regulations must consider whether sanitary landfills are located within certain areas and whether any landfill will attract or sustain hazardous bird movements, with attendant reporting requirements and bird management considerations. If a public-use airport has conducted a specified federal noise study, residential construction and construction of certain educational facilities are prohibited within the area defined by the study to be incompatible with such construction. If no study is conducted, the same construction is prohibited within a certain distance.

Airport zoning regulations restricting new incompatible uses, activities, or construction within runway clear zones must be adopted, including uses that result in congregations of people,

[61] The bill defines "airport hazard" to mean any area of land or water upon which an airport hazard might be established. "Airport hazard area" is defined in the bill to mean any obstruction which exceeds the federal obstruction standards in the specified sections of the Code of Federal Regulations and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing; or is otherwise hazardous to such activity and for which no permit has been obtained. The bill generally defines "obstruction" to mean any object of natural growth, terrain, or permanent or temporary construction or alteration thereof, existing or proposed, that exceeds the federal obstruction standards.

emissions of light or smoke, or attract birds. Certain limited exceptions for construction of educational facilities in specified areas are authorized.

Effect of Proposed Changes

Section 15 amends s. 333.03, F.S., to eliminate the duplicative requirement for obtaining a variance for structures that would exceed federal obstruction standards, in favor of a local permitting process. Every political subdivision having an airport hazard area is required to adopt, by either of the two authorized methods, airport *protection* zoning regulations. In addition to editorial and grammatical revisions, this section revises language to:

- Replace references to a "variance" with "permit."
- Update references to the federal obstruction standards contained in the CFR;
- Replace aeronautical "evaluation" with "study" consistent with the new definition;
- Remove the FDOT's duty to provide copies of the federal obstruction standards and issue maps and replace it with making the FDOT available to provide assistance with respect to the standards;
- Eliminate the reporting requirements related to birds at airports near landfills in favor of requiring the landfill operator to incorporate bird management techniques;
- Allow alternative noise studies approved by the FAA, and their application;
- Include substantial modification of existing incompatible uses in the required adopted regulations restricting such uses within runway *protection* zones;
- Remove the limited exceptions for construction of educational facilities
- Require all updates and amendments to local airport codes to be filed with the FDOT within 30 days after adoption.
- Delete outdated language; and
- Authorize an airport authority, local government, or other governing body operating a public-use airport to adopt more restrictive airport protection zoning regulations, per the FDOT, to allow restrictions appropriate to the local context of the airport.[62]

Guidelines Regarding Land Use Near Airports

Present Situation

Section 333.065, F.S., requires the FDOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. The guidelines must use certain acceptable and established quantitative measures.

Effect of Proposed Changes

Section 19 repeals s. 333.065, F.S. The FDOT advises the deletion reflects completion of the FDOT's Airport Compatible Land Use Guidebook.[63]

[62] *Supra*, note 48.
[63] *Supra*, note 48.

Permits, Variances, and Appeals

Present Situation

Section 333.07, F.S., authorizes any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired. All such regulations must require a permit before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted.

If a nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down or deteriorated, a permit may not be issued under certain conditions. The owner of a nonconforming structure or tree may be compelled, at the owner's expense, to under certain actions necessary to conform to the regulations. If the owner does not, the required action may be accomplished by the administrative agency and the costs may be assessed against the nonconforming object or the land on which it is located. If the assessment is not paid within 90 days, a lien at the annual rate of 6 percent interest is applied.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the adopted airport zoning regulations is authorized to apply to a board of adjustment for a variance from the regulations. The FDOT has 45 days to comment or waive that right. Conditions for allowance of variations are provided. The FDOT is authorized to appeal any variance granted and to apply for judicial relief.

As a condition of any granted permit or variance, the administrative agency or board of adjustment must require the structure or tree owner to install, operate, and maintain at the owner's expense marking and lighting necessary to indicate to aircraft pilots the presence of an obstruction.

Section 333.08, F.S., authorizes any person or taxpayer affected by any decision of an administrative agency in its administration of adopted airport zoning regulations or of any governing body of a political subdivision, or the Department of Transportation, or any joint airport zoning board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Effect of Proposed Changes

Section 20 amends s. 333.07, F.S., to streamline the permitting process, repeal the duplicative variance process, and facilitate implementation of the permitting process by local entities. More specifically, rather than authorizing any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired, the bill simply requires a permit to erect, construct, alter, increase the height of any structure, permit the growth of any vegetation, or otherwise use his or her property in violation of the adopted regulations.

The political subdivision or its administrative agency must consider virtually the same standards as must be considered by the FDOT when issuing or denying a permit for structures exceeding

federal obstruction standards. All variance provisions are removed in favor of the permitting process. In addition, the provisions relating to a lien resulting from an owner's failure to take action to bring a nonconforming structure or tree into regulatory compliance are removed. The FDOT's 45-day comment period is removed in favor of the shortened 15-day period of review for technical consistency described above. Obstruction marking and lighting is required in conformance with specific standards established by the FAA. Outdated language is repealed.

Section 21 repeals s. 333.08, F.S., authorizing and providing requirements for appeals of zoning regulation decisions, in favor of relocated, modified appeals language in s. 333.09, F.S.

Section 23 repeals s. 333.10, F.S., currently requiring all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances, consistent with repeal of the variance provisions in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

Administration of Airport Zoning Regulations

Present Situation

Section 333.09, F.S., requires all adopted airport zoning regulations to provide for administration and enforcement by an administrative agency, which may be an agency created by the regulations; or by any official, board, or other existing agency of the political subdivision adopting the regulations; or by one of the subdivisions that participated in creating a joint airport zoning board adopting the regulations. The duties of any such administrative agency include hearing and deciding all permits under s. 333.07, F.S., but not any of the powers delegated to the board of adjustment.

Effect of Proposed Changes

Section 22 amends s. 333.09, F.S., to remove the list of entities that may be an administrative agency, per the FDOT, to reflect correct community planning terminology.[64] Administration and enforcement is left to the affected political subdivision or its administrative agency. Also removed is the prohibition against an administrative agency exercising the powers delegated to the board of adjustment.

Political subdivisions required to adopt airport zoning regulations must establish a process to:

- Issue or deny permits consistent with s. 333.07, F.S., including requests for exceptions to airport zoning regulations;
- Notify the FDOT of receipt of a complete permit application; and
- Enforce any permit, order, requirement, decision, or determination made by the administrative agency with respect the airport zoning regulations.

If a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the permitting and appeals process. Otherwise, the political subdivision must implement the permitting and appeals process.

[64] *Supra*, note 48.

Any person, political subdivision or its administrative agency, or any joint airport zoning board, may use the process established for an appeal. Appeals must be taken with a reasonable time provided by the political subdivision or its administrative agency by filing a notice of appeal specifying the grounds for appeal. An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies pursuant to the rules for appeal that a stay would cause imminent peril to life or property. In such case, proceedings may be stayed only by an order from the political subdivision or its administrative agency following notice to the entity from which the appeal is taken and for good cause shown.

The political subdivision or its administrative agency must set a reasonable time for a hearing and provide notice to the public and the parties in interest. A party may appear in person, by agent, or by attorney. The subdivision or agency may reverse, affirm, or modify the underlying order, requirement, decision, or determination from which the appeal is taken in accordance with the provisions of ch. 333, F.S.

Judicial Review

Present Situation

Section 333.11, F.S., authorizes any person aggrieved or any taxpayer affected by a decision of a board of adjustment, any governing body of a political subdivision, the FDOT, any joint airport zoning board, or any administrative agency to apply for judicial relief in the judicial circuit court where the board of adjustment is located. That section provides procedural provisions related to the board of adjustment, describes the court's authorized review of a decision by a board of adjustment, and prohibits judicial review in provisions related to a board of adjustment.

Effect of Proposed Changes

Section 24 amends s. 333.11, F.S., to remove the FDOT from authorization to apply for judicial relief and reference to the board of adjustment, but otherwise leave the authorization to apply for judicial review in place. Any person, political subdivision or its administrative agency, or any joint zoning board is authorized to apply for judicial relief. The judicial review prohibition is revised. An appellant is required to exhaust all remedies through application for local government permits, exceptions, and appeals before seeking judicial review. These revisions reflect the elimination of the requirement that adopted airport zoning regulations provide for a board of adjustment, consistent with repeal of the variance provisions in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

Transition Provisions

Section 26 of the bill creates s. 333.135, F.S., to:

- Provide that a provision of airport zoning regulation in effect on July 1, 2015, and in conflict with the revised ch. 333, F.S., must be amended to conform by July 1, 2016.
- Requires any political subdivision with an airport that has not adopted airport zoning regulations to do so by October 1, 2017, consistent with the chapter.
- Require the FDOT to administer the permitting process as provided in s. 333.025, F.S., for political subdivisions that have not yet adopted the required regulations.

Technical Revisions
The following sections of the bill primarily make grammatical and editorial revisions to existing language in ch. 333, F.S., and modify sections of the chapter for internal consistency with definitions.

Section 16 amends s. 333.04, F.S., to replace the following phrases as follows:
- "Zoning ordinance" with "plan or policy."
- "Trees" with "vegetation."

Section 17 amends s. 333.05, F.S., to reference amended or deleted regulations and administering and enforcing regulations, in addition to those adopted.

Section 18 amends s. 333.06, F.S., to replace references to "runway clear zones" with "runway protection zones, and "tree" to "vegetation."

Section 25 amends s. 333.12, F.S., to provide editorial changes; replace the term "navigation easement" with "avigation easement;"[65] and replace "tree" with "vegetation."

Section 27 repeals s. 333.14, the short title citing of ch. 333, F.S., as the "Airport Zoning Law of 1945."

Section 58 reenacts s. 350.81, F.S., to incorporate the amendment to s. 333.01, F.S.

National Environmental Policy Act/Delegation of Responsibilities to States (Section 29)

Present Situation

The National Environmental Policy Act (NEPA) "establishes national environmental policy for the protection, maintenance, and enhancement of the environment and provides a process for implementing the goals within the federal agencies." Federal agencies are required to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions that significantly affect the environment. [66]

NEPA requirements also apply to state highway projects eligible for federal funding. According to the FDOT, when a highway project is advanced and is federally eligible, project development occurs consistent with NEPA requirements, in consultation with and subject to the oversight of the Federal Highway Administration (FHWA). The FDOT utilizes two processes to meet NEPA requirements. One process, the Efficient Transportation Decision Making process, is used during the project's planning phase to initiate contact with agencies and other stakeholders and obtain multiple-party input and information used to inform the second process. The Project Development and Environment (PD&E) process is used to analyze, perform outreach, guide agency coordination, and meet regulatory requirements before a project may be advanced. The FDOT prepares necessary documents, analyzes alternatives, consults with agencies, and makes

[65] The bill describes "avigation" easement as an easement conveying the airspace over another property for use by the airport.
[66] See the U.S. Environmental Protection Agency website: http://www.epa.gov/compliance/basics/nepa.html. Last visited March 17, 2015.

recommendations. This information is provided to the FHWA, which is the lead agency for review, comment, and ultimate approval.[67]

Following an initial pilot project conducted in California, Congress in 2012 enacted the Moving Ahead for Progress in the 21st Century Act, which established a permanent surface transportation project delivery program.[68] Under the program, in which Texas is already participating, the U.S. Department of Transportation (USDOT) secretary may assign, and any state may assume, pursuant to a written agreement, all or part of the secretary's responsibilities under NEPA with respect to projects or classes of projects. The written agreement must provide that the state:

- Agrees to assume all or part of the described responsibilities;
- Expressly consents, on behalf of the state, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the secretary assumed by the state;[69]
- Certifies that state laws and regulations are in effect that authorize the state to take the actions necessary to carry out the responsibilities; and
- Agrees to maintain the financial resources necessary to carry out the responsibilities.[70]

The USDOT secretary is authorized to terminate the participation of any state if the state is not adequately carrying out the responsibilities and the secretary notifies the state of the determination of noncompliance. If the state fails to take corrective action as determined by the USDOT secretary within 30 days after notice, the agreement is terminated.[71]

With respect to the consent to federal court jurisdiction, the FDOT advises:

> This waiver is limited to only those actions delegated to the Department by the USDOT and related to carrying out its NEPA duties on state highway projects. Challenges to NEPA decision making are filed in federal district court pursuant to the Federal Administrative Procedures Act and are limited to a review of the underlying administrative record. The standard for review is whether the Department's action is arbitrary and capricious. To the extent that a challenger is successful, the remedy is to require additional review, analysis and documentation to support the action. The state's exposure is further limited by 23 USC 327(a)(2)(G), which provides that a state assuming the responsibilities of the Secretary [of the USDOT] under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys' fees directly attributable to eligible activities associated with the project.[72]

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[67] See the FDOT 2015 Legislative Proposal form, *Authorization to Participate in Certain Federal Transportation Programs*. On file in the Senate Transportation Committee.
[68] 23 U.S.C. s. 327 (2013).
[69] This requirement apparently exists to address the Eleventh Amendment to the U.S. Constitution, which generally prohibits suits in law or equity against one of the United States by its citizens, citizens of another state, or subjects of any foreign state.
[70] *Supra*, note 56.
[71] *Id.*
[72] *Supra*, note 55.

Effect of Proposed Changes

Section 29 amends s. 334.044, F.S., to authorize the FDOT to assume responsibilities of the USDOT under 23 U.S.C. s. 327 with respect to highway projects, and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project, within Florida. The FDOT is authorized to enter into one or more agreements with the U.S. Secretary of Transportation related to the federal surface transportation project delivery program for the delivery of transportation projects, including highway projects. The FDOT is authorized to adopt implementing rules and to adopt relevant federal environmental standards as the standards for this state for the program. The FDOT advises the delegation allows direct consultation between the FDOT and federal regulatory agencies and maximizes efficiency by consolidating all NEPA reviews under the FDOT.

Sovereign immunity to civil suit in federal court is waived consistent with 23 U.S.C. s. 327 and limited to the compliance, discharge, or enforcement of a responsibility assumed by the FDOT. The FDOT advises its district offices would continue to conduct the PD&E process, with the FHWA's project review, legal sufficiency, and approval authority delegated to the FDOT's Central Office and with the FHWA retaining program level oversight. The waiver of sovereign immunity is limited only to those actions delegated to the FDOT and related to carrying out its NEPA duties on state highway projects. The standard for review is whether the FDOT's action is arbitrary and capricious. The remedy for a successful challenge is to require additional review, analysis, and documentation to support the project. Further, a state assuming the NEPA responsibilities may use certain apportioned state funds for attorneys' fees directly attributable to eligible activities associated with a project.[73]

Autonomous Vehicles (Sections 7, 10, 35, and 36)

Present Situation

Autonomous or "self-driving" vehicles are those operated "without direct driver input to control the steering, acceleration, and braking and … designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode."[74] According to the National Highway Traffic Safety Administration, autonomous vehicles have the potential to improve highway safety, increase environmental benefits, expand mobility, and create new economic opportunities for jobs and investment.[75]

A review of material obtained via a simple Internet search reveals that common availability and use of such vehicles was not previously anticipated for at least a couple of decades. However, some expect increased availability and use in the relative near future, perhaps no longer than in the next five years.[76]

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[73] *Supra*, note 56.
[74] See the National Highway Traffic Safety Administration's Press Release: *U.S. Department of Transportation Releases Policy on Automated Vehicle Development.* On file in the Senate Transportation Committee.
[75] See NHTSA's statement of policy on automated vehicles.
[76] *See*, e.g.: *Autonomous Cars are Closer Than You Think*: http://techcrunch.com/2015/01/18/autonomous-cars-are-closer-than-you-think/. Last visited February 21, 2015.

Transportation Planning and Autonomous Vehicles
Current law requires metropolitan planning organizations (MPOs) to develop a long-range transportation plan addressing at least a 20-year planning horizon. The plans must be consistent, to the maximum extent feasible, with local government comprehensive plans of the local governments located within the jurisdiction of the MPO.

Section 339.64, F.S., requires the FDOT to develop and update every five years, in cooperation with MPOs, regional planning councils, local governments, and other transportation providers, a Strategic Intermodal System (SIS) Plan. The plan must be consistent with the Florida Transportation Plan.[77]

Current law makes no specific mention of taking into consideration planning for infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicles, in developing MPO long-range transportation plans or when updating the SIS Plan.

Electronic Displays in Autonomous Vehicles
A motor vehicle operated on the highways of this state may not be equipped with television-type receiving equipment that is visible from the driver's seat. The prohibition does not apply to an electronic display used in conjunction with a vehicle navigation system.[78]

Definitions
The definitions of the terms "autonomous vehicle" and "autonomous technology" are currently contained together in one subsection of s. 316.003, F.S.

Effect of Proposed Changes

Section 35 amends s. 339.175(3)(c)2., F.S., to include in an MPO's capital investment assessment the goal of improving safety while making the most efficient use of existing transportation facilities. In addition, MPOs are required to consider in developing long-range transportation plans infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments.

Similarly, section 36 amends s. 339.64, F.S., to require the FDOT to coordinate with federal, regional, and local partners, as well as industry representatives, to consider when updating the SIS Plan infrastructure and technological improvements to the SIS necessary to accommodate advances in vehicle technology. The bill also requires the same consideration to be included in the needs assessment.

Section 10 amends s. 316.303(1) and (3), F.S., respectively, to allow autonomous vehicles to be equipped with television-type receiving equipment visible from the driver's seat, and to authorize an operator of an autonomous vehicle to use an electronic display in conjunction with a vehicle navigation system, both while the vehicle is being operated in autonomous mode.

[77] The Florida Transportation Plan is a statewide transportation plan that considers the needs of the entire state transportation system and examines the use of all modes of transportation to meet such needs. The purpose of the plan is to establish and define the state's long-range transportation goals and objectives over a period of at least 20 years. See s. 339.155, F.S.
[78] See s. 316.303(1) and (3), F.S.

Section 7 amends s. 316.003, F.S., to separate the definitions of the terms "autonomous vehicle" and "autonomous technology," currently contained in one subsection, to facilitate ease of reference.

Pedestrian Safety/Crosswalks (Sections 7 and 9)

Present Situation

The FDOT advises that it conducts public opinion surveys and on-the-street observation surveys to elicit feedback relating to pedestrian safety.

> It is the opinion of the department's safety office that these results indicate that both the general population and law enforcement have a challenging time with the crosswalk definition as it is written.[79]

Current law defines "crosswalk" to mean:

- That part of the roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.
- Any portion of a roadway at an intersection *or elsewhere* distinctly indicated for pedestrian crossing by lines or other markings on the surface.[80]

This definition is quite similar, but not identical, to the definition contained in the Manual on Uniform Traffic Control Devices (MUTCD), which is a national, uniform system of traffic control devices adopted by the American Association of State Highway Officials. States must adopt the 2009 National MUTCD as their legal standard for traffic control devices within two years from the effective date.[81] The FDOT has adopted the MUTCD pursuant to direction in s. 316.0745, F.S., which in part recognizes the potential need for revisions to a uniform system "to meet local and state needs." Further, a review of the MUTCD reveals numerous references to the need to exercise engineering judgment in applying the provisions of the MUTCD, depending upon factors such as traffic volume, terrain, and posted speed limit, etc.

According to a Federal Highway Administration (FHWA) Study:

> Pedestrians have a right to cross roads safely, and planners and engineers have a professional responsibility to plan, design, and install safe and convenient crossing facilities. Pedestrians should be included as design users for all streets.
>
> Providing marked crosswalks traditionally has been one measure used in an attempt to facilitate crossings. Such crosswalks commonly are used at

[79] See the FDOT email to Senate and House Committee staff, February 9, 2015. On file in the Senate Transportation Committee.
[80] See s. 316.003(6), F.S. Emphasis added.
[81] See the FHWA website: http://mutcd.fhwa.dot.gov/index.htm. Last visited February 18, 2015.

> uncontrolled locations (i.e., sites not controlled by a traffic signal or stop sign) and sometimes at *midblock* locations.[82]

While current Florida law, the MUTCD, and the FHWA recognize the existence of midblock crosswalks, the term, "midblock crosswalk," is not currently defined in the Florida Statutes.

The FDOT also seeks to revise the current definition of "sidewalk"; *i.e.,* "That portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians."[83]

Section 316.130, F.S., generally requires a pedestrian to obey the instructions of any applicable official traffic control device, including, but not limited, to signals and signage at crosswalks. That section also contains direction to drivers with respect to stopping or yielding to pedestrians at intersections having a traffic control signal in place,[84] at crosswalks where signage so indicates,[85] and at crosswalks with no traffic control signals and no signage.[86]

Generally, a driver must stop and remain stopped when encountering a pedestrian at these crosswalks when the pedestrian steps in or is in the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. However, pedestrians crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided must yield to all vehicles on the roadway.[87]

Effect of Proposed Changes

The current definitions of "crosswalk" and "sidewalk" are revised in an attempt to clarify the terms with more easily understood language. The provisions relating to stopping for pedestrians at crosswalks where signage so indicates; i.e., crosswalks with stop signs, and at crosswalks with no traffic control signals and no signage are edited and collapsed into one subsection for clarity and brevity.

Section 7 amends s. 316.003(6), F.S., by deleting the current two-part definition of "crosswalk" and replacing it as follows:

- "Unmarked crosswalk" is defined to mean an unmarked part of the roadway at an intersection used by pedestrians for crossing the roadway.
- "Marked crosswalk" is defined to mean pavement marking lines on the roadway surface, which may include contrasting pavement texture, style, or colored[88] portions of the roadway at an intersection used by pedestrians for crossing the roadway.

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[82] Emphasis added. See *Safety Effects of Marked Versus Unmarked Crosswalks at Uncontrolled Locations, Final Report and Recommended Guidelines*, 2005, at 1. On file in the Senate Transportation Committee.
[83] See s. 316.003(47), F.S.
[84] Section 316.130(7)(a), F.S.
[85] Section 316.130(7)(b), F.S.
[86] Section 316.130(7)(c), F.S.
[87] *Id.*
[88] The current MUTCD definition of "crosswalk" also references "contrasting pavement texture, style, or color." *Supra*, note 69. The definition is found on p. 13 of the MUTCD, available by link on the FHWA website.

- "Midblock crosswalk" is defined to mean a location between intersections where the roadway surface is marked by pavement marking lines on the roadway surface, which may include contrasting pavement texture, style or colored portion of the roadway at a signalized or unsignalized crosswalk used for pedestrian roadway crossings and may include a pedestrian refuge island.

The bill also amends s. 316.003(47), F.S., to define "sidewalk" to mean: "That portion of a street intended for use by pedestrians, adjacent to the roadway between the curb or edge of the roadway and the property line. The current definitions of "crosswalk" and "sidewalk" are revised with "plain language." According to the FDOT, plain language provides pedestrians with tools necessary to make safer choices, which often results in fewer crashes. In addition, law enforcement officials are assisted in enforcing compliance with relevant laws. The FDOT further advises these changes will not result in fewer crosswalks getting marked; rather, the sole purpose is to utilize plain language to assist pedestrians and law enforcement.[89]

Section 9 amends s. 316.130(7)(b), F.S., to make that paragraph applicable to crosswalk locations where the approach is not controlled by a traffic signal or by, in plain language, a stop sign. A driver continues to be required to stop and remain stopped when encountering a pedestrian at these crosswalks when the pedestrian steps in or is in the crosswalk and is upon the half of the roadway upon which the vehicle is traveling and, the bill adds, when turning, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Such locations may include midblock crosswalks. Paragraph (c) relating to crosswalks with no traffic control signals or signs is repealed, but a pedestrian's duty to yield to all vehicles on the roadway when crossing at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided is retained and moved to paragraph (b).

Turnpike Tolls/Dormant Prepaid Accounts (Section 34)

Present Situation

SunPass is the Florida Turnpike's electronic, prepaid tolls program. SunPass is accepted on all Florida toll roads and nearly all toll bridges. The system uses electronic devices, called transponders, which are attached to the inside of a vehicle's windshield. The transponder sends a signal when the vehicle goes through a tolling location, and the toll is deducted from the customer's pre-paid account. The pre-paid accounts may be set up and replenished with a credit card or with cash.[90]

Under current law, any prepaid toll account of any kind which has been inactive for three years is presumed unclaimed. The Department of Financial Services (DFS) is required to process any such inactive account in accordance with applicable provisions of ch. 717, F.S., relating to the disposition of unclaimed property, and the FDOT is directed to close such accounts.[91]

[89] *Supra*, note 69.
[90] *See* SunPass website, *Frequently Asked Questions:* https://www.sunpass.com/faq. Last visited February 11, 2015.
[91] See s. 338.231(3)(c), F.S.

Effect of Proposed Changes

Section 34 amends s. 338.231(3)(c), F.S., to increase the period after which a dormant prepaid toll account is presumed unclaimed from three years to ten years, thereby delaying disposition by the DFS and closing of the account by the FDOT. The FDOT advises:

> [T]he deletion is desired because, with multi-state toll interoperability already implemented, and national toll interoperability mandated by federal law,[92] prepaid customers may live outside Florida and use their Florida prepaid toll account only when vacationing or otherwise visiting the state.
>
> We believe that the affected citizens and businesses would react positively to the proposal as funds on a prepaid toll account continue to be managed by the Department. This provides the customers that have had no activity on a prepaid toll account for the 10 year time with continued direct access to the same agency with whom they established the account.[93]

Shared-Use Nonmotorized Trail (SunTrail) Network (Sections 3, 31, 37, 38, and 39)

Present Situation

Trail Development

The development of Florida's bicycle and pedestrian infrastructure did not begin in earnest until the late 20th Century. With the deregulation of the American railroad industry by the Staggers Rail Act of 1980[94], the state was presented with an immediate abundance of abandoned rail corridors. With the assistance of organizations such as The Rails-to-Trails Conservancy and The Trust for Public Land, the Florida Department of Transportation (FDOT), and the Florida Department of Environmental Protection (FDEP) coordinated to develop numerous abandoned rail corridors as shared-use "rail-trails" for nonmotorized transportation and recreation. Many of Florida's premier nonmotorized trails, including the Pinellas Trail, Tallahassee-St. Marks Trail, and the West Orange Trail, are a result of rail-trail conversions.

The second major thrust in trail development came in 1991 when Congress shifted transportation policy. The Intermodal Surface Transportation Efficiency Act, for the first time, identified pedestrian and bicycle facilities as components of the nation's transportation infrastructure, and created a dedicated funding source for multiuse trails and paths. With local governments serving as project sponsors,[95] many of the resulting projects are community-centric, short-distance trails, initiated by local governments and other governmental entities not traditionally associated with transportation development, such as water management districts and school districts.

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[92] The Moving Ahead for Progress in the 21st Century Act (MAP-21) requires implementation of technologies or business practices that provide for the interoperability of electronic toll collection on all Federal-aid highway toll facilities by October 1, 2016. See the FHWA website, *Investment* heading, *Tolling [1512]* subheading: http://www.fhwa.dot.gov/map21/summaryinfo.cfm. Last visited February 13, 2015.

[93] See the FDOT 2015 Legislative Proposal, *Dormant Accounts/Tolls/SunPass*. On file in the Senate Transportation Committee.

[94] Staggers Rail Act of 1980, Pub. L. 96-448, 94 Stat. 1895. Approved 1980-10-14.

[95] Resources for the Future Backgrounder "Federal Funding for Conservation and Recreation Trails" Joe Maher, February 2009 (http://www.rff.org/RFF/Documents/RFF-BCK-ORRG_DOT.pdf).

Trail Connectivity

Although locales throughout the state benefited from federal trail funding, an unintended consequence of trail development being initiated by numerous state entities and local governments is a collection of random trails rather than a statewide system. As a result, many trails lack connectivity with other trails and often serve no meaningful origins and destinations. Trail users are often required to use roads, sidewalks, and highways to connect trails or complete a trip. Many trail trips are "out-and-back" trips in which the origin and destination are the same. Such trips serve little to no transportation function and do not realize the full economic potential of a trail network.

A widely accepted tenet in trail development holds that the longer a given trail is, the greater its propensity for becoming a "destination trail," and the greater distance users will travel to use. Users traveling farther stay in the area longer and, consequently, increase spending in the area. Users of the Great Allegheny Passage/C&O Towpath, a 335-mile system of biking and hiking trails that connects Pittsburgh to Washington, DC, travel an average of 131 miles to a trailhead. Those traveling 50 miles or more had daily expenditures approximately twice that of users that traveled less.[96]

Recognizing this potential, the Florida Greenways and Trails Foundation (FGTF),[97] recently announced its priority to "close the gaps" on a 275-mile corridor between the Canaveral National Seashore near Titusville and St. Petersburg.[98] The "Coast-to-Coast Connector" will link communities along this destination trail, providing a year-round eco-tourism engine throughout the region. The Connector includes two of the state's most popular trails, the Pinellas Trail and the West Orange Trail, each of which have served approximately one million users per year and fueled the economic transformation of trail communities, particularly Dunedin and Winter Garden. Components of the Connector will also serve other planned trails including multi-day loop trails such as the 250-mile Heart of Florida Greenway[99] and the 300-mile St. Johns River-to-Sea Loop.[100]

Trail Benefits

In addition to the intrinsic values nonmotorized travel bring to community mobility, sustainable transportation, and personal health, trails provide the framework for, and access to, conservation lands and wildlife corridors. Trails also produce numerous quantifiable economic benefits:

- *Trails increase the value of nearby properties.* Based on an analysis of comparable trails from across the country, the presence of Miami-Dade County's Ludlam Trail will increase properties values within 1/2 mile of the trail, 0.32 percent to 0.73 percent faster than other

[96]The Great Allegheny Passage Economic Impact Study (2007–2008) Detailed Report The Progress Fund/Job #07-294b 91 March 9, 2009, page 70. (http://www.atatrail.org/docs/GAPeconomicImpactStudy200809.pdf)

[97] The FGTF, a direct support organization, exists to support the mission and programs of the Florida Department of Environmental Protection's Office of Greenways and Trails (OGT) as it continues toward establishing a statewide system of greenways and trails for recreation, conservation and alternative transportation.

[98] Florida Greenways and Trails Foundation Website: Coast-to-Coast Connector (http://fgtf.org/coast-to-coast/) (Last visited: 2/25/15)

[99] Florida Greenways and Trails Foundation Website: Heart of Florida Greenway (http://fgtf.org/maps/hof/overview.pdf) (Last visited 2/25/15)

[100]St. Johns River-to-Sea Loop Trail Status Update, September 2011. ETM, Inc. http://www.etminc.com/SJR2C/sg_userfiles/SJR2C_Summary_Report_09-19-11.pdf

properties throughout the county. This translates into a total property value increase over a 25 year period of between $121 million and $282 million.[101] A survey co-sponsored by the National Association of Home Builders and the National Association of Realtors found that proximity to nonmotorized trails came in second only to highway access when recent home buyers were asked about the "importance of community amenities."[102] A study of property values near trails in Delaware found that properties within 50 meters of the bike paths sell for $8,800 more than other similar homes.[103]

- *Trails boost spending at local businesses.* An economic impact analysis of Orange County trails found that in 2010, average spending per trail user is $20 per visit, representing food and beverages, transportation, books and maps, bike maintenance, rentals and more. The West Orange Trail supported 61 jobs, and represented an estimated economic impact of $5 million for Downtown Winter Garden. Longer, "destination trails," increase spending and benefit hotels, bed and breakfasts, and outdoor outfitters. A study of the Great Allegheny Passage, a 132-mile corridor in Pennsylvania, found that users reporting longer average travel distances to the trail, were more likely to spend successive days on or near the trail. Those who reported an overnight stay in conjunction with their trip averaged spending $203 per person.[104] A survey on the Greenbrier River Trail, an 81-mile corridor in West Virginia, found an overwhelming majority of trail users were highly educated professionals with high income levels, 2/3 were from outside of West Virginia, 93 percent were staying in the area from one to four days, 58 percent spent between $100 and $500 in the area, and 93 percent indicated that they were highly likely to plan a return trip.[105]
- *Trails influence business location and relocations decisions.* Companies often choose to locate in communities that offer a high level of amenities to employees as a means of attracting and retaining top-level workers. Trails can make communities attractive to businesses looking to expand or relocate both because of the amenities they offer to employees and the opportunities they offer to cater to trail visitors.[106]
- *Trails revitalize depressed areas.* In Dunedin, Florida, after the abandoned CSX railroad was transformed into the Pinellas Trail, the downtown went from a 30 percent storefront vacancy rate to a 95 percent storefront occupancy.[107]
- *Trails provide sustainable tourism opportunities.* The Outer Banks of North Carolina generates $60 million in economic activity through bicycle tourism. The one-time investment of $6.7 million on bicycle infrastructure has resulted in an annual nine-to-one return. Outer Banks shows bicycle tourists tend to be affluent (half earn more than $100,000 a year, 87 percent earn more than $50,000) and educated (40 percent have a masters or doctoral

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[101] Miami-Dade County Trail Benefits Study: Ludlam Trail Case Study (http://atfiles.org/files/pdf/Miami-Dade-Ludlam-Trail-Benefits.pdf)
[102] (http://www.americantrails.org/resources/benefits/homebuyers02.html)
[103] Lindsey et al, "Property Values, Recreation Values, and Urban Greenways," Journal of Park and Recreation Administration, V22(3) pp.69-90.
[104] *The Great Allegheny Passage Economic Impact Study* (2007–2008) Detailed Report The Progress Fund/Job #07-294b 91 March 9, 2009, page 91 (http://www.atatrail.org/docs/GAPeconomicImpactStudy200809.pdf)
[105] *Maximizing Economic Benefits from a Rails-to-Trails Project in Southern West Virginia – A Case Study of the Greenbrier River Trail*, May 2001. Raymond Busbee, Ph.D. Marshall University.
[106] Economic Impacts of Protecting Rivers, Trails, and Greenway Corridors: Corporate Relocation and Retention. Rivers, Trails and Conservation Assistance Program, National Park Service 1995
[107] FDEP Presentation: "*The Impact of Trails on Communities*" Office of Greenways and Trails. (http://www.opportunityflorida.com/pdf/Jim%20Wood%20-%20Trails%20and%20Economic%20Impact%20-%20Rural%20Summit.pdf)

degree). More than half of survey respondents said bicycling had a strong influence on their decision to return to the area. Two-thirds of respondents said that riding on bike facilities made them feel safer and three-fourths said that more paths, shoulders and lanes should be built.[108] A trail can be regarded as a product that is able to provide a sustainable form of tourism resting on a 'quadruple bottom line' of environmental, social, economic and climate responsiveness."[109]

- *Trail development creates more jobs than road development.* A national comparison of the number of jobs created per $1 million spent on various types of transportation projects found that for every $1 million spent on the development of multi-use trails, 9.57 jobs were created while road-only development yielded 7.75 jobs.[110]

Effect of Proposed Changes

Generally, the bill creates the Shared-Use Nonmotorized Trail (SunTrail) Network as a component of the Florida Greenways and Trail System. The FDOT is given primary responsibility for developing and maintaining the SunTrail network, although provisions are included to allow the FDOT to outsource maintenance and to enter into trail sponsorship agreements with public and private entities. Specific provisions of the bill follow.

Section 3 amends s. 260.0144 F.S., to remove SunTrail components from existing provisions for sponsorship of state trails by not-for-profit or private sector entities. Other greenways and trails remain eligible for sponsorship under the section. Section 12 of the bill creates a new s. 339.83, F.S., to provide for sponsorship of SunTrail components.

Section 31 amends s. 335.065, F.S., to remove the FDOT's authority to enter contracts for commercial sponsorship of multi-use trails. This authority is provided in new section 339.83, F.S., which expands sponsorship opportunities for SunTrail components.

Section 37 creates s. 339.81, F.S., to establish the Florida Shared-Use Nonmotorized Trail (SunTrail) Network. The bill provides legislative findings and intent and creates the SunTrail Network as a component of the Florida Greenways and Trails System established in ch. 260 of the Florida Statutes. SunTrail components will provide nonmotorized travel opportunities between and within communities, conservation areas, state parks, beaches and other natural and cultural attractions.

SunTrail components will not include sidewalks, nature trails, or loop trails in a single park. Bicycle lanes on roadways may not be considered components of the SunTrail network unless the lane is used to connect two or more nonmotorized trails and is no more than one-half mile long. Exceptions are provided to include some on-road components of the Florida Keys Overseas Heritage Trail within the SunTrail Network.

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[108] Lawrie, et al, "*Pathways to Prosperity: the economic impact of investments in bicycling facilities*," N.C. Department of Transportation Division of Bicycle and Pedestrian Transportation, Technical Report, July 2004. http://www.ncdot.org/transit/bicycle/safety/safety_economicimpact.html.

[109] Reis, A.C.; Jellum, C. (2012). Rail trails development: a conceptual model for sustainable tourism. Tourism Planning and Development,9(2): 133-148

[110] Pedestrian And Bicycle Infrastructure: A National Study Of Employment Impacts Heidi Garrett-Peltier Political Economy Research Institute University of Massachusetts, Amherst June 2011

The FDOT will include SunTrail projects within its five-year Work Program. Beginning in Fiscal Year 2015-2016, the FDOT is required to allocate a minimum of $50 million annually for SunTrail projects in the Work Program. The FDOT and other agencies and units of government are authorized to expend funds and accept gifts and grants of funds, property, and property rights for the development of the SunTrail network. The FDOT is authorized to enter into memoranda of agreement with other governmental entities and contract with private entities to provide maintenance services on individual components of the network and may adopt rules to assist in developing and maintaining the network.

Section 38 creates s. 339.82, F.S., directing the FDOT to develop the SunTrail Network Plan in coordination with FDEP, MPOs, local governments, other public agencies, and the Florida Greenways and Trails Council. The plan must include:

- A needs assessment, including a comprehensive inventory of existing facilities;
- A process that prioritizes projects that:
  - Are identified by the Florida Greenways and Trails Council as priority projects;
  - Connect components by closing gaps in the network; and
  - Maximize use of federal, local, and private funds;
- A map showing existing and planned facilities;
- A finance plan in five- and ten-year cost-feasible increments;
- Performance measures focusing on trail access and connectivity;
- A timeline for completion of the base network; and
- A marketing plan prepared in conjunction with Visit Florida.

Section 39 creates s. 339.83, F.S., to provide for sponsorship of SunTrail components by not-for-profit or private sector entities. The bill provides guidance on sponsor signs, markings, and exhibits and provides for trail marketing materials to recognize sponsors.

Vehicle Miles Traveled Pilot (Section 57)

Present Situation

Concern regarding the sustainability of transportation funding sources remains as a focus of attention in the transportation arena. A number of factors have together caused a reduction in transportation revenues:

- The bulk of federal surface transportation funding comes from the federal taxes on gasoline and diesel fuel assessed on a per-gallon basis, and the tax rates are not adjusted for inflation.
- The total number of vehicle miles traveled (VMT) has declined in recent years, resulting in fewer gallons of gas and diesel sold upon which to assess federal, state, and local taxes. This number is not expected to return to previously realized growth levels.
- Vehicle fuel efficiency continues to increase, also lowering the demand for gallons of gas and diesel.[111]

[111] See the Center for Urban Transportation Research, *Florida MPOAC Transportation Revenue Study*, July 2012. On file in the Senate Transportation Committee.

Various alternatives to the existing gas and diesel taxes have been considered. One alternative is to replace those taxes with a "vehicle-miles-traveled tax" or a "mileage-based user fee":

> Mileage-based user fees (MBUF) are an alternative way to finance the construction and maintenance of roads. Rather than the current gas tax method, which is based on the amount of fuel purchased at the pump, a VMT tax is based on how many miles are driven.[112]

According to the Mileage-based User Fee Alliance (MBUFA), use of a distance-traveled mechanism is already being successfully implemented in several European nations and in New Zealand. Domestically, "…states are taking a lead in helping to resolve many of the implementation questions by working with academia, industry partners and each other to devise mileage-based user fee pilot projects around the country."[113]

The State of Oregon appears to have made the most progress in the United States, having already completed two pilots and planning implementation of a voluntary program, beginning July 1, 2015, using 5,000 vehicles.[114] Interest has been expressed in developing a Florida-specific, implementable pilot project to determine the efficacy of a VMT fee as a viable alternative to per-gallon gas and diesel taxes.

Effect of Proposed Changes

Section 57 directs the Center for Urban Transportation Research at the University of South Florida (CUTR) to conduct a study on the viability of implementing a system that charges drivers based on their vehicle miles traveled (VMT), as an alternative to the present fuel tax structure, to fund transportation projects. The study is to inventory previous research and findings from pilot projects conducted in other states.

At a minimum, the study must address previous work conducted in the following broad areas.

- Assessment of technologies;
- Behavioral and privacy concerns;
- Equity impacts; and
- Policy implications of a VMT road charging system.

The study must also quantify the current costs to collect traditional highway user fees, synthesize findings of completed research and demonstrations, and analyze their applicability to Florida. The CUTR must present the findings of the study phase to the Legislature by January 30, 2016.

In the course of the study, and in consultation with the Florida Transportation Commission, the CUTR is directed to establish the framework for a pilot project that will evaluate the feasibility

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[112] See Mileage-Based User Fee Alliance website: http://mbufa.org/about.html. Last visited February 26, 2015.
[113] See MBUFA website: http://mbufa.org/where.html. Last visited February 26, 2015. Colorado, Minnesota, Nevada, New York City, Texas, Washington, the University of Iowa, and the I-95 Corridor Coalition have all undertaken efforts with respect to a mileage-based fee.
[114] See *Oregon's VMT Pilot to Begin its Third Phase – Road usage Charge Program Update*: http://www.nlc.org/media-center/news-search/oregon%E2%80%99s-vmt-pilot-to-begin-its-third-phase-road-usage-charge-program-update. Last visited February 26, 2015.

of implementing a VMT charging system. In designing the framework, the CUTR is directed to address at a minimum the following elements:

- The geographic location for the pilot;
- Special fleets or classes of vehicles;
- Evaluation criteria for the demonstration;
- Consumer choice in the method of reporting miles traveled;
- Privacy options for participants in the pilot project;
- The recording of miles traveled with and without locational information;
- Records retention and destruction; and
- Cyber security.

The pilot project design must be completed by December 31, 2016, and submitted in a report to the Legislature, so that implementation can occur in 2017.

Northwest Florida Regional Transportation Finance Authority (Sections 42 through 56)

Present Situation

Escambia and Santa Rosa counties, are currently served by the Northwest Florida Transportation Corridor Authority and the Santa Rosa Bay Bridge Authority. According to a report by the Florida Transportation Commission (FTC), the NFTCA is not currently operating any facility and is operating under an agreement using federal funding for administration, professional services, and regional transportation planning. The Santa Rosa Bay Bridge Authority owns the Garcon Point Bridge in southwest Santa Rosa County. Florida's Turnpike Enterprise provides toll operations.[115]

Effect of Proposed Changes

The bill creates ch. 345 of the Florida Statutes, the Northwest Florida Regional Transportation Finance Authority Act, consisting of ss. 345.0001 through 345.0014, F.S. The bill authorizes Escambia County, alone or together with a consenting Santa Rosa County, to form a regional finance authority in the northwest region of the state. The governing body of the Authority consists of two resident members from each participating county appointed by the county commission of each county, an equal number to be appointed by the Governor, and the FDOT's District Three secretary. County commission appointees must represent the business and civic interests of the relevant community, if possible.

The Authority is authorized to construct, operate, and maintain a regional system in the area served, except for an existing system for transporting people and goods owned by another non-consenting entity. Broad powers are granted to the Authority, including, but not limited to:

- The exercise of eminent domain;
- The establishment and collection of rates and fees, which power may be assigned or delegated to the FDOT;

[115] Florida Transportation Commission, *Transportation Authority Monitoring and Oversight Fiscal Year 2013 Report*, at 163, *available at*: http://www.ftc.state.fl.us/reports/TAMO.shtm. Last visited February 16, 2015.

- The power to borrow money and issue bonds[116] to finance the system and to secure the payment of such bonds by a pledge of system revenues, including any municipal or county funds received by the Authority under an agreement with the municipality or county.
- The power to enter into contracts, including, but not limited to, partnerships providing for participation in system ownership and revenues;
- The power to employ an executive director, attorney, staff, and consultants, with the FDOT furnishing the services of an FDOT employee to act as the executive director upon the request of the Authority.

The FDOT is deemed the Authority's agent for performing all construction, extension, and improvement phases of a project. After the issuance of bonds to finance construction, the Division of Bond Finance and the Authority are required to transfer the necessary funds to the credit of the State Transportation Trust Fund. Alternatively, with the FDOT's consent and approval, the Authority may appoint a local, FDOT-certified agency to administer federal-aid projects.

The FDOT is also deemed the Authority's agent for operating and maintaining the system, except for transit facilities, and the costs incurred by the FDOT must be reimbursed from system revenues. However, the Authority remains obligated as principal to operate and maintain the system.

At the request of the Authority and subject to appropriation by the Legislature, the FDOT may pay the cost of financial, engineering, or traffic feasibility studies or of the design, financing, acquisition, or construction of an Authority project that is included in the ten-year Strategic Intermodal System (SIS) Plan.[117] The FDOT is required to include funding for such payments in its legislative budget request. The request for funding may be included in the FDOT's five-year Tentative Work Program. However, the request must appear as a distinct funding item in the legislative budget request and be supported by a financial feasibility test.

The FDOT may not make a budget request unless the estimated net revenues of the proposed project will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of 12 years of operation, and at least 100 percent of the same by the end of 30 years of operation.[118] Funding for a project must appear in the General Appropriations Act as a distinct fixed capital outlay item and must clearly identify the related project.

[116] A resolution authorizing issuance of bonds on behalf of the authority under the State Bond Act and pledging system revenues must require periodic deposits of system revenues into appropriate accounts in amounts sufficient to pay the costs of O&M for the current fiscal year and to reimburse the FDOT for any unreimbursed O&M costs from prior fiscal years before revenues of the system are deposited for payment of principal and interest on such bonds.
[117] The Strategic Intermodal System (SIS) is the statewide network of high priority transportation facilities, including the state's largest and most significant airports, spaceports, deepwater seaports, freight rail terminals, interregional rail and bus terminals, rail corridors, urban fixed guideway transit corridors, waterways, and highways. The SIS is the state's highest statewide priority for transportation capacity improvements. See the FDOT SIS brochure, available at: http://www.dot.state.fl.us/planning/sis/Strategicplan/. Last visited February 17, 2015.
[118] Equivalent to the economic feasibility test for proposed Turnpike projects under s. 338.221(8)(a), F.S.

The FDOT may participate in projects that, at a minimum, serve national, statewide, or regional functions; are identified in the capital improvements element of a comprehensive plan; comply with local government policies in such plans relative to corridor management; are consistent with the SIS; and have a local, regional, or private financial match.

Before approving a proposed project, the FDOT must determine that the project:
- Is in the public's best interest;
- Does not require the use of state funds, unless the project is on the State Highway System;
- Has adequate safeguards in place to ensure no additional imposed costs or service disruptions if the FDOT cancels or defaults on the agreement, and to ensure that the FDOT and the Authority have the opportunity to add capacity to the project and other transportation facilities serving similar origins and destinations.

The FDOT may require any contribution to be repaid from tolls of the project, other Authority revenue, or other sources of funds. The FDOT must receive a share of the Authority's net revenues equal to the ratio of the FDOT's total contributions to the Authority to the sum of:
- The FDOT's total contributions;
- Any local government contributions to the cost of revenue-producing Authority projects; and
- The sale proceeds of Authority bonds after payment of costs of issuance.

The Authority is exempt from paying any taxes or assessments upon any Authority property, rates, fees, or income, etc., or upon bonds issued by the Authority. Issuance of bonds to finance the cost of extension or improvement of a system is authorized without compliance with any other law.

Fort Myers Urban Office/Staffing and Responsibilities (Section 1)

Present Situation

Current law organizes the operations of the FDOT into seven districts, each headed by a district secretary, as well as a turnpike enterprise and a rail enterprise. Section 20.23(4)(b), F.S., authorizes each district secretary to appoint up to three district directors. Section 20.23(4)(d), F.S., makes the district director for the Fort Myers Urban Office of the FDOT responsible for developing the five-year Transportation Plan for Charlotte, Collier, DeSoto, Glades, Hendry, and Lee Counties, and makes the Urban Office responsible for providing policy, direction, local government coordination, and planning for those counties. The office and the counties are contained within FDOT's District One, which currently provides policy, direction, and planning for all counties in District One, not just those listed above.

The FDOT also has Urban Area offices located in Jacksonville and Orlando. The FDOT advises all urban offices are satellite offices for their main District Office, and all are under the direction of the respective District Secretary. However, only the Fort Myer's Urban Office is referenced in statute with express direction as to staffing and responsibilities.

The FDOT advises that insertion of the specific staffing and responsibility assignment was in the nature of a precursor to what might have, but did not, become an FDOT District Eight. No district director is currently physically housed in the Fort Myers Urban Office. Responsibility for

providing policy, direction, and planning for the listed counties occurs at the District One level, leaving the Fort Myers Urban Office largely responsible for local government coordination in support of those activities, as well as coordination of joint participation and local funding agreements for transportation projects, in the listed counties.[119]

Effect of Proposed Changes

Section 1 repeals s. 20.23(4)(d), F.S., to remove the Fort Myers Urban Office District Director responsibility for developing the five-year Transportation Plan for the specified counties and remove the specified Urban Office responsibilities. The FDOT advises the existence of the Fort Myers Urban Office is in no way affected, and the office will continue to provide local government coordination in the specified counties. The FDOT advises the revisions provide flexibility to make efficient best-practices human resource decisions, while it continues to provide service in the specified counties.[120]

511 Traveler Information Services (Sections 28, 29, and 30)

Present Situation

511 is a national abbreviated dialing code assigned by the Federal Communications Commission (FCC) to be used exclusively for access to travel information services.[121] The code enables a caller to connect to a location in a network without using a seven or ten-digit telephone number. The network is pre-programmed to translate a three-digit code into the appropriate seven or ten-digit code and route the call accordingly.[122]

All of Florida's interstates, toll roads, and other major metropolitan roadways are covered by the 511 system. Currently, in addition to provision of services via the toll-free 511 telephone system, motorists may also receive travel information by:

- Visiting FL511.com for interactive roadway maps showing traffic congestion and crashes, travel times, and traffic camera views;
- Downloading a free mobile app available on Google Play or Apple App Store; or
- Following one of the 12 statewide, regional, or roadway specific Twitter feeds (#FL511).[123]

[119] Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.
[120] See the FDOT 2015 Legislative Proposal form, *Fort Myers Urban Office.* On file in the Senate Transportation Committee.
[121] See Federal Communications Commission Order No. 00-256, *Third Report and Order and Order on Reconsideration*, July 21, 2000. Copy on file in the Senate Transportation Committee.
[122] *Id.*, at 4.
[123] See 511News.com January 20, 2015, press release http://www.511news.com/news-releases/fdots-511-on-the-lookout-to-help-birdwatchers-travel-to-space-coast/ for additional information on Florida 511 features. Last visited February 4, 2015.

The FDOT, as the state's lead agency for implementing 511 services and the point of contact for coordinating 511 services with *telecommunications*[124] service providers, is statutorily tasked with the following duties:

- Implementation and administration of 511 services in the state;
- Coordination with other transportation authorities in the state to provide multimodal traveler information through 511 services and other means;
- Development of uniform standards and criteria for the collection and dissemination of traveler information using the 511 number or other interactive voice response systems; and
- Entrance into joint participation agreements or contracts with highway authorities and public transit districts to share the costs of implementation and administration.[125]

"511" or "511 services" are currently defined as three-digit *telecommunications dialing to access interactive voice response telephone*[126] traveler information services as defined by the FCC Order No. 00-256, July 1, 2000.[127] "Interactive voice response" is defined as a software application that accepts a combination of voice *telephone* input and touch-tone keypad selection and provides appropriate responses in the form of voice, fax, callback, e-mail, and other media.[128] The FDOT's existing rulemaking authority is similarly limited to coordination of 511 traveler information *phone* services.[129] And the FDOT's existing powers and duties likewise limit the FDOT's provision of services to *interactive voice response telephone systems access.*[130]

The referenced duties and definitions are essentially limited to *telephonic* access to traveler information and do not recognize the additional methods by which travelers may obtain the information using more recent technology, such as a web site, mobile apps, Twitter accounts, and text alerts.

Effect of Proposed Changes

The bill in general revises 511 traveler information services statutes to remove language limiting the provision of services through only telephonic access. These revisions recognize newer technologies and methods for providing traveler information.

Section 28 amends s. 334.03(36), F.S., to remove from the definition reference to *three-digit telecommunications dialing to access interactive voice response telephone* traveler information in favor of *all* traveler information services. That section also amends s. 334.03(37), F.S., to repeal the definition of "interactive voice response," as the phrase is no longer to be used.

Section 29 amends s. 334.044(31), F.S., to revise the FDOT's 511 oversight duty by deleting reference to *the provision of interactive voice response telephone systems* and a reference to the 511 *number*, leaving the FDOT responsible for oversight via the 511 *services* as assigned by the FCC.

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[124] Emphasis added.
[125] See s. 334.60, F.S.
[126] Emphasis added.
[127] See s. 334.03(36), F.S.
[128] See s. 334.03(37), F.S.
[129] See s. 334.60, F.S.
[130] See s. 334.044(31), F.S.

Section 30 amends s. 334.60, F.S., striking reference to the FDOT's coordination *with telecommunications service providers*, to allow the FDOT's continued coordination of *all* traveler information services with providers using newer technologies and methods. A reference to the 511 *number or other interactive voice response systems* is removed, in favor of 511 *services*, and a reference to *phone* services is deleted.

The FDOT advises that the effectiveness of disseminating traveler information through interactive voice response is becoming less advantageous. While the FDOT may decide to discontinue providing an interactive voice response system, traveler information will be provided via the most advanced technologies, thereby ensuring distribution of information to the largest possible audience. Armed with the information, users are able to make informed travel decisions, which improves safety and mobility on Florida roadways.[131]

Inspector General Appointment (Section 1)

Present Situation

Prior to 2014, agency inspectors general were appointed by and reported to agency heads. The Legislature in 2014 revised the law with respect to agency inspector general appointment to provide, for agencies such as the FDOT under the jurisdiction of the Governor, agency inspectors general are to be appointed by and report to the Chief Inspector General.[132] Section 20.23(3)(d), F.S., continues to require the FDOT Secretary to appoint an inspector general directly responsible to and serving at the pleasure of the Secretary, in direct conflict with the revisions made in 2014 to s. 20.55, F.S.

Effect of Proposed Changes

Section 1 repeals s. 20.23(3)(d), F.S., to remove the directly conflicting and obsolete direction to the FDOT Secretary regarding inspector general appointment, thereby conforming to the revisions to s. 20.55, F.S., made by the 2014 Legislature.

Transportation Corridors (Section 41)

Present Situation

Section 341.0532, F.S., enacted in 2003, currently defines "statewide transportation corridor" as a system of transportation infrastructure that collectively provides for the efficient movement of significant volumes of intrastate, interstate, and international commerce by seamlessly linking multiple modes of transport. That section also lists eight corridors deemed "Florida's statewide transportation corridors."

In the same year, the Legislature enacted the Strategic Intermodal System (SIS).[133] SIS facilities collectively serve 56 percent of State Highway System traffic, 70 percent of State Highway System truck traffic, 89 percent of interregional bus and rail passengers, 99 percent of

[131] See the FDOT 2015 Legislative Proposal form, *Modify definition/responsibilities of 511*, on file in the Senate Transportation Committee.
[132] See Enrolled HB 1385 (2014).
[133] See the web link, *supra*, note 105, for additional information on the SIS.

commercial air passengers and cargo, and 100 percent of rail and waterborne freight tonnage and cruise ship passengers.[134] SIS facilities are designated by the FDOT based on criteria provided in ss. 339.61 through 339.64, F.S. The corridors currently listed in s. 341.0532, F.S., with limited exception,[135] are also part of the SIS. Section 341.0532, F.S., is not referenced elsewhere in the Florida Statutes, and the FDOT advises that section is not used in performing any of its duties and responsibilities. The statute appears to be obsolete.

Effect of Proposed Changes

Section 41 repeals s. 341.0532, F.S., which created Florida's statewide transportation corridors. The corridors continue to be managed through their inclusion in the SIS.

Obsolete References/Beeline-East Expressway and Navarre Bridge (Section 32)

Present Situation

Section 338.165(4), F.S., authorizes the FDOT to request the DBF to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the FDOT's adopted Work Program. The Beeline-East Expressway (re-named the Beachline East Expressway) became part of the Turnpike Enterprise on July 1, 2012, pursuant to ch. 2012-128, L.O.F.[136] The Navarre Bridge is now county-owned and no longer used for toll revenue. The references to each facility in s. 338.165(4), F.S., are now obsolete.

Effect of Proposed Changes

Section 32 s. 338.165(4), F.S., to remove obsolete references to the Beeline-East Expressway and the Navarre Bridge within the FDOT's authority to request issuance of bonds secured by toll revenues from certain toll facilities, as the expressway and bridge are no longer owned by the FDOT.

Broward County Expressway Authority/Obsolete Bond Language (Section 34)

Present Situation

The Broward County Expressway Authority built the Sawgrass Expressway, a 23-mile facility in Broward County. The expressway opened to traffic in 1986 and extends from I-75 in Weston to its interchange with the Florida Turnpike and Southwest 10th Street in Deerfield Beach. In 1990, the FDOT acquired the expressway, and it became a part of Florida's Turnpike System.[137] The Expressway Authority was abolished in 2011.[138] Section 338.221(5), F.S., generally authorizes the FDOT, in each fiscal year during which any of the Broward County Expressway Authority bond series 1984 and series 1986-A remain outstanding, to pledge revenues from the turnpike

[134] See the 2014 FDOT *Strategic Intermodal System Briefing*. On file in the Senate Transportation Committee.
[135] See the FDOT email, March 2, 2015. On file in the Senate Transportation Committee.
[136] See s. 338.165(10), F.S.
[137] See the FDOT website: http://www.floridasturnpike.com/about_system.cfm#7. Last visited February 23, 2015.
[138] See s. 18, ch. 2011-64, Laws of Florida.

system to the payment of such bonds and the operation and maintenance of the Sawgrass Expressway. No such bonds are currently outstanding, and the language is obsolete.

Effect of Proposed Changes

Section 34 repeals the obsolete language in s. 338.231(5), F.S., relating to bonds of the abolished Broward County Expressway Authority.

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:

The following sections of PCS/CS/SB 1554 will have the indicated impact on the private sector:

Sections 3, 31, 37, 38, and 39: Significant positive economic development is expected from development of the SunTrail Network.

Section 5 and 6: Increased FSTED funding may generate a positive economic impact for the private sector.

Sections 7 and 12: The trucking industry is expected to experience a positive fiscal impact due to the decreased fines assessed for IRP violations.

Sections 7 and 9: To the extent that the bill reduces the number and severity of bicycle and pedestrian deaths and injuries, a positive but indeterminate fiscal impact to bicyclists and pedestrians is expected.

C. Government Sector Impact:

The following sections of the bill will have the indicated impacts:

Sections 3, 31, 37, 38, and 39: Funding for the SunTrail Network in the amount of $50 million is authorized for Fiscal Year 2015-2016 in SB 2500 (the Senate's General Appropriations Bill for Fiscal Year 2015-2016). **Sections 5 and 6:** The additional $10 million in FSTED funding will assist seaports with various projects and is expected to generate a positive economic impact by helping to increase the competitiveness of Florida's seaports. Projects planned for various ports include dredging, berth rehabilitation, and the expansion of facilities. The additional FSTED funding will require the FDOT to reallocate budget authority within the state's $9.3 billion transportation Work Program.

Sections 7 and 12: The FDOT advises it expects a negative annual fiscal impact of approximately $1.6 million due to a decrease in the fines assessed for IRP violations.[139] A portion of the decrease, approximately $500,000, is attributed to the revised IRP Full Reciprocity Plan.

Section 11: The FDOT may experience an indeterminate positive fiscal impact if the increased allowable trailer length used to transport manufactured buildings results in issuance of more special permits.

Section 40: According to the Office of Economic and Demographic Research (EDR), the additional workload and resources associated with the evaluation and determination of the economic benefits of the state's investment in the FDOT Adopted Work Program annually can be absorbed by existing staff. The FDOT and its district offices may experience additional workload to provide the necessary data to EDR; however, the workload is currently indeterminate.

Sections 35 and 36: MPOs may experience minimal expenses in considering autonomous vehicle technology when developing long-range transportation plans. Likewise for the FDOT when updating the SIS Plan.

Section 57: The bill authorizes the Center for Urban Transportation Research at the University of South Florida to expend up to $400,000 for the vehicle miles traveled study and pilot project design, contingent upon legislative appropriation. There is no funding in SB 2500 for this study.

Sections 42 through 56: The fiscal impact of authorizing creation of the Northwest Florida Regional Transportation Finance Authority is indeterminate.

VI. Technical Deficiencies:

None.

[139] See the FDOT's response to House committee staff's *DOT Package Questions from Committee Staff*, on file in the Senate Transportation Committee.

VII. Related Issues:

Section 4 relating to the Port of Palm Beach appears to conflict with Article III, section 10 of the State Constitution, which requires that a notice of intent to seek enactment of local law be published in the manner provided by general law[140] or that the local law be conditioned to take affect only upon approval by vote of the electors of the area affected.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.23, 215.82, 260.0144, 311.07, 311.09, 316.003, 316.0895, 316.130, 316.303, 316.515, 316.545, 333.01, 333.025, 333.03, 333.04, 333.05, 333.06, 333.07, 333.09, 333.11, 333.12, 334.03, 334.044, 334.60, 335.065, 338.165, 338.227, 338.231, 339.175, and 339.64.

This bill creates the following sections of the Florida Statutes: 288.365, 333.135, 339.81, 339.82, 339.83, 345.0001, 345.0002, 345.0003, 345.0004, 345.0005, 345.0006, 345.0007, 345.0008, 345.0009, 345.001, 345.0011, 345.0012, 345.0013, and 345.0014.

This bill repeals the following sections of the Florida Statutes: 333.065, 333.08, 333.10, 333.14, and 341.0532.

This bill reenacts section 350.81 of the Florida Statutes.

The bill creates three undesignated sections of Florida law.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 14, 2015:
The committee substitute recommends modifying the bill by:

- Granting authority to the Port of Palm Beach to apply for designation as a foreign-trade zone, through an alternate site framework to include all of Palm Beach, Martin and St. Lucie counties;
- Removing provisions that revised the membership of the Hillsborough County Public Transportation Commission; and
- Conforming language relating to the Florida Shared-Use Nonmotorized Trail (SunTrail) Network to SB 918.

CS by Transportation on March 29, 2015:
The CS modifies the bill by:

- Revising several sections of the bill dealing with ch. 333, F.S., relating to airport zoning regulations, to make final glitch corrections and provide uniformity in the language;

[140] See sections 11.02, 11.021, and 11.03, F.S.

- Authorizing the FDOT to assume responsibilities under the National Environmental Policy Act with respect to highway projects, as authorized by federal law;
- Providing that the provisions revising the membership of a legislatively-created independent special district do not apply to certain entities;
- Adding provisions of SB 1186 requiring a vehicle-miles-traveled study, requiring consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology, creating the Northwest Florida Regional Transportation Authority Act, extending the allowable length of certain trailers, and repealing obsolete language;
- Defining "driver-assistive truck platooning," excluding certain vehicles equipped with such technology from provisions relating to vehicles following too closely, and including such vehicles in the provisions relating to television-type or other electronic displays visible to a driver.
- Removing Port Citrus from membership on the FSTED Council and repealing related provisions;
- Removing authorization of a public transit provider to contract with a transportation network company to provide public transit services;
- Removing direction to the Commission for the Transportation Disadvantaged and the Center for Urban Transportation Research to develop and implement a pilot program with a public transit provider to provide paratransit services; and
- Extending from 53 to 57 feet the allowable length of certain semitrailers authorized to operate on public roads.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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04/22/2015	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 617 and 618
insert:

Section 8. Paragraph (a) of subsection (2) of section 316.0776, Florida Statutes, is amended to read:

316.0776 Traffic infraction detectors; placement and installation.—

(2)(a) If the department, county, or municipality installs a traffic infraction detector at an intersection, the

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department, county, or municipality shall notify the public that a traffic infraction device may be in use at that intersection and must specifically include notification of camera enforcement of violations concerning right turns. A notice of a violation may not be issued to a motorist unless signage notifying the public of the traffic infraction detector is present, ~~Such signage used to notify the public must meet~~ meets the specifications for uniform signals and devices adopted by the Department of Transportation pursuant to s. 316.0745~~.~~ , and:

1. Is 3 feet wide by 2 feet tall and displays visible, prominent letters at least 6 inches tall stating "Photo Enforced"; and

2. Is installed at an intersection having a traffic infraction detector on or before November 30, 2015. The signage must be prominently displayed over the intersection and be clearly visible to drivers traveling in all directions. The traffic infraction detector company is responsible for any costs associated with the manufacture and installation of such signage.

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

And the title is amended as follows:

Delete line 37

and insert:

redefining terms; amending s. 316.0776, F.S.; prohibiting violations from being issued unless traffic infraction detector notification signage is present, meets certain requirements, and is installed at an intersection with a traffic infraction detector

777084

by a certain date; requiring that the traffic infraction detector company be responsible for certain costs of the signage; amending s. 316.0895, F.S.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2015	.	
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	.	
	.	

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (777084)

Delete lines 20 - 22
and insert:
1. Displays visible, prominent letters stating "Photo Enforced" and displays "Includes Right Turns" as appropriate, consistent with the Department of Transportation's specifications; and

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/22/2015	.	
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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 617 and 618
insert:
Section 10. Paragraph (b) of subsection (1) and paragraph (a) of subsection (4) of section 316.0083, Florida Statutes, are amended to read:
316.0083 Mark Wandall Traffic Safety Program; administration; report.—
(1)

850140

(b)1.a. Within 30 days after a violation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying the remedies available under s. 318.14 and that the violator must pay the penalty of $158 to the department, county, or municipality, or furnish an affidavit in accordance with paragraph (d), or request a hearing within 60 days following the date of the notification in order to avoid the issuance of a traffic citation. The notification must be sent by first-class mail. The mailing of the notice of violation constitutes notification.

b. Included with the notification to the registered owner of the motor vehicle involved in the infraction must be a notice that the owner has the right to review the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or Internet location where the evidence may be examined and observed.

c. Notwithstanding any other provision of law, a person who receives a notice of violation under this section may request a hearing within 60 days following the notification of violation or pay the penalty pursuant to the notice of violation, but a payment or fee may not be required before the hearing requested by the person. The notice of violation must be accompanied by, or direct the person to a website that provides, information on the person’s right to request a hearing and on all court costs related thereto and a form to request a hearing. As used in this sub-subparagraph, the term “person” includes a natural person, registered owner or coowner of a motor vehicle, or person identified on an affidavit as having care, custody, or control

of the motor vehicle at the time of the violation.

d. If the registered owner or coowner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or an authorized representative of the owner, coowner, or designated person, initiates a proceeding to challenge the violation pursuant to this paragraph, such person waives any challenge or dispute as to the delivery of the notice of violation.

2. Penalties assessed and collected by the department, county, or municipality authorized to collect the funds provided for in this paragraph, less the amount retained by the county or municipality pursuant to subparagraph 3., shall be paid to the Department of Revenue weekly. Payment by the department, county, or municipality to the state shall be made by means of electronic funds transfers. In addition to the payment, summary detail of the penalties remitted shall be reported to the Department of Revenue.

3. Penalties to be assessed and collected by the department, county, or municipality are as follows:

a. One hundred fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver failed to stop at a traffic signal if enforcement is by the department’s traffic infraction enforcement officer. One hundred dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and $45 shall be distributed to the

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municipality in which the violation occurred, or, if the violation occurred in an unincorporated area, to the county in which the violation occurred. Funds deposited into the Department of Health Emergency Medical Services Trust Fund under this sub-subparagraph shall be distributed as provided in s. 395.4036(1). Proceeds of the infractions in the Brain and Spinal Cord Injury Trust Fund shall be distributed quarterly to the Miami Project to Cure Paralysis and used for brain and spinal cord research.

b. One hundred fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver failed to stop at a traffic signal if enforcement is by a county or municipal traffic infraction enforcement officer. Seventy dollars shall be remitted by the county or municipality to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and $75 shall be retained by the county or municipality enforcing the ordinance enacted pursuant to this section. Funds deposited into the Department of Health Emergency Medical Services Trust Fund under this sub-subparagraph shall be distributed as provided in s. 395.4036(1). Proceeds of the infractions in the Brain and Spinal Cord Injury Trust Fund shall be distributed quarterly to the Miami Project to Cure Paralysis and used for brain and spinal cord research.

4. If a county or municipality fails to comply with the reporting requirements in subsection (4), as determined by the

department, the department shall annually, on October 1, provide notice of the failure to the county or municipality. The county or municipality shall have 30 days from the date of the notice within which to establish compliance with the reporting requirements. If compliance is not established within the 30 days, the department shall immediately notify the Department of Revenue of the county's or municipality's noncompliance. In cases of such noncompliance, notwithstanding subparagraph 3., the portion of revenues collected and otherwise retained by the county or municipality may not be retained but shall be remitted to the Department of Revenue. The Department of Revenue shall maintain records of such remissions reflecting the total amount of revenues received from each noncompliant county or municipality. On notice from the department that the county or municipality has established compliance, the Department of Revenue shall return those revenues to the affected county or municipality.

5.~~4.~~ An individual may not receive a commission from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.

(4)(a) Each county or municipality that operates a traffic infraction detector shall submit a report ~~by October 1, 2012, and annually thereafter,~~ to the department no later than September 30 of each year which details the results of using the traffic infraction detector and the procedures for enforcement for the preceding state fiscal year. The information submitted

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by the counties and municipalities must include statistical data and information required by the department to complete the report required under paragraph (b), and must include all of the following:.

1. The name of the jurisdiction and contact information for the person responsible for the administration of the traffic infraction detector program.

2. The location of each camera, including both geospatial and cross-road descriptions of the location of each device.

3. The date that each red light camera became operational, and the dates of camera operation during the fiscal year, including any status changes of the camera's use during the reporting period.

4. Data related to the issuance and disposition of notices of violation and subsequent uniform traffic citations issued during the reporting period.

5. Vehicle crash data, including fatalities and injuries, for crashes that occurred within 250 feet of the approach to, or 250 feet following, a traffic infraction detector on the specific road monitored by the traffic infraction detector during the 12-month period immediately preceding the initial date of camera operation. Data submitted as required under this subsection should be able to be validated against department data.

6. Identification of any and all alternative safety measures, including increasing the interval between the yellow change light and the red clearance light, increasing the visibility of traffic lights, and installing advance dilemma-zone detection systems, which the jurisdiction considered or

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implemented during the reporting period in lieu of or in addition to the use of a traffic infraction detector. The jurisdiction shall include the date of implementation of any such measures to assist the department in the analysis of crash data at a specified location.

Section 11. Subsection (9) of section 316.0745, Florida Statutes, is created to read:

316.0745 Uniform signals and devices.—

(9) The Department of Transportation is authorized to inspect, at random, any traffic control device or any traffic infraction detector at any intersection with a traffic infraction detector for the purpose of verifying that such device and detector conform to the specifications and requirements of this section.

Section 12. Subsection (1) of section 316.0776, Florida Statutes, is amended to read:

316.0776 Traffic infraction detectors; placement and installation.—

(1) Traffic infraction detectors are allowed on state roads when permitted by the Department of Transportation and under placement and installation specifications developed by the Department of Transportation. Traffic infraction detectors are allowed on streets and highways under the jurisdiction of counties or municipalities in accordance with placement and installation specifications developed by the Department of Transportation. A notice of violation or uniform traffic citation may not be issued through the use of a traffic infraction detector that is not in compliance with all specifications. Additionally, before installation of any traffic

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infraction detector, the county or municipality shall document and make available upon the request of the Department of Transportation consideration and reasons for rejection of other engineering countermeasures set forth in the most recent publication addressing countermeasures by the Institute of Transportation Engineers that are intended to reduce violations of ss. 316.074(1) and 316.075(1)(c)1.

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

And the title is amended as follows:

Delete line 37

and insert:

redefining terms; amending s. 316.0083, F.S.; relating to traffic infraction detectors; requiring the Department of Highway Safety & Motor Vehicles to provide notice of failure to comply with certain reporting requirements; providing a period within which to become compliant with such reporting requirements; requiring a municipality or county to remit certain revenues to the Department of Revenue; requiring the Department of Revenue to maintain records of such remissions; providing for the return of certain revenues to a municipality or county under certain circumstances; requiring the annual report detailing the results of using traffic infraction detectors and the procedures for enforcement to include specified information; amending s. 316.0745, F.S.; authorizing the Department of Transportation to randomly inspect any traffic control device or any

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traffic infraction detector at certain locations to verify compliance with certain specifications and requirements; amending s. 316.0776, F.S.; prohibiting issuance of a notice of violation or traffic citation through use of a traffic infraction detector that is not in compliance with all specifications; requiring a municipality or county to document and make available upon request of the Department of Transportation consideration and reasons for rejection of certain engineering countermeasures before installing any traffic infraction detector; amending s. 316.0895, F.S.;

327768

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 661 and 662
insert:

Section 10. Subsection (1) of section 316.228, Florida Statutes, is amended to read:

316.228 Lamps or flags on projecting load.—

(1) Except as provided in subsection (2), whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle, there shall be displayed at the

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extreme rear end of the load, at the times specified in s. 316.217, two red lamps visible from a distance of at least 500 feet to the rear, two red reflectors visible at night from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps and located so as to indicate maximum width, and on each side one red lamp visible from a distance of at least 500 feet to the side and located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than 4 feet beyond its rear, red flags, not less than 18 ~~12~~ inches square, marking the extremities of such load, at each point where a lamp would otherwise be required by this section. A violation of this section is a noncriminal traffic infraction punishable as a nonmoving violation as provided in chapter 318.

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

And the title is amended as follows:

Delete line 44

and insert:

roadways; amending s. 316.228, F.S.; requiring a vehicle with a load that extends beyond its sides or a certain amount beyond its rear to display red flags not less than 18 inches square under certain circumstances; amending s. 316.303, F.S,; providing

866326

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 818 and 819
insert:

Section 13. Section 319.141, Florida Statutes, is amended to read:

319.141 Pilot rebuilt motor vehicle inspection program.—

(1) As used in this section, the term:

(a) "Facility" means a rebuilt motor vehicle inspection facility authorized and operating under this section.


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(b) "Rebuilt inspection services" means an examination of a rebuilt vehicle and a properly endorsed certificate of title, salvage certificate of title, or manufacturer's statement of origin and an application for a rebuilt certificate of title, a rebuilder's affidavit, a photograph of the junk or salvage vehicle taken before repairs began, receipts or invoices for all major component parts, as defined in s. 319.30, and repairs which were changed, and proof that notice of rebuilding of the vehicle has been reported to the National Motor Vehicle Title Information System.

(2) By July 1, 2015 ~~October 1, 2013~~, the department shall oversee ~~implement~~ a pilot program in Miami-Dade County ~~and Hillsborough Counties~~ to evaluate alternatives for rebuilt inspection services ~~to be~~ offered by existing ~~the~~ private sector operators, including the continued use ~~feasibility~~ of ~~using~~ private facilities, the cost impact to consumers, and the potential savings to the department.

(3) The department shall establish a memorandum of understanding that allows private parties participating in the pilot program to conduct rebuilt motor vehicle inspections and specifies requirements for oversight, bonding and insurance, procedures, and forms and requires the electronic transmission of documents.

(4) Before an applicant is approved, the department shall ensure that the applicant meets basic criteria designed to protect the public. At a minimum, the applicant shall meet all of the following requirements:

(a) Have and maintain a surety bond or irrevocable letter of credit in the amount of $100,000 ~~$50,000~~ executed by the

applicant.

(b) Secure and maintain a facility at a permanent structure at an address recognized by the United States Postal Service where the only services provided on such property are rebuilt inspection services. The operator of a facility shall annually attest that he or she is not employed by or does not have an ownership interest in or other financial arrangement with the owner, operator, manager, or employee of a motor vehicle repair shop as defined in s. 559.903, a motor vehicle dealer as defined in s. 320.27(1)(c), a towing company, a vehicle storage company, a vehicle auction, an insurance company, a salvage yard, a metal retailer, or a metal rebuilder from which he or she receives remuneration, directly or indirectly, for the referral of customers for rebuilt inspection services.

(c) ~~(b)~~ Have and maintain garage liability and other insurance required by the department.

(d) ~~(c)~~ Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors employed by the facility.

(e) ~~(d)~~ Meet any additional criteria the department determines necessary to conduct proper inspections.

(5) A participant in the program shall access vehicle and title information and enter inspection results through an electronic filing system authorized by the department and shall maintain records of each rebuilt vehicle inspection processed at such facility for at least 5 years.

(6) The department shall immediately terminate any operator from the program who fails to meet the minimum eligibility requirements specified in subsection (4). Prior to a change in

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ownership of the rebuilt inspection facility, the current operator must give the department 45 days written notice of the intended sale. The prospective owner must meet the eligibility requirements of this section and execute a new memorandum of understanding with the department prior to operating the facility.

~~(6) The department shall submit a report to the President of the Senate and the Speaker of the House of Representatives providing the results of the pilot program by February 1, 2015~~.

(7) This section is ~~shall stand~~ repealed on July 1, 2018 ~~2015~~, unless saved from repeal through reenactment by the Legislature.

Section 14. Subsection (1) and paragraph (a) of subsection (2) of section 320.086, Florida Statutes, are amended to read:

320.086 Ancient or antique motor vehicles; horseless carriage, antique, or historical license plates; former military vehicles.—

(1) The owner of a motor vehicle for private use manufactured in the model year 1945 or earlier, ~~equipped with an engine manufactured in 1945 or earlier or manufactured to the specifications of the original engine,~~ and operated on the streets and highways of this state shall, upon application in the manner and at the time prescribed by the department and upon payment of the license tax for an ancient motor vehicle prescribed by s. 320.08(1)(d), (2)(a), or (3)(e), be issued a special license plate for such motor vehicle. The license plate shall be permanent and valid for use without renewal so long as the vehicle is in existence. In addition to the payment of all other fees required by law, the applicant shall pay such fee for


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the issuance of the special license plate as may be prescribed by the department commensurate with the cost of its manufacture. The registration numbers and special license plates assigned to such motor vehicles shall run in a separate numerical series, commencing with "Horseless Carriage No. 1," and the plates shall be of a distinguishing color.

(2)(a) The owner of a motor vehicle for private use manufactured in the model year after 1945 and of the age of 30 years or more after the model year ~~date of manufacture, equipped with an engine of the age of 30 years or more after the date of manufacture~~, and operated on the streets and highways of this state may, upon application in the manner and at the time prescribed by the department and upon payment of the license tax prescribed by s. 320.08(1)(d), (2)(a), or (3)(e), be issued a special license plate for such motor vehicle. In addition to the payment of all other fees required by law, the applicant shall pay the fee for the issuance of the special license plate prescribed by the department, commensurate with the cost of its manufacture. The registration numbers and special license plates assigned to such motor vehicles shall run in a separate numerical series, commencing with "Antique No. 1," and the plates shall be of a distinguishing color. The owner of the motor vehicle may, upon application and payment of the license tax prescribed by s. 320.08, be issued a regular Florida license plate or specialty license plate in lieu of the special "Antique" license plate.

Section 15. For the purpose of incorporating the amendment made by this act to section 320.086, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section


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319.23, Florida Statutes, is reenacted to read:

319.23 Application for, and issuance of, certificate of title.—

(3) If a certificate of title has not previously been issued for a motor vehicle or mobile home in this state, the application, unless otherwise provided for in this chapter, shall be accompanied by a proper bill of sale or sworn statement of ownership, or a duly certified copy thereof, or by a certificate of title, bill of sale, or other evidence of ownership required by the law of the state or county from which the motor vehicle or mobile home was brought into this state. The application shall also be accompanied by:

(c) If the vehicle is an ancient or antique vehicle, as defined in s. 320.086, the application shall be accompanied by a certificate of title; a bill of sale and a registration; or a bill of sale and an affidavit by the owner defending the title from all claims. The bill of sale must contain a complete vehicle description to include the vehicle identification or engine number, year make, color, selling price, and signatures of the seller and purchaser.

Verification of the vehicle identification number is not required for any new motor vehicle; any mobile home; any trailer or semitrailer with a net weight of less than 2,000 pounds; or any travel trailer, camping trailer, truck camper, or fifth-wheel recreation trailer.

Section 16. For the purpose of incorporating the amendment made by this act to section 320.086, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) and paragraph

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(e) of subsection (3) of section 320.08, Florida Statutes, are reenacted to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), tri-vehicles as defined in s. 316.003, and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

(a) An ancient or antique automobile, as defined in s. 320.086, or a street rod, as defined in s. 320.0863: $7.50 flat.

(3) TRUCKS.—

(e) An ancient or antique truck, as defined in s. 320.086: $7.50 flat.

Section 17. Subsection (2) of section 324.242, Florida Statutes, is amended, present subsection (3) of that section is redesignated as subsection (6), and new subsections (3), (4), and (5) are added to that section, to read:

324.242 Personal injury protection and property damage liability insurance policies; public records exemption.—

(2) Upon receipt of a ~~written~~ request and proof ~~a copy~~ of a crash report as required under s. 316.065, s. 316.066, or s. 316.068, or a crash report created pursuant to the laws of another state, the department shall release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

(a) Any person involved in such accident;

(b) The attorney of any person involved in such accident;

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or

(c) A representative of the insurer of any person involved in such accident.

(3) The department shall provide personal injury protection and property damage liability insurance policy numbers to department-approved third parties that provide data collection services to an insurer of any person involved in such accident.

(4) Before the department's release of a policy number in accordance with subsection (2) or subsection (3), an insurer's representative, a contracted third party, or an attorney for a person involved in an accident must provide the department with documentation confirming proof of representation.

(5) Information made confidential and exempt by this section may be disclosed to another governmental entity without a written request or copy of the crash report if disclosure is necessary for the receiving governmental entity to perform its duties and responsibilities. For purposes of this subsection, the term "governmental entity" means any federal, state, county, district, authority, or municipal officer, department, division, board, bureau, or commission created or established by law.

(6)~~(3)~~ This exemption applies to personal identifying information of an insured or former insured and insurance policy numbers held by the department before, on, or after October 11, 2007.

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

And the title is amended as follows:

Delete line 61

and insert:

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location; amending s. 319.141, F.S.; defining the term "rebuilt inspection services"; directing the Department of Highway Safety and Motor Vehicles to oversee a pilot program in Miami-Dade County to evaluate alternatives for certain rebuilt inspection services by a specified date; revising the minimum criteria an applicant must meet before he or she is approved; requiring that participants in the program maintain records of each rebuilt vehicle inspection processed at such facility for a specified period of time; requiring the department to terminate any operator from the program under certain circumstances; requiring a current operator to give the department written notice of an intended sale within a specified period of time; requiring a prospective owner to meet specified requirements and execute a certain memorandum; deleting a provision requiring the department to submit a certain report to the Legislature; revising the date of repeal for this section; amending s. 320.086, F.S.; requiring the department to issue a special license plate to the owner of a motor vehicle manufactured in the model year 1945 or earlier for such motor vehicle, subject to certain requirements; requiring the department to issue a special license plate to the owner of a motor vehicle manufactured in the model year after 1945 and of the age of 30 years or more after the model year for such motor vehicle, subject to certain requirements; reenacting s. 319.23(3)(c), F.S.,

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relating to application for, and issuance of, certificate of title, to incorporate the amendment made to s. 320.086, F.S., in a reference thereto; reenacting s. 320.08(2)(a) and (3)(e), F.S., relating to license taxes, to incorporate the amendment made to s. 320.086, F.S., in a reference thereto; amending s. 324.242, F.S.; requiring the department to release the policy number of a policy covering a vehicle involved in a motor vehicle accident to certain persons upon receipt of a request and proof of a crash report created pursuant to the laws of another state; requiring the department to provide personal injury protection and property damage liability insurance policy numbers to department-approved third parties that provide data collection services to certain insurers; requiring an insurer’s representative, a contracted third party, or an attorney for a person involved in an accident to provide the department with documentation confirming proof of representation prior to the release of certain policy numbers; authorizing the department to disclose certain confidential and exempt information to another governmental entity under certain circumstances; defining the term “governmental entity”; amending s. 333.01, F.S.; defining and

317554

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 1786 and 1787
insert:

Section 32. Paragraph (a) of subsection (1) of section 337.18, Florida Statutes, is amended to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)(a) A surety bond shall be required of the successful

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bidder in an amount equal to the awarded contract price. However, the department may choose, in its discretion and applicable only to multiyear maintenance contracts, to allow for incremental annual contract bonds that cumulatively total the full, awarded, multiyear contract price.

1. The department may waive the requirement for all or a portion of a surety bond if:

a. ~~For a project for which~~ The contract price is $250,000 or less and the department~~, the department may waive the requirement for all or a portion of a surety bond if it~~ determines the project is of a noncritical nature and nonperformance will not endanger public health, safety, or property;

b. The prime contractor is a qualified nonprofit agency for the blind or for the other severely handicapped under s. 413.036(2); or

c. The prime contractor is using a subcontractor that is a qualified nonprofit agency for the blind or for the other severely handicapped under s. 413.036(2); however, the department may not waive more than the amount of the subcontract.

2. If the Secretary of Transportation or the secretary's designee determines that it is in the best interests of the department to reduce the bonding requirement for a project and that to do so will not endanger public health, safety, or property, the department may waive the requirement of a surety bond in an amount equal to the awarded contract price for a project having a contract price of $250 million or more and, in its place, may set a surety bond amount that is a portion of the

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total contract price and provide an alternate means of security for the balance of the contract amount that is not covered by the surety bond or provide for incremental surety bonding and provide an alternate means of security for the balance of the contract amount that is not covered by the surety bond. Such alternative means of security may include letters of credit, United States bonds and notes, parent company guarantees, and cash collateral. The department may require alternate means of security if a surety bond is waived. The surety on such bond shall be a surety company authorized to do business in the state. All bonds shall be payable to the department and conditioned for the prompt, faithful, and efficient performance of the contract according to plans and specifications and within the time period specified, and for the prompt payment of all persons defined in s. 713.01 furnishing labor, material, equipment, and supplies for work provided in the contract; however, whenever an improvement, demolition, or removal contract price is $25,000 or less, the security may, in the discretion of the bidder, be in the form of a cashier’s check, bank money order of any state or national bank, certified check, or postal money order. The department shall adopt rules to implement this subsection. Such rules shall include provisions under which the department shall refuse to accept bonds on contracts when a surety wrongfully fails or refuses to settle or provide a defense for claims or actions arising under a contract for which the surety previously furnished a bond.

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

And the title is amended as follows:

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Delete line 197

and insert:

trails; amending s. 337.18, F.S.; authorizing the department to waive a surety bond on certain contracts with specified contractors; amending s. 338.165, F.S.; removing an option

487104

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1859 - 1905
and insert:
Section 35. Paragraphs (a), (c), and (d) of subsection (3) and paragraph (c) of subsection (7) of section 339.175, Florida Statutes, are amended to read:
339.175 Metropolitan planning organization.—
(3) VOTING MEMBERSHIP.—
(a) The voting membership of an M.P.O. shall consist of at

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least 5 but not more than 25 apportioned members, with the exact number determined on an equitable geographic-population ratio basis, based on an agreement among the affected units of general-purpose local government and the Governor, as required by federal regulations. In accordance with 23 U.S.C. s. 134, the Governor may also allow M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area which do not have members on the M.P.O. With the exception of counties chartered under s. 6(e), Art. VIII of the State Constitution and instances in which all of the county commissioners in a single-county M.P.O. are members of the M.P.O. governing board, county commissioners shall compose at least one-third of the M.P.O. governing board membership. A multicounty M.P.O. may satisfy this requirement by any combination of county commissioners from each of the counties constituting the M.P.O. Voting members shall be elected officials of general-purpose local governments, one of whom may represent a group of general-purpose local governments through an entity created by an M.P.O. for that purpose. An M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of Space Florida. As used in this section, the term "elected officials of a general-purpose local government" excludes constitutional officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners shall compose not less than 20 percent of the M.P.O. membership if an official of an

agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(c) Except as provided in paragraph (d), and any other provision of this section to the contrary notwithstanding, a chartered county with over 1 million population may elect to reapportion the membership of an M.P.O. whose jurisdiction is wholly within the county. The charter county may exercise the provisions of this paragraph if:

1. The M.P.O. approves the reapportionment plan by a three-fourths vote of its membership;

2. The M.P.O. and the charter county determine that the reapportionment plan is needed to fulfill specific goals and policies applicable to that metropolitan planning area; and

3. The charter county determines the reapportionment plan otherwise complies with all federal requirements pertaining to M.P.O. membership.

Any charter county that elects to exercise the provisions of this paragraph shall notify the Governor in writing.

(d) Any other provision of this section to the contrary notwithstanding, the membership of an M.P.O. in any county chartered under s. 6(e), Art. VIII of the State Constitution whose jurisdiction is wholly contained within the county shall be the county mayor, the chairperson of the county commission, the chairperson of the county's transportation committee, one elected official appointed by the governing body of each municipality with a population of 50,000 or more residents, one county commissioner appointed by the Governor whose district includes at least three municipalities with a population less

than 50,000 each, one county commissioner appointed by the Governor whose district includes only unincorporated areas of the county, one county commissioner appointed by the Governor whose district includes Biscayne National Park, one school board member appointed by the Governor, one nonvoting representative from the county's expressway authority appointed by the Governor, and one representative of the department serving as a nonvoting advisor ~~may elect to have its county commission serve as the M.P.O., if the M.P.O. jurisdiction is wholly contained within the county. Any charter county that elects to exercise the provisions of this paragraph shall so notify the Governor in writing. Upon receipt of such notification, the Governor must designate the county commission as the M.P.O. The Governor must appoint four additional voting members to the M.P.O., one of whom must be an elected official representing a municipality within the county, one of whom must be an expressway authority member, one of whom must be a person who does not hold elected public office and who resides in the unincorporated portion of the county, and one of whom must be a school board member~~.

(7) LONG-RANGE TRANSPORTATION PLAN.—Each M.P.O. must develop a long-range transportation plan that addresses at least a 20-year planning horizon. The plan must include both long-range and short-range strategies and must comply with all other state and federal requirements. The prevailing principles to be considered in the long-range transportation plan are: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements

and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the M.P.O. Each M.P.O. is encouraged to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

(c) Assess capital investment and other measures necessary to:

1. Ensure the preservation of the existing metropolitan transportation system including requirements for the operation, resurfacing, restoration, and rehabilitation of major roadways and requirements for the operation, maintenance, modernization, and rehabilitation of public transportation facilities; and

2. Make the most efficient use of existing transportation facilities to relieve vehicular congestion, improve safety, and maximize the mobility of people and goods. Such efforts shall include, but not be limited to, consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments.

In the development of its long-range transportation plan, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private

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providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan. The long-range transportation plan must be approved by the M.P.O.

Section 36. Section 339.176, Florida Statutes, is amended to read:

339.176 Voting membership for M.P.O. with boundaries including certain counties.—In addition to the voting membership established by s. 339.175(3) and notwithstanding any other provision of law to the contrary, the voting membership of any Metropolitan Planning Organization whose geographical boundaries include any county as defined in s. 125.011(1) must include an additional voting member appointed by the ~~that city's~~ governing body for each municipality ~~city~~ with a population of 50,000 or more residents, except as otherwise provided in s. 339.175(3)(d).

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

And the title is amended as follows:

Delete lines 212 - 219

and insert:

s. 339.175, F.S.; revising the membership of certain metropolitan planning organizations; requiring certain long-range transportation plans to include assessment of capital investment and other measures necessary to make the most efficient use of existing transportation facilities to improve safety; requiring the assessments to include consideration of infrastructure

and technological improvements necessary to accommodate advances in vehicle technology; amending s. 339.176, F.S.; providing an exception to the voting membership of metropolitan planning organizations in certain counties; amending

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to transportation; amending s. 20.23, F.S.; deleting the requirement that the Secretary of Transportation appoint an inspector general pursuant to s. 20.055, F.S.; deleting the requirement that the district director for the Fort Myers Urban Office of the Department of Transportation be responsible for developing the 5-year Transportation Plan and other duties for specified counties; amending s. 215.82, F.S.; deleting a cross-reference; amending s. 260.0144, F.S.; providing that certain commercial sponsorship may be displayed on state greenway and trail facilities not included within the Florida Shared-Use Nonmotorized Trail Network; deleting provisions relating to the authorization of sponsored state greenways and trails at specified facilities or property; creating s. 288.365, F.S.; providing that the Port of Palm Beach is deemed eligible and granted authority to apply to the federal government to seek approval from the Foreign-Trade Zones Board through an alternative site framework to include specified counties in the proposed service area without obtaining approvals from certain municipalities; providing applicability; amending s. 311.07, F.S.; increasing the minimum amount that shall be made available annually from the State Transportation Fund

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to fund the Florida Seaport Transportation and Economic Development Program; amending s. 311.09, F.S.; reducing the number of members of the Florida Seaport Transportation and Economic Development Council; removing Port Citrus from the council membership; increasing the amount per year the department must include in its annual legislative budget request for the Florida Seaport Transportation and Economic Development Program; deleting obsolete language; amending s. 316.003, F.S.; defining and redefining terms; amending s. 316.0895, F.S.; providing that provisions prohibiting a driver from following certain vehicles within a certain distance do not apply to truck tractor-semitrailer combinations under certain conditions; providing for financial responsibility; amending s. 316.130, F.S.; revising traffic regulations relating to pedestrians crossing roadways; amending s. 316.303, F.S.; providing exceptions to the prohibition of certain television-type receiving equipment and certain electronic displays in vehicles; amending s. 316.515, F.S.; extending the allowable length of certain semitrailers authorized to operate on public roads under certain conditions; authorizing the Department of Transportation to permit truck tractor-semitrailer combinations where the total number of overwidth deliveries of manufactured buildings may be reduced by the transport of multiple sections or single units on an overlength trailer of no more than a specified

length under certain circumstances; amending s. 316.545, F.S.; providing a specified penalty for commercial motor vehicles that obtain temporary registration permits entering the state at, or operating on designated routes to, a port-of-entry location; amending s. 333.01, F.S.; defining and redefining terms; amending s. 333.025, F.S.; revising requirements relating to securing a permit for the proposed construction or alteration of structures that would exceed specified federal obstruction standards; requiring such permits only within an airport hazard area if the proposed construction is within a set radius of a certain airport reference point; providing that existing, planned, and proposed facilities at public-use airports contained in certain plans or documents will be protected from structures that exceed federal obstruction standards; providing that a permit is not required when political subdivisions have adopted adequate airport protection zoning regulations and have established a permitting process, subject to certain requirements; providing for a review period by the department to run concurrent with such permitting process, subject to certain requirements and exemptions; specifying certain factors the department shall consider in determining whether to issue or deny a permit; directing the department to require an owner of a permitted obstruction or vegetation to install, operate, and maintain marking and lighting subject to certain

requirements; prohibiting a permit from being approved solely on the basis that a proposed structure will not exceed specified federal obstruction standards; providing certain administrative review for the denial of a permit; amending s. 333.03, F.S.; revising the requirements relating to the adoption of airport protection zoning regulations by certain political subdivisions; revising the requirements of such adopted airport protection zoning regulations; providing that the department is available to assist political subdivisions with regard to federal obstruction standards; revising requirements relating to airport land use compatibility zoning regulations that address, at a minimum, landfill locations and noise contours; requiring adoption of airport zoning regulations that restrict substantial modifications to existing incompatible uses within runway protection zones; requiring that updates and amendments to local airport zoning codes, rules, and regulations be filed with the department within a certain time after adoption; revising requirements relating to educational structures or sites; providing that a governing body operating a public-use airport may establish more restrictive airport protection zoning regulations for certain purposes; amending s. 333.04, F.S.; revising provisions relating to comprehensive plan or policy regulations, including airport protection zoning regulations under certain circumstances; amending s. 333.05, F.S.; revising

provisions relating to the procedure for adoption, amendment, or deletion of airport zoning regulations; revising provisions relating to airport zoning commissions; amending s. 333.06, F.S.; revising provisions relating to airport zoning requirements, and airport master plans that are prepared by certain public-use airports; repealing s. 333.065, F.S., relating to guidelines regarding land use near airports; amending s. 333.07, F.S.; revising provisions relating to permits for use of structures or vegetation in violation of airport protection zoning regulations; specifying factors a political subdivision or its administrative agency must consider when determining whether to issue or deny a permit; deleting provisions relating to applying for a variance from zoning regulations; revising provisions relating to obstruction marking and lighting requirements when a political subdivision or its administrative agency issues a permit; repealing s. 333.08, F.S., relating to appeals in regard to airport zoning regulations; amending s. 333.09, F.S.; requiring all airport zoning regulations to provide for the administration and enforcement of such regulations by the affected political subdivisions or an administrative agency created by the subdivisions; requiring a political subdivision that must adopt airport zoning regulations to provide a permitting process subject to certain requirements and exceptions; providing for an appeals process for

decisions in the administration of airport zoning regulations, subject to certain requirements; repealing s. 333.10, F.S., relating to boards of adjustment provided for by all airport zoning regulations; amending s. 333.11, F.S.; revising provisions relating to judicial review for decisions made by any governing body of a political subdivision, joint airport zoning board, or administrative agency; requiring the appellant to exhaust all its remedies through application for local government permits, exceptions, and appeals before judicial appeal is permitted; amending s. 333.12, F.S.; revising provisions relating to the acquisition of air rights; providing that a certain political subdivision may acquire air right, avigation easement, other estate, or interest in a nonconforming structure or use that presents an air hazard and cannot be removed, lowered, or otherwise terminated, subject to certain requirements; creating s. 333.135, F.S.; requiring that certain airport zoning regulations be amended to conform by a certain date; requiring certain political subdivisions to adopt airport zoning regulations by a certain date; directing the department to administer the permitting process for local governments that have not adopted airport protection zoning regulations; repealing s. 333.14, F.S., relating to a short title; amending s. 334.03, F.S.; redefining the term “511” or “511 services”; deleting the term “interactive voice response”; amending s. 334.044, F.S.; removing the

provision of interactive voice response telephone systems accessible via the 511 number that may be included in traveler information systems; removing a requirement that applied uniform standards and criteria for collection and dissemination of traveler information using interactive voice response systems; authorizing the department to assume certain responsibilities under the National Environmental Policy Act with respect to highway projects within the state and certain related responsibilities relating to review or approval of a highway project; authorizing the department to enter into certain agreements related to the federal surface transportation project delivery program under certain federal law; authorizing the department to adopt implementing rules; authorizing the department to adopt certain relevant federal environmental standards; providing a limited waiver of sovereign immunity to civil suit in federal court consistent with certain federal law; amending s. 334.60, F.S.; revising provisions relating to the 511 traveler information system; amending s. 335.065, F.S.; deleting provisions relating to certain commercial sponsorship displays on multiuse trails and related facilities; deleting provisions relating to funding a statewide system of interconnected multiuse trails; amending s. 338.165, F.S.; removing an option to issue certain bonds secured by toll revenues collected on the Beeline-East Expressway and the Navarre Bridge; amending s. 338.227, F.S.; providing

that bonds issued are not required to be validated pursuant to ch. 75, F.S., but may be validated at the option of the Division of Bond Finance; providing filing, notice, and service requirements relating to complaints for such validation; amending s. 338.231, F.S.; increasing the number of years before an inactive prepaid toll account shall be presumed unclaimed; deleting provisions relating to using the revenues from the turnpike system to pay the principal and interest of a specified series of bonds and certain expenses of the Sawgrass Expressway; amending s. 339.175, F.S.; requiring certain long-range transportation plans to include assessment of capital investment and other measures necessary to make the most efficient use of existing transportation facilities to improve safety; requiring the assessments to include consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology; amending s. 339.64, F.S.; requiring the Department of Transportation to coordinate with certain partners and industry representatives to consider infrastructure and technological improvements necessary to accommodate advances in vehicle technology in Strategic Intermodal System facilities; requiring the Strategic Intermodal System Plan to include a needs assessment regarding such infrastructure and technological improvements; creating s. 339.81, F.S.; creating the Florida Shared-Use Nonmotorized Trail

Network; specifying the composition of the network; requiring the network to be included in the Department of Transportation's work program; declaring the planning, development, operation, and maintenance of the network to be a public purpose; authorizing the department to transfer maintenance responsibilities to local governments or other state agencies and contract with not-for-profit or private sector entities to provide maintenance services; requiring funding to be allocated to the Florida Shared-Use Nonmotorized Trail Network in the program and resource plan of the department; authorizing the department to adopt rules; creating s. 339.82, F.S.; directing the department to develop a Shared-Use Nonmotorized Trail Network Plan, subject to certain requirements; creating s. 339.83, F.S.; creating a trail sponsorship program, subject to certain requirements and restrictions; directing the Office of Economic and Demographic Research to evaluate and determine the economic benefits of the state's investment in the Department of Transportation's adopted work program for a certain timeframe, subject to certain requirements; directing the Department of Transportation and each of its district offices to provide the Office of Economic and Demographic Research full access to certain data; requiring the Office of Economic and Demographic Research to submit the analysis to the Legislature by a certain date; repealing s. 341.0532, F.S., relating to statewide transportation corridors; providing a

directive to the Division of Law Revision and Information; creating s. 345.0001, F.S.; providing a short title; creating s. 345.0002, F.S.; defining terms; creating s. 345.0003, F.S.; authorizing certain counties to form the Northwest Florida Regional Transportation Finance Authority to construct, maintain, or operate transportation projects in a given region of the state; specifying procedural requirements; creating s. 345.0004, F.S.; specifying the powers and duties of the authority, subject to certain restrictions; requiring that the authority comply with certain reporting and documentation requirements; creating s. 345.0005, F.S.; authorizing the issuing of bonds on behalf of the authority under the State Bond Act and by the authority itself; specifying requirements and restrictions for such bonds under certain circumstances; creating s. 345.0006, F.S.; providing rights and remedies of bondholders; creating s. 345.0007, F.S.; designating the Department of Transportation as the agent of the authority for specified purposes; authorizing the administration and management of projects by the department; limiting the powers of the department as an agent; establishing the fiscal responsibilities of the authority; creating s. 345.0008, F.S.; authorizing the department to provide for or commit its resources for the authority project or system, if approved by the Legislature, subject to legislative budget request procedures and prohibitions and appropriation

procedures; authorizing the payment of expenses incurred by the department on behalf of the authority; requiring the department to receive a share of the revenue from the authority; providing calculations for disbursement of revenues; creating s. 345.0009, F.S.; authorizing the authority to acquire private or public property and property rights for a project or plan; establishing the rights and liabilities and remedial actions relating to property acquired for a transportation project or corridor; creating s. 345.001, F.S.; authorizing contracts between governmental entities and the authority; creating s. 345.0011, F.S.; pledging that the state will not limit or alter the vested rights of the authority or the department with regard to any issued bonds or other rights relating to the bonds if such vested rights affect the rights of bondholders; creating s. 345.0012, F.S.; exempting the authority from certain taxes and assessments; providing exceptions; creating s. 345.0013, F.S.; providing that bonds or obligations issued under this chapter are legal investments for specified entities; creating s. 345.0014, F.S.; providing applicability; providing legislative findings and intent relating to transportation funding; directing the Center for Urban Transportation Research to conduct a study on implementing a system in this state which charges drivers based on their vehicle miles traveled as an alternative to the present fuel tax structure to fund transportation

projects; specifying requirements of the study; requiring that the findings of the study be presented to the Legislature by a certain date; directing the center, in consultation with the Florida Transportation Commission, to establish the framework for a pilot project that will evaluate the feasibility of implementing a system that charges drivers based on their vehicle miles traveled; specifying requirements for the design of the pilot project framework; authorizing the center to expend up to a certain amount for the study and pilot project design contingent upon legislative appropriation; requiring that the pilot project design be completed by a certain date and submitted in a report to the Legislature; reenacting s. 350.81(6), F.S., relating to the definition of the term "airport layout plan," to incorporate the amendment made to s. 333.01, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) and paragraph (d) of subsection (4) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(3)

~~(d) The secretary shall appoint an inspector general~~

~~pursuant to s. 20.055 who shall be directly responsible to the secretary and shall serve at the pleasure of the secretary.~~

(4)

~~(d) The district director for the Fort Myers Urban Office of the Department of Transportation is responsible for developing the 5-year Transportation Plan for Charlotte, Collier, DeSoto, Glades, Hendry, and Lee Counties. The Fort Myers Urban Office also is responsible for providing policy, direction, local government coordination, and planning for those counties.~~

Section 2. Subsection (2) of section 215.82, Florida Statutes, is amended to read:

215.82 Validation; when required.—

(2) Any bonds issued pursuant to this act which are validated shall be validated in the manner provided by chapter 75. In actions to validate bonds to be issued in the name of the State Board of Education under s. 9(a) and (d), Art. XII of the State Constitution and bonds to be issued pursuant to chapter 259, the Land Conservation Act of 1972, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending. In any action to validate bonds issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1), Art. XII of the State Constitution or issued pursuant to s. 215.605 ~~or s. 338.227~~, the complaint shall be filed in the circuit court of the county where the seat of state government

is situated, the notice required to be published by s. 75.06 shall be published in a newspaper of general circulation in the county where the complaint is filed and in two other newspapers of general circulation in the state, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending; provided, however, that if publication of notice pursuant to this section would require publication in more newspapers than would publication pursuant to s. 75.06, such publication shall be made pursuant to s. 75.06.

Section 3. Section 260.0144, Florida Statutes, is amended to read:

260.0144 Sponsorship of state greenways and trails.—The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship to be displayed on state greenway and trail facilities <u>not included within the Florida Shared-Use Nonmotorized Trail Network established in chapter 339</u> ~~or property specified in this section~~. The department may establish the cost for entering into a concession agreement.

(1) A concession agreement shall be administered by the department and must include the requirements found in this section.

(2)(a) Space for a commercial sponsorship display may be provided through a concession agreement on certain state-owned greenway or trail facilities or property.

(b) Signage or displays erected under this section shall comply with the provisions of s. 337.407 and chapter 479, and shall be limited as follows:

1. One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.

2. One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.

(c) Before installation, each name or sponsorship display must be approved by the department.

(d) The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

~~(c) Sponsored state greenways and trails are authorized at the following facilities or property:~~

~~1. Florida Keys Overseas Heritage Trail.~~

~~2. Blackwater Heritage Trail.~~

~~3. Tallahassee-St. Marks Historic Railroad State Trail.~~

~~4. Nature Coast State Trail.~~

~~5. Withlacoochee State Trail.~~

~~6. General James A. Van Fleet State Trail.~~

~~7. Palatka-Lake Butler State Trail.~~

(e) ~~(f)~~ The department may enter into commercial sponsorship agreements for other state greenways or trails as authorized in

this section. A qualified entity that desires to enter into a commercial sponsorship agreement shall apply to the department on forms adopted by department rule.

(f) ~~(g)~~ All costs of a display, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.

(3) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or any provision of this section.

(4) Commercial sponsorship pursuant to a concession agreement is for public relations or advertising purposes of the not-for-profit entity or private sector business or entity, and may not be construed by that not-for-profit entity or private sector business or entity as having a relationship to any other actions of the department.

(5) This section does not create a proprietary or compensable interest in any sign, display site, or location.

(6) Proceeds from concession agreements shall be distributed as follows:

(a) Eighty-five percent shall be deposited into the appropriate department trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties.

(b) Fifteen percent shall be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle

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Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

(7) The department may adopt rules to administer this section.

Section 4. Section 288.365, Florida Statutes, is created to read:

288.365 Notwithstanding chapter 74-570, Laws of Florida, as amended by chapter 90-462, Laws of Florida, the Port of Palm Beach is deemed eligible and granted authority to apply to the Federal Government to seek approval from the Foreign-Trade Zones Board through an alternative site framework to include all of Palm Beach, Martin, and St. Lucie Counties in the proposed service area without requirement to obtain approvals from incorporated municipalities within the service area. However, the designation of any area as a foreign-trade zone does not authorize an exemption from any law, any local zoning or land use designation or ordinance of any municipality or county, or any tax imposed by the state or by any political subdivision, agency, or instrumentality thereof.

Section 5. Subsection (2) of section 311.07, Florida Statutes, is amended to read:

311.07 Florida seaport transportation and economic development funding.—

(2) A minimum of $25 ~~$15~~ million per year shall be made available from the State Transportation Trust Fund to fund the Florida Seaport Transportation and Economic Development Program. The Florida Seaport Transportation and Economic Development Council created in s. 311.09 shall develop guidelines for project funding. Council staff, the Department of

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Transportation, and the Department of Economic Opportunity shall work in cooperation to review projects and allocate funds in accordance with the schedule required for the Department of Transportation to include these projects in the tentative work program developed pursuant to s. 339.135(4).

Section 6. Subsections (1), (9), and (12) of section 311.09, Florida Statutes, are amended to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(1) The Florida Seaport Transportation and Economic Development Council is created within the Department of Transportation. The council consists of the following 16 ~~17~~ members: the port director, or the port director's designee, of each of the ports of Jacksonville, Port Canaveral, ~~Port Citrus,~~ Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina; the secretary of the Department of Transportation or his or her designee; and the director of the Department of Economic Opportunity or his or her designee.

(9) The Department of Transportation shall include at least $25 ~~no less than $15~~ million per year in its annual legislative budget request for the Florida Seaport Transportation and Economic Development Program funded under s. 311.07. Such budget shall include funding for projects approved by the council which have been determined by each agency to be consistent. The department shall include the specific approved Florida Seaport Transportation and Economic Development Program projects to be funded under s. 311.07 during the ensuing fiscal year in the tentative work program developed pursuant to s. 339.135(4). The

total amount of funding to be allocated to Florida Seaport Transportation and Economic Development Program projects under s. 311.07 during the successive 4 fiscal years shall also be included in the tentative work program developed pursuant to s. 339.135(4). The council may submit to the department a list of approved projects that could be made production-ready within the next 2 years. The list shall be submitted by the department as part of the needs and project list prepared pursuant to s. 339.135(2)(b). However, the department shall, upon written request of the Florida Seaport Transportation and Economic Development Council, submit work program amendments pursuant to s. 339.135(7) to the Governor within 10 days after the later of the date the request is received by the department or the effective date of the amendment, termination, or closure of the applicable funding agreement between the department and the affected seaport, as required to release the funds from the existing commitment. Notwithstanding s. 339.135(7)(c), any work program amendment to transfer prior year funds from one approved seaport project to another seaport project is subject to the procedures in s. 339.135(7)(d). Notwithstanding any provision of law to the contrary, the department may transfer unexpended budget between the seaport projects as identified in the approved work program amendments.

~~(12) Until July 1, 2014, Citrus County may apply for a grant through the Florida Seaport Transportation and Economic Development Council to perform a feasibility study regarding the establishment of a port in Citrus County. The council shall evaluate such application pursuant to subsections (5)-(8) and, if approved, the Department of Transportation shall include the~~

~~feasibility study in its budget request pursuant to subsection (9). If the study determines that a port in Citrus County is not feasible, the membership of Port Citrus on the council shall terminate.~~

Section 7. Subsections (6), (47), and present subsection (90) of section 316.003, Florida Statutes, are amended, present subsections (91), (92), and (93) of that section are redesignated as subsections (93), (95), and (96), respectively, and new subsections (90), (92), and (94) are added to that section, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(6) CROSSWALK.—

(a) Unmarked crosswalk.—An unmarked part of the roadway at an intersection used by pedestrians for crossing the roadway ~~That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway~~.

(b) Marked crosswalk.—Pavement marking lines on the roadway surface, which may include contrasting pavement texture, style, or colored portions of the roadway at an intersection used by pedestrians for crossing the roadway ~~Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface~~.

(c) Midblock crosswalk.—A location between intersections where the roadway surface is marked by pavement marking lines,

which may include contrasting pavement texture, style or colored portion of the roadway at a signalized or unsignalized crosswalk used for pedestrian roadway crossings and may include a pedestrian refuge island.

(47) SIDEWALK.—That portion of a street ~~between the curbline, or the lateral line, of a roadway and the adjacent property lines,~~ intended for use by pedestrians, adjacent to the roadway between the curb or edge of the roadway and the property line.

(90) AUTONOMOUS TECHNOLOGY.—Technology installed on a motor vehicle which has the capability to drive the vehicle on which the technology is installed without the active control of or monitoring by a human operator.

(91)~~(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with autonomous technology. ~~The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator.~~ The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

(92) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle

automation technology that integrates sensor array, wireless communications, vehicle controls, and specialized software to synchronize acceleration and braking between up to two truck tractor-semitrailer combinations, while leaving each vehicle's steering control and systems command in the control of the vehicle's driver.

(94) PORT-OF-ENTRY.—A designated location that allows drivers of commercial motor vehicles to purchase temporary registration permits necessary to operate legally within the state. The locations and the designated routes to such locations shall be determined by the Department of Transportation.

Section 8. Subsection (2) of section 316.0895, Florida Statutes, is amended to read:

316.0895 Following too closely.—

(2) It is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles. This subsection does not apply to two truck tractor-semitrailer combinations equipped and connected with driver-assistive truck-platooning technology, as defined in s. 316.003, and operating on a multilane limited access facility, if the owner or operator complies with the financial responsibility requirement of s. 316.86.

Section 9. Paragraphs (b) and (c) of subsection (7) of section 316.130, Florida Statutes, are amended to read:

316.130 Pedestrians; traffic regulations.—

(7)

(b) The driver of a vehicle at any crosswalk location where the approach is not controlled by a traffic signal or stop sign must ~~signage so indicates shall~~ stop and remain stopped to allow a pedestrian to cross a roadway when the pedestrian is in the crosswalk or steps into the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or turning, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided must yield the right-of-way to all vehicles upon the roadway.

~~(c) When traffic control signals are not in place or in operation and there is no signage indicating otherwise, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.~~

Section 10. Subsections (1) and (3) of section 316.303, Florida Statutes, are amended to read:

316.303 Television receivers.—

(1) No motor vehicle operated on the highways of this state shall be equipped with television-type receiving equipment so located that the viewer or screen is visible from the driver's seat, unless the vehicle is equipped with autonomous technology, as defined in s. 316.003(90), and is being operated in autonomous mode, as provided in s. 316.85(2); or unless the vehicle is equipped and operating with driver-assistive truck-platooning technology, as defined in s. 316.003(92).

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system; or an electronic display used by an operator of a vehicle equipped with autonomous technology, as defined in s. 316.003(90), while the vehicle is being operated in autonomous mode, as provided in s. 316.85(2); or an electronic display used by the operator of a vehicle equipped and operating with driver-assistive truck platooning technology, as defined in s. 316.003(92).

Section 11. Paragraph (b) of subsection (3) and subsection (14) of section 316.515, Florida Statutes, are amended to read:

316.515 Maximum width, height, length.—

(3) LENGTH LIMITATION.—Except as otherwise provided in this section, length limitations apply solely to a semitrailer or trailer, and not to a truck tractor or to the overall length of a combination of vehicles. No combination of commercial motor vehicles coupled together and operating on the public roads may consist of more than one truck tractor and two trailing units. Unless otherwise specifically provided for in this section, a combination of vehicles not qualifying as commercial motor vehicles may consist of no more than two units coupled together; such nonqualifying combination of vehicles may not exceed a

total length of 65 feet, inclusive of the load carried thereon, but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Notwithstanding any other provision of this section, a truck tractor-semitrailer combination engaged in the transportation of automobiles or boats may transport motor vehicles or boats on part of the power unit; and, except as may otherwise be mandated under federal law, an automobile or boat transporter semitrailer may not exceed 50 feet in length, exclusive of the load; however, the load may extend up to an additional 6 feet beyond the rear of the trailer. The 50-feet length limitation does not apply to non-stinger-steered automobile or boat transporters that are 65 feet or less in overall length, exclusive of the load carried thereon, or to stinger-steered automobile or boat transporters that are 75 feet or less in overall length, exclusive of the load carried thereon. For purposes of this subsection, a "stinger-steered automobile or boat transporter" is an automobile or boat transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit. Notwithstanding paragraphs (a) and (b), any straight truck or truck tractor-semitrailer combination engaged in the transportation of horticultural trees may allow the load to extend up to an additional 10 feet beyond the rear of the vehicle, provided said trees are resting against a retaining bar mounted above the truck bed so that the root balls of the trees rest on the floor and to the front of the truck bed and the tops of the trees extend up over and to the rear of the truck bed, and provided the overhanging portion of the load is covered with

protective fabric.

(b) *Semitrailers.*—

1. A semitrailer operating in a truck tractor-semitrailer combination may not exceed 48 feet in extreme overall outside dimension, measured from the front of the unit to the rear of the unit and the load carried thereon, exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads, unless it complies with subparagraph 2. A semitrailer which exceeds 48 feet in length and is used to transport divisible loads may operate in this state only if issued a permit under s. 316.550 and if such trailer meets the requirements of this chapter relating to vehicle equipment and safety. Except for highways on the tandem trailer truck highway network, public roads deemed unsafe for longer semitrailer vehicles or those roads on which such longer vehicles are determined not to be in the interest of public convenience shall, in conformance with s. 316.006, be restricted by the Department of Transportation or by the local authority to use by semitrailers not exceeding a length of 48 feet, inclusive of the load carried thereon but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Truck tractor-semitrailer combinations shall be afforded reasonable access to terminals; facilities for food, fuel, repairs, and rest; and points of loading and unloading.

2. A semitrailer which is more than 48 feet but not more than 57 ~~53~~ feet in extreme overall outside dimension, as measured pursuant to subparagraph 1., may operate on public roads, except roads on the State Highway System which are

restricted by the Department of Transportation or other roads restricted by local authorities, if:

a. The distance between the kingpin or other peg that locks into the fifth wheel of a truck tractor and the center of the rear axle or rear group of axles does not exceed 41 feet, or, in the case of a semitrailer used exclusively or primarily to transport vehicles in connection with motorsports competition events, the distance does not exceed 46 feet from the kingpin to the center of the rear axles; and

b. It is equipped with a substantial rear-end underride protection device meeting the requirements of 49 C.F.R. s. 393.86, "Rear End Protection."

(14) MANUFACTURED BUILDINGS.—The Department of Transportation may, in its discretion and upon application and good cause shown therefor that the same is not contrary to the public interest, issue a special permit for truck tractor-semitrailer combinations where the total number of overwidth deliveries of manufactured buildings, as defined in s. 553.36(13), may be reduced by permitting the use of multiple sections or single units on an overlength trailer of no more than 80 ~~54~~ feet.

Section 12. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle, as defined in s. 316.003(66), to determine if its gross weight is

in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle, as defined in s. 316.003(66), is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003(94), or operating on designated routes to a port-of-entry location, which obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5 cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment as defined in s. 316.003(48), which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or

operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 13. Section 333.01, Florida Statutes, is amended to read:

333.01 Definitions.—For the purpose of this chapter, the following words, terms, and phrases shall have the following meanings ~~herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires~~:

(1) "Aeronautical study" means a Federal Aviation Administration review conducted pursuant to 14 C.F.R. part 77, concerning the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft. ~~"Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.~~

(2) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and

utilized or to be utilized in the interest of the public for such purpose.

(3) "Airport hazard" means any obstruction that exceeds ~~structure or tree or use of land which would exceed~~ the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and 77.29~~ and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing, or that is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has ~~previously~~ obtained a permit ~~or variance~~ pursuant to s. 333.025 or s. 333.07.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established ~~if not prevented as provided in this chapter~~.

(5) "Airport land use compatibility zoning" means airport zoning regulations governing ~~restricting~~ the use of land adjacent to or in the immediate vicinity of airports in the manner provided ~~enumerated~~ in ss. 333.03(2) ~~s. 333.03(2) to activities~~ and (3) ~~purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare~~.

(6) "Airport layout plan" means a scaled ~~detailed, scale engineering~~ drawing or set of drawings in either paper or electronic form of the existing~~, including pertinent dimensions, of an airport's current~~ and planned airport facilities which provides a graphic representation of the existing and long-term development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency

of the airport~~, their locations, and runway usage~~.

(7) "Airport master plan" means a comprehensive plan for an airport that describes the immediate and long-term development plans to meet future aviation demand.

(8) "Airport protection zoning" means airport zoning regulations governing airport hazards in the manner provided in s. 333.03.

(9) "Department" means the Department of Transportation as created by s. 20.23.

(10) "Educational facility" means any structure, land, or use thereof that includes a public or private kindergarten through grade 12 school, charter school, magnet school, college campus, or university campus. Space used for educational purposes within a multitenant building may not be treated as an educational facility for the purpose of this chapter.

(11) "Landfill" has the same meaning as in s. 403.703.

(12)~~(7)~~ "Obstruction" means any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including existing or proposed appurtenances, or lateral dimensions, including equipment or material used therein, which exceeds ~~existing or proposed manmade object or object of natural growth or terrain that violates~~ the standards contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and 77.29~~.

(13)~~(8)~~ "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or

body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(14)~~(9)~~ "Political subdivision" means the local government of any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(15) "Public-use airport" means an airport, publicly or privately owned and licensed by the state, which is open for use by the public.

(16)~~(10)~~ "Runway protection ~~clear~~ zone" or "RPZ" means an area at ground level beyond the ~~a~~ runway end which is intended to enhance the safety and protection of people and property on the ground ~~clear zone as defined in 14 C.F.R. s. 151.9(b)~~.

(17)~~(11)~~ "Structure" means any object, constructed, erected, altered, or installed ~~by humans~~, including, but without limitation ~~thereof~~, buildings, towers, smokestacks, utility poles, power generation equipment, and overhead transmission lines.

(18) "Substantial modification" means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

~~(12) "Tree" includes any plant of the vegetable kingdom.~~

Section 14. Section 333.025, Florida Statutes, is amended to read:

333.025 Permit required for structures exceeding federal obstruction standards.—

(1) A person proposing the construction or alteration ~~In order to prevent the erection~~ of structures hazardous ~~dangerous~~ to air navigation, subject to the provisions of subsections (2), (3), and (4), must ~~each person shall~~ secure from the department ~~of Transportation~~ a permit for the proposed construction or ~~erection,~~ alteration~~, or modification~~ of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and 77.29~~. However, permits from the department ~~of Transportation~~ will be required only within an airport hazard area where federal obstruction standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the airport reference point, located at the approximate geometric ~~geographical~~ center of all useable runways of public-use airports or ~~a publicly owned or operated airport,~~ a military airport~~, or an airport licensed by the state for public use~~.

(2) Existing, planned, and proposed ~~Affected airports will be considered as having those~~ facilities at public-use airports contained in an ~~which are shown on the~~ airport master plan, on ~~or~~ an airport layout plan submitted to the Federal Aviation Administration Airport District Office, or in comparable military documents~~, and~~ will be ~~so~~ protected from structures that exceed federal obstruction standards. ~~Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal Aviation Administration or to the Department of Transportation shall also be protected.~~

(3) Permit requirements of subsection (1) do ~~shall~~ not apply to structures ~~projects~~ which received construction permits

from the Federal Communications Commission for structures exceeding federal obstruction standards prior to May 20, 1975~~, provided such structures now exist~~; nor does subsection (1) ~~shall it~~ apply to previously approved structures now existing, or any necessary replacement or repairs to such existing structures, so long as the height and location is unchanged.

(4) When political subdivisions have adopted adequate airport ~~airspace~~ protection zoning regulations in compliance with s. 333.03~~,~~ and such regulations are on file with the department ~~of Transportation~~, and have established a permitting process in compliance with s. 333.09(2), a permit for such structure shall not be required from the department ~~of Transportation~~. To evaluate technical consistency with this section, there is a 15-day department review period concurrent with the permitting process prescribed by s. 333.09. Upon receipt of a complete permit application, the local government shall forward to the department's Aviation Office by certified mail, return receipt requested, or by delivery service that provides a receipt evidencing delivery, a copy of the application. Cranes, construction equipment, and other temporary structures, in use or in place for a period not to exceed 18 consecutive months, are exempt from this requirement, unless requested by the department's Aviation Office.

(5) The department ~~of Transportation~~ shall, within 30 days of the receipt of an application for a permit, issue or deny a permit for the construction or ~~erection,~~ alteration~~, or modification~~ of any structure ~~the result of~~ which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25,~~

77.28, and 77.29. The department shall review permit applications in conformity with s. 120.60.

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The safety of persons on the ground and in the air The nature of the terrain and height of existing structures.

(b) The safe and efficient use of navigable airspace Public and private interests and investments.

(c) The nature of the terrain and height of existing structures The character of flying operations and planned developments of airports.

(d) Whether the construction of the proposed structure would impact the state licensing standards for a public-use airport, contained in chapter 330 and chapter 14-60, Florida Administrative Code Federal airways as designated by the Federal Aviation Administration.

(e) The character of existing and planned flight operations and developments at public-use airports Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.

(f) Federal airways; visual flight rules, flyways and corridors; and instrument approaches as designated by the Federal Aviation Administration Technological advances.

(g) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport The safety of persons on the ground and in the air.

(h) The cumulative effects on navigable airspace of all existing structures and all other known and proposed structures

in the area Land use density.

(i) The safe and efficient use of navigable airspace.

(j) The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

(7) When issuing a permit under this section, the department of Transportation shall, as a specific condition of such permit, require the owner obstruction marking and lighting of the permitted structure or vegetation to install, operate, and maintain thereon, at his or her own expense, marking and lighting in conformance with the specific standards established by the Federal Aviation Administration structure as provided in s. 333.07(3)(b).

(8) The department may of Transportation shall not approve a permit for the construction or alteration erection of a structure unless the applicant submits both documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study evaluation, and no permit shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, or 77.23 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation.

(9) The denial of a permit under this section is subject to the administrative review provisions of chapter 120.

Section 15. Section 333.03, Florida Statutes, is amended to read:

333.03 Requirement Power to adopt airport zoning

regulations.—

(1)(a) Every ~~In order to prevent the creation or establishment of airport hazards, every~~ political subdivision having an airport hazard area within its territorial limits shall~~, by October 1, 1977,~~ adopt, administer, and enforce~~, under the police power and~~ in the manner and upon the conditions ~~hereinafter~~ prescribed in this section, airport protection zoning regulations for ~~such~~ airport hazards ~~hazard area~~.

(b) Where an airport is owned or controlled by a political subdivision and an ~~any~~ airport hazard area ~~appertaining to such airport~~ is located wholly or partly outside the territorial limits of the ~~said~~ political subdivision, the political subdivision owning or controlling the airport and any ~~the~~ political subdivision within which the airport hazard area is located, must ~~shall~~ either:

1. By interlocal agreement, ~~in accordance with the provisions of chapter 163,~~ adopt, administer, and enforce a set of airport protection zoning regulations applicable to the airport hazard area ~~in question~~; or

2. By ordinance, regulation, or resolution duly adopted, create a joint airport zoning board, which must ~~board shall have the same power to~~ adopt, administer, and enforce a set of airport protection zoning regulations applicable to the airport hazard area in each ~~question as that vested in paragraph (a) in the~~ political subdivision in ~~within~~ which the airport hazard ~~such~~ area is located. Each such joint airport zoning board shall have as members two representatives appointed by each participating political subdivision ~~participating in its creation~~ and, in addition, a chair elected by a majority of the

members so appointed. The ~~However, the~~ airport manager or representative of each airport in ~~managers of~~ the ~~affected~~ participating political subdivisions shall serve on the board in a nonvoting capacity.

(c) Airport protection zoning regulations adopted under paragraph (a) must ~~shall~~, at ~~as a~~ minimum, require:

1. A permit ~~variance~~ for the ~~erection,~~ construction or alteration~~, or modification~~ of any structure that ~~which~~ would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23. ~~77.21, 77.23, 77.25, 77.28, and 77.29;~~

2. Obstruction marking and lighting for structures exceeding the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23, as specified in s. 333.07(3).~~;~~

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study ~~evaluation~~ submitted by each person applying for a permit. ~~variance;~~

4. Consideration of the criteria in s. 333.025(6), when determining whether to issue or deny a permit. ~~variance; and~~

5. That a permit may not ~~no variance shall~~ be approved solely on the basis that the ~~such~~ proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, or 77.23 ~~77.21, 77.23, 77.25, 77.28, or 77.29~~, or any other federal aviation regulation.

(d) The department is available to provide assistance to political subdivisions with regard to federal obstruction standards ~~shall issue copies of the federal obstruction~~

~~standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients~~.

(2) In the manner provided in subsection (1), ~~interim~~ airport land use compatibility zoning regulations must ~~shall~~ be adopted, administered, and enforced. Airport land-use compatibility zoning ~~When political subdivisions have adopted land development~~ regulations must, at a minimum, ~~in accordance with the provisions of chapter 163 which~~ address the ~~use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider the~~ following:

(a) Prohibiting any new and restricting any existing ~~Whether sanitary~~ landfills ~~are located~~ within the following areas:

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbine ~~turbojet or turboprop~~ aircraft.

2. Within 5,000 feet from the nearest point of any runway used only by nonturbine ~~piston-type~~ aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. part 77.19 ~~77.25~~. Case-by-case review of such landfills is advised.

(b) Where ~~Whether~~ any landfill is located and constructed so that it attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft, ~~. The political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body, shall consider whether~~ the landfill operator will be required to incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. ~~The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.~~

(c) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has conducted a noise study in accordance with the provisions of 14 C.F.R. part 150, or where the public-use airport owner has established noise contours pursuant to another public study approved by the Federal Aviation Administration, incompatible uses, as established in 14 C.F.R. part 150, appendix A noise study, or as a part of an alternative FAA-approved public study, may not be permitted within the noise contours established by that study, except where such use is specifically contemplated by such study with appropriate mitigation or similar techniques described in the study ~~neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that~~

~~is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies~~.

(d) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has not conducted a noise study, neither residential construction nor any educational facility ~~as defined in chapter 1013~~, with the exception of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

(3) In the manner provided in subsection (1), airport zoning regulations ~~shall be adopted~~ which restrict new incompatible uses~~, activities,~~ or substantial modifications to existing incompatible uses ~~construction~~ within runway protection ~~clear~~ zones shall be adopted ~~, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway~~. ~~Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing~~

~~the construction outweigh health and safety concerns prohibiting such a location.~~

~~(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.~~

(4)~~(5)~~ The department ~~of Transportation~~ shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning regulation ~~code~~. A copy of all local airport zoning codes, rules, ~~and~~ regulations, and amendments and proposed and granted permits ~~variances thereto,~~ shall be filed with the department. All updates and amendments to local airport zoning codes, rules, and regulations must be filed with the department within 30 days after adoption.

(5)~~(6)~~ ~~Nothing in~~ Subsection (2) and ~~or~~ subsection (3) may not ~~shall be construed to~~ require the removal, alteration, sound conditioning, or other change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993~~, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, as of July 1, 1993~~.

(6) This section may not preclude an airport authority, local government, or other governing body operating a public-use airport from establishing airport protection zoning regulations more restrictive than herein prescribed in order to protect the safety and welfare of the public in the air and on the ground.

Section 16. Section 333.04, Florida Statutes, is amended to

read:

333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—

(1) INCORPORATION.—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive plan or policy ~~zoning ordinance~~ regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive plans or policies ~~zoning regulations~~, and be administered and enforced in connection therewith.

(2) CONFLICT.—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or vegetation ~~trees~~, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Section 17. Section 333.05, Florida Statutes, is amended to read:

333.05 Procedure for adoption of zoning regulations.—

(1) NOTICE AND HEARING.—~~No~~ Airport zoning regulations may not ~~shall~~ be adopted, amended, or deleted ~~changed~~ under this chapter except by action of the legislative body of the political subdivision ~~in question~~, or the joint board provided in s. 333.03(1)(b) by the political subdivisions ~~bodies~~ therein

provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in an official paper, or a paper of general circulation, in the political subdivision or subdivisions where ~~in which are located~~ the airport zoning regulations are ~~areas~~ to be adopted, amended, or deleted ~~zoned~~.

(2) AIRPORT ZONING COMMISSION.—Prior to the initial zoning of any airport area under this chapter the political subdivision or joint airport zoning board which is to adopt, administer, and enforce the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take any action until it has received the final report of such commission, and at least 15 days shall elapse between the receipt of the final report of the commission and the hearing to be held by the latter board. Where a planning ~~city plan~~ commission, airport commission, or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Section 18. Section 333.06, Florida Statutes, is amended to read:

333.06 Airport zoning requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted

under this chapter shall be reasonable and ~~none~~ shall not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area and runway protection ~~clear~~ zones, the character of the neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) INDEPENDENT JUSTIFICATION.—The purpose of all airport zoning regulations adopted under this chapter is to provide both airspace protection and land uses ~~use~~ compatible with airport operations. Each aspect of this purpose requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway protection ~~clear~~ zone which does not exceed airspace height restrictions is not conclusive ~~evidence per se~~ that such use, activity, or construction is compatible with airport operations.

(3) NONCONFORMING USES.—No airport protection zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or vegetation ~~tree~~ not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

(4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED

LOCAL GOVERNMENTS.—An airport master plan shall be prepared by each public-use ~~publicly owned and operated~~ airport licensed by the department ~~of Transportation~~ under chapter 330. The authorized entity having responsibility for governing the operation of the airport, when either requesting from or submitting to a state or federal governmental agency with funding or approval jurisdiction a "finding of no significant impact," an environmental assessment, a site-selection study, an airport master plan, or any amendment to an airport master plan, shall submit simultaneously a copy of said request, submittal, assessment, study, plan, or amendments by certified mail to all affected local governments. For the purposes of this subsection, "affected local government" is defined as any city or county having jurisdiction over the airport and any city or county located within 2 miles of the boundaries of the land subject to the airport master plan.

Section 19. Section 333.065, Florida Statutes, is repealed.

Section 20. Section 333.07, Florida Statutes, is amended to read:

333.07 Local government permitting of airspace obstructions ~~Permits and variances~~.—

(1) PERMITS.—

(a) Any person proposing to erect, construct, or alter any structure, increase the height of any structure, permit the growth of any vegetation, or otherwise use his or her property in violation of the airport protection zoning regulations adopted under this chapter shall apply for a permit. A ~~Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or~~

~~use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No~~ permit may not ~~shall~~ be issued ~~granted~~ that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or vegetation ~~tree~~ or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(b) Whenever the political subdivision or its administrative agency determines that a nonconforming use or nonconforming structure or vegetation ~~tree~~ has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, a ~~no~~ permit may not ~~shall~~ be granted that would allow the ~~said~~ structure or vegetation ~~tree~~ to exceed the applicable height limit or otherwise deviate from the zoning regulations.~~,~~ ~~and,~~ Whether an application is made for a permit under this subsection or not, the ~~said agency may by appropriate action, compel the~~ owner of the nonconforming structure or vegetation may be required ~~tree~~, at his or her own expense, to lower, remove, reconstruct, alter, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or vegetation neglects or refuses ~~tree~~

~~shall neglect or refuse~~ to comply with the ~~such~~ order for 10 days after notice ~~thereof~~, the ~~said~~ agency may report the violation to the political subdivision involved therein. The~~,~~ ~~which~~ subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, altered, or equipped, and assess the cost and expense thereof upon the object or the land where ~~whereon~~ it is or was located~~, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85~~.

~~(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.~~

(2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.—In determining whether to issue or deny a permit, the political subdivision or its administrative agency must consider the following, as applicable:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c) The nature of the terrain and height of existing structures.

(d) The construction or alteration of the proposed

structure on the state licensing standards for a public-use airport, contained in chapter 330 and chapter 14-60 of the Florida Administrative Code.

(e) The character of existing and planned flight operations and developments at public-use airports.

(f) Federal airways; visual flight rules, flyways and corridors; and instrument approaches as designated by the Federal Aviation Administration.

(g) The construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.

(h) The cumulative effects on navigable airspace of all existing structures, and all other known proposed structures in the area.

(i) Requirements contained in s. 333.03(2) and (3).

(j) Additional requirements adopted by the local jurisdiction pertinent to evaluation and protection of airspace and airport operations.

~~(2) VARIANCES.—~~

~~(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The~~

~~department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.~~

~~(b) The Department of Transportation shall have the authority to appeal any variance granted under this chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.~~

(3) OBSTRUCTION MARKING AND LIGHTING.—

(a) In issuing a ~~granting any~~ permit ~~or variance~~ under this section, the political subdivision or its administrative agency ~~or board of adjustment~~ shall require the owner of the structure

or vegetation ~~tree in question~~ to install, operate, and maintain thereon, at his or her own expense, ~~such~~ marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~as may be necessary to indicate to aircraft pilots the presence of an obstruction~~.

(b) Such marking and lighting shall conform to the specific standards established by rule by the department ~~of Transportation~~.

~~(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.~~

Section 21. Section 333.08, Florida Statutes, is repealed.

Section 22. Section 333.09, Florida Statutes, is amended to read:

333.09 Administration of airport zoning regulations.—

(1) ADMINISTRATION AND ENFORCEMENT.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by the political subdivisions or their ~~by an~~ administrative agency ~~which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment~~. The duties of any administrative agency designated

pursuant to this chapter shall include that of hearing and deciding all permits under s. 333.07 ~~s. 333.07(1), deciding all matters under s. 333.07(3),~~ as they pertain to such agency, and all other matters under this chapter applying to said agency~~,~~ ~~but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment~~.

(2) LOCAL GOVERNMENT PROCESS.—

(a) Any political subdivision required to adopt airport zoning regulations under this chapter must provide a process to:

1. Issue or deny permits consistent with s. 333.07, including requests for exceptions to airport zoning regulations.

2. Notify the department of receipt of a complete permit application consistent with s. 333.025(4).

3. Enforce any permit, order, requirement, decision, or determination made by the administrative agency with respect to the airport zoning regulations.

(b) Where a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the permitting and appeals process. Otherwise, the political subdivision shall implement the permitting and appeals process in a manner consistent with its constitutional powers and areas of jurisdiction.

(3) APPEALS.—

(a) Any person, political subdivision or its administrative agency, or any joint airport zoning board, which contends that the decision made by a political subdivision or its administrative agency is an improper application of airport zoning regulations may use the process established for an appeal.

(b) All appeals taken under this section must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing with the entity from which appeal is taken a notice of appeal specifying the grounds for appeal.

(c) An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies pursuant to the rules for appeal that by reason of the facts stated in the certificate, a stay would, in its opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by an order of the political subdivision or its administrative agency following notice to the entity from which the appeal is taken and on good cause shown.

(d) The political subdivision or its administrative agency must set a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, a party may appear in person, by agent, or by attorney.

(e) The political subdivision or its administrative agency may, in conformity with the provisions of this chapter, reverse, affirm, or modify the underlying order, requirement, decision, or determination from which the appeal is taken.

Section 23. Section 333.10, Florida Statutes, is repealed.

Section 24. Section 333.11, Florida Statutes, is amended to read:

333.11 Judicial review.—

(1) Any person, ~~aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a~~

political subdivision or its administrative agency, or ~~the Department of Transportation or~~ any joint airport zoning board affected by a decision of a political subdivision~~,~~ or its ~~of any~~ administrative agency ~~hereunder~~, may apply for judicial relief to the circuit court in the judicial circuit where the political subdivision ~~board of adjustment~~ is located within 30 days after rendition of the decision ~~by the board of adjustment~~. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

~~(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.~~

~~(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

(2) ~~(4)~~ The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review~~, in whole or in part,~~ and if need be, to order further proceedings by the political subdivision or its administrative agency ~~board of adjustment~~. The findings of fact by the political subdivision or its administrative agency ~~board~~, if supported by substantial evidence, shall be accepted by the

court as conclusive. An~~, and no~~ objection to a decision of the political subdivision or its administrative agency may not ~~board shall~~ be considered by the court unless such objection was raised in the underlying proceeding ~~shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so~~.

(3)~~(5)~~ If ~~In any case in which~~ airport zoning regulations adopted under this chapter~~, although generally reasonable,~~ are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(4)~~(6)~~ ~~No~~ Judicial appeal ~~shall be or~~ is not permitted under this section~~,~~ to any courts until the appellant has exhausted all its remedies through application for local government permits, exceptions, and appeals~~, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his or her remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder~~.

Section 25. Section 333.12, Florida Statutes, is amended to

read:

333.12 Acquisition of air rights.—When ~~In any case which: it is desired to remove, lower or otherwise terminate~~ a nonconforming structure or use presents an air hazard and the structure cannot be removed, lowered, or otherwise terminated; or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such air right, avigation ~~navigation~~ easement conveying the airspace over another property for use by the airport, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, vegetation ~~tree~~, structure, or use, in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property, ~~or any~~ easement, or estate or interest therein or the acquisition of the same by the power of eminent domain, the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury, or destruction of property also pay the cost

of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

Section 26. Section 333.135, Florida Statutes, is created to read:

333.135 Transition provisions.—

(1) A provision of an airport zoning regulation in effect on July 1, 2015, that conflicts with this chapter must be amended to conform to the requirements of this chapter by July 1, 2016.

(2) By October 1, 2017, a political subdivision having an airport within its territorial limits, which has not adopted airport zoning regulations, must adopt airport zoning regulations which are consistent with this chapter.

(3) For those political subdivisions that have not yet adopted airport zoning regulations pursuant to this chapter, the department shall administer the permitting process as provided in s. 333.025.

Section 27. Section 333.14, Florida Statutes, is repealed.

Section 28. Subsections (36) and (37) of section 334.03, Florida Statutes, are amended to read:

334.03 Definitions.—When used in the Florida Transportation Code, the term:

(36) "511" or "511 services" means all ~~three-digit telecommunications dialing to access interactive voice response telephone~~ traveler information services provided in the state to include, but not be limited to, the terms ~~as~~ defined by the Federal Communications Commission in FCC Order No. 00-256, July 31, 2000.

~~(37) "Interactive voice response" means a software~~

~~application that accepts a combination of voice telephone input and touch-tone keypad selection and provides appropriate responses in the form of voice, fax, callback, e-mail, and other media.~~

Section 29. Subsection (31) of section 334.044, Florida Statutes, is amended, and subsection (34) of that section is created, to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(31) To provide oversight of traveler information systems ~~that may include the provision of interactive voice response telephone systems accessible~~ via ~~the~~ 511 services ~~number~~ as assigned by the Federal Communications Commission for traveler information services. The department shall ensure that uniform standards and criteria for the collection and dissemination of traveler information are applied ~~using interactive voice response systems~~.

(34) The department may assume responsibilities of the United States Department of Transportation with respect to highway projects within the state under the National Environmental Policy Act of 1969 (42 U.S.C. s. 4321 et seq.) and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project within the state. The department may assume responsibilities under 23 U.S.C. s. 327 and enter into one or more agreements, including memoranda of understanding, with the United States Secretary of Transportation related to the federal surface transportation project delivery program for the delivery

of highway projects, as provided by 23 U.S.C. s. 327. The department may adopt rules to implement this subsection and may adopt relevant federal environmental standards as the standards for this state for a program described in this subsection. Sovereign immunity to civil suit in federal court is waived consistent with 23 U.S.C. s. 327 and limited to the compliance, discharge, or enforcement of a responsibility assumed by the department under this subsection.

Section 30. Section 334.60, Florida Statutes, is amended to read:

334.60 511 traveler information system.—The department is the state's lead agency for implementing 511 services and is the state's point of contact for coordinating all 511 services ~~with telecommunications service providers~~.

(1) The department shall:

(a) ~~(1)~~ Implement and administer 511 services in the state;

(b) ~~(2)~~ Coordinate with other transportation authorities in the state to provide multimodal traveler information through 511 services and other means;

(c) ~~(3)~~ Develop uniform standards and criteria for the collection and dissemination of traveler information using ~~the~~ 511 services ~~number or other interactive voice response systems~~; and

(d) ~~(4)~~ Enter into joint participation agreements or contracts with highway authorities and public transit districts to share the costs of implementing and administering 511 services in the state. The department may also enter into other agreements or contracts with private firms relating to the 511 services to offset the costs of implementing and administering

511 services in the state.

(2) The department shall adopt rules to administer the coordination of 511 traveler information ~~phone~~ services in the state.

Section 31. Subsections (3) and (4) of section 335.065, Florida Statutes, are amended to read:

335.065 Bicycle and pedestrian ways along state roads and transportation facilities.—

(3) The department, in cooperation with the Department of Environmental Protection, shall establish a statewide integrated system of bicycle and pedestrian ways in such a manner as to take full advantage of any such ways which are maintained by any governmental entity. ~~The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship displays on multiuse trails and related facilities and use any concession agreement revenues for the maintenance of the multiuse trails and related facilities. Commercial sponsorship displays are subject to the requirements of the Highway Beautification Act of 1965 and all federal laws and agreements, when applicable. For the purposes of this section, bicycle facilities may be established as part of or separate from the actual roadway and may utilize existing road rights-of-way or other rights-of-way or easements acquired for public use.~~

~~(a) A concession agreement shall be administered by the department and must include the requirements of this section.~~

~~(b)1. Signage or displays erected under this section shall comply with s. 337.407 and chapter 479 and shall be limited as follows:~~

~~a. One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.~~

~~b. One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.~~

~~2. Before installation, each name or sponsorship display must be approved by the department.~~

~~3. The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:~~

~~...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....~~

~~4. All costs of a display, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.~~

~~(c) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or this section.~~

~~(4)(a) The department may use appropriated funds to support~~

~~the establishment of a statewide system of interconnected multiuse trails and to pay the costs of planning, land acquisition, design, and construction of such trails and related facilities. The department shall give funding priority to projects that:~~

~~1. Are identified by the Florida Greenways and Trails Council as a priority within the Florida Greenways and Trails System under chapter 260.~~

~~2. Support the transportation needs of bicyclists and pedestrians.~~

~~3. Have national, statewide, or regional importance.~~

~~4. Facilitate an interconnected system of trails by completing gaps between existing trails.~~

~~(b) A project funded under this subsection shall:~~

~~1. Be included in the department's work program developed in accordance with s. 339.135.~~

~~2. Be operated and maintained by an entity other than the department upon completion of construction. The department is not obligated to provide funds for the operation and maintenance of the project.~~

Section 32. Subsection (4) of section 338.165, Florida Statutes, is amended to read:

338.165 Continuation of tolls.—

(4) Notwithstanding any other law to the contrary, pursuant to s. 11, Art. VII of the State Constitution, and subject to the requirements of subsection (2), the Department of Transportation may request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge~~, the Beeline-East Expressway, the Navarre Bridge,~~

and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program of the department.

Section 33. Subsection (5) is added to section 338.227, Florida Statutes, to read:

338.227 Turnpike revenue bonds.—

(5) Notwithstanding s. 215.82, bonds issued pursuant to this section are not required to be validated pursuant to chapter 75, but may be validated at the option of the Division of Bond Finance. Any complaint for such validation must be filed in the circuit court of the county where the seat of state government is situated. The notice required to be published by s. 75.06 must be published only in the county where the complaint is filed. The complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending.

Section 34. Paragraph (c) of subsection (3) of section 338.231, Florida Statutes, and subsections (5) and (6) of that section, are amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.—The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

(3)

(c) Notwithstanding any other provision of law to the contrary, any prepaid toll account of any kind which has remained inactive for 10 ~~3~~ years shall be presumed unclaimed and its disposition shall be handled by the Department of Financial Services in accordance with all applicable provisions of chapter 717 relating to the disposition of unclaimed property, and the prepaid toll account shall be closed by the department.

~~(5) In each fiscal year while any of the bonds of the Broward County Expressway Authority series 1984 and series 1986-A remain outstanding, the department is authorized to pledge revenues from the turnpike system to the payment of principal and interest of such series of bonds and the operation and maintenance expenses of the Sawgrass Expressway, to the extent gross toll revenues of the Sawgrass Expressway are insufficient to make such payments. The terms of an agreement relative to the pledge of turnpike system revenue will be negotiated with the parties of the 1984 and 1986 Broward County Expressway Authority lease-purchase agreements, and subject to the covenants of those agreements. The agreement must establish that the Sawgrass Expressway is subject to the planning, management, and operating control of the department limited only by the terms of the lease-purchase agreements. The department shall provide for the payment of operation and maintenance expenses of the Sawgrass Expressway until such agreement is in effect. This pledge of turnpike system revenues is subordinate to the debt service requirements of any future issue of turnpike bonds, the payment of turnpike system operation and maintenance expenses, and subject to any subsequent resolution or trust indenture relating~~

~~to the issuance of such turnpike bonds.~~

(5) ~~(6)~~ The use and disposition of revenues pledged to bonds are subject to ss. 338.22-338.241 and such regulations as the resolution authorizing the issuance of the bonds or such trust agreement may provide.

Section 35. Paragraph (c) of subsection (7) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(7) LONG-RANGE TRANSPORTATION PLAN.—Each M.P.O. must develop a long-range transportation plan that addresses at least a 20-year planning horizon. The plan must include both long-range and short-range strategies and must comply with all other state and federal requirements. The prevailing principles to be considered in the long-range transportation plan are: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the M.P.O. Each M.P.O. is encouraged to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

(c) Assess capital investment and other measures necessary

to:

1. Ensure the preservation of the existing metropolitan transportation system including requirements for the operation, resurfacing, restoration, and rehabilitation of major roadways and requirements for the operation, maintenance, modernization, and rehabilitation of public transportation facilities; and

2. Make the most efficient use of existing transportation facilities to relieve vehicular congestion, improve safety, and maximize the mobility of people and goods. Such efforts shall include, but not be limited to, consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments.

In the development of its long-range transportation plan, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan. The long-range transportation plan must be approved by the M.P.O.

Section 36. Paragraph (c) is added to subsection (3) of section 339.64, Florida Statutes, and paragraph (a) of subsection (4) of that section is amended, to read:

339.64 Strategic Intermodal System Plan.—

(3)

(c) The department also shall coordinate with federal,

regional, and local partners, as well as industry representatives, to consider infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments, in Strategic Intermodal System facilities.

(4) The Strategic Intermodal System Plan shall include the following:

(a) A needs assessment. Such assessment shall include, but not be limited to, consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments.

Section 37. Section 339.81, Florida Statutes, is created to read:

339.81 Florida Shared-Use Nonmotorized Trail Network.—

(1) The Legislature finds that increasing demands continue to be placed on the state's transportation system by a growing economy, continued population growth, and increasing tourism. The Legislature also finds that significant challenges exist in providing additional capacity to the conventional transportation system and will require enhanced accommodation of alternative travel modes to meet the needs of residents and visitors. The Legislature further finds that improving bicyclist and pedestrian safety for both residents and visitors remains a high priority. Therefore, the Legislature declares that the development of a nonmotorized trail network will increase mobility and recreational alternatives for residents and visitors of this state, enhance economic prosperity, enrich quality of life, enhance safety, and reflect responsible

environmental stewardship. To that end, it is the intent of the Legislature that the department make use of its expertise in efficiently providing transportation projects to develop the Florida Shared-Use Nonmotorized Trail Network, consisting of a statewide network of nonmotorized trails which allows nonmotorized vehicles and pedestrians to access a variety of origins and destinations with limited exposure to motorized vehicles.

(2) The Florida Shared-Use Nonmotorized Trail Network is created as a component of the Florida Greenways and Trails System established in chapter 260. The statewide network consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provides nonmotorized transportation opportunities for bicyclists and pedestrians statewide between and within a wide range of points of origin and destinations, including, but not limited to, communities, conservation areas, state parks, beaches, and other natural or cultural attractions for a variety of trip purposes, including work, school, shopping, and other personal business, as well as social, recreational, and personal fitness purposes.

(3) Network components do not include sidewalks, nature trails, loop trails wholly within a single park or natural area, or on-road facilities, such as bicycle lanes or routes other than:

(a) On-road facilities that are no longer than one-half mile connecting two or more nonmotorized trails, if the

provision of a non-motorized trail without the use of the on-road facility is not feasible, and if such on-road facilities are signed and marked for nonmotorized use; or

(b) On-road components of the Florida Keys Overseas Heritage Trail.

(4) The planning, development, operation, and maintenance of the Florida Shared-Use Nonmotorized Trail Network is declared to be a public purpose, and the department, together with other agencies of this state and all counties, municipalities, and special districts of this state, may spend public funds for such purposes and accept gifts and grants of funds, property, or property rights from public or private sources to be used for such purposes.

(5) The department shall include the Florida Shared-Use Nonmotorized Trail Network in its work program developed pursuant to s. 339.135. For purposes of funding and maintaining projects within the network, the department shall allocate in its program and resource plan a minimum of $50 million annually, beginning in the 2015-2016 fiscal year.

(6) The department may enter into a memorandum of agreement with a local government or other agency of the state to transfer maintenance responsibilities of an individual network component. The department may contract with a not-for-profit entity or private sector business or entity to provide maintenance services on an individual network component.

(7) The department may adopt rules to aid in the development and maintenance of components of the network.

Section 38. Section 339.82, Florida Statutes, is created to read:

339.82 Shared-Use Nonmotorized Trail Network Plan.—

(1) The department shall develop a Shared-Use Nonmotorized Trail Network Plan in coordination with the Department of Environmental Protection, metropolitan planning organizations, affected local governments and public agencies, and the Florida Greenways and Trails Council. The plan must be consistent with the Florida Greenways and Trails Plan developed under s. 260.014 and must be updated at least once every 5 years.

(2) The Shared-Use Nonmotorized Trail Network Plan must include all of the following:

(a) A needs assessment, including, but not limited to, a comprehensive inventory and analysis of existing trails that may be considered for inclusion in the Shared-Use Nonmotorized Trail Network.

(b) A project prioritization process that includes assigning funding priority to projects that:

1. Are identified by the Florida Greenways and Trails Council as a priority within the Florida Greenways and Trails System under chapter 260;

2. Facilitate an interconnected network of trails by completing gaps between existing facilities; and

3. Maximize use of federal, local, and private funding and support mechanisms, including, but not limited to, donation of funds, real property, and maintenance responsibilities.

(c) A map illustrating existing and planned facilities and identifying critical gaps between facilities.

(d) A finance plan based on reasonable projections of anticipated revenues, including both 5-year and 10-year cost-feasible components.

(e) Performance measures that include quantifiable increases in trail network access and connectivity.

(f) A timeline for the completion of the base network using new and existing data from the department, the Department of Environmental Protection, and other sources.

(g) A marketing plan prepared in consultation with the Florida Tourism Industry Marketing Corporation.

Section 39. Section 339.83, Florida Statutes, is created to read:

339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

(1) The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship signs, pavement markings, and exhibits on nonmotorized trails and related facilities constructed as part of the Shared-Use Nonmotorized Trail Network. The concession agreement may also provide for recognition of trail sponsors in any brochure, map, or website providing trail information. Trail websites may provide links to sponsors. Revenue from such agreements may be used for the maintenance of the nonmotorized trails and related facilities.

(a) A concession agreement shall be administered by the department.

(b)1. Signage, pavement markings, or exhibits erected pursuant to this section must comply with s. 337.407 and chapter 479 and are limited as follows:

a. One large sign, pavement marking, or exhibit, not to exceed 16 square feet in area, may be located at each trailhead or parking area.

b. One small sign, pavement marking, or exhibit, not to

exceed 4 square feet in area, may be located at each designated trail public access point where parking is not provided.

c. Pavement markings denoting specified distances must be located at least 1 mile apart.

2. Before installation, each sign, pavement marking, or exhibit must be approved by the department.

3. The department shall ensure that the size, color, materials, construction, and location of all signs, pavement markings, and exhibits are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain a logo selected by the sponsor and the following sponsorship wording:

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

4. Exhibits may provide additional information and materials including, but not limited to, maps and brochures for trail user services related or proximate to the trail. Pavement markings may display mile marker information.

5. The costs of a sign, pavement marking, or exhibit, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.

(c) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for

termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or this section.

(2) Pursuant to s. 287.057, the department may contract for the provision of services related to the trail sponsorship program, including recruitment and qualification of businesses, review of applications, permit issuance, and fabrication, installation, and maintenance of signs, pavement markings, and exhibits. The department may reject all proposals and seek another request for proposals or otherwise perform the work. The contract may allow the contractor to retain a portion of the annual fees as compensation for its services.

(3) This section does not create a proprietary or compensable interest in any sponsorship site or location for any permittee, and the department may terminate permits or change locations of sponsorship sites as it determines necessary for construction or improvement of facilities.

(4) The department may adopt rules to establish requirements for qualification of businesses, qualification and location of sponsorship sites, and permit applications and processing. The department may adopt rules to establish other criteria necessary to implement this section and to provide for variances when necessary to serve the interest of the public or when required to ensure equitable treatment of program participants.

Section 40. (1) The Office of Economic and Demographic Research shall evaluate and determine the economic benefits, as defined in s. 288.005(1), Florida Statutes, of the state's investment in the Department of Transportation's adopted work

program developed in accordance with s. 339.135(5), Florida Statutes, for fiscal year 2015-2016, including the following 4 fiscal years. At a minimum, a separate return on investment shall be projected for each of the following areas:

(a) Roads and highways;
(b) Rails;
(c) Public transit;
(d) Aviation; and
(e) Seaports.

The analysis is limited to the funding anticipated by the adopted work program, but may address the continuing economic impact for those transportation projects in the 5 years beyond the conclusion of the adopted work program. The analysis must also evaluate the number of jobs created, the increase or decrease in personal income, and the impact on gross domestic product from the direct, indirect, and induced effects on the state's investment in each area.

(2) The Department of Transportation and each of its district offices shall provide the Office of Economic and Demographic Research full access to all data necessary to complete the analysis, including any confidential data.

(3) The Office of Economic and Demographic Research shall submit the analysis to the President of the Senate and the Speaker of the House of Representatives by January 1, 2016.

Section 41. Section 341.0532, Florida Statutes, is repealed.

Section 42. The Division of Law Revision and Information is directed to create chapter 345, Florida Statutes, consisting of

ss. 345.0001-345.0014, Florida Statutes, to be entitled the "Northwest Florida Regional Transportation Finance Authority."

Section 43. Section 345.0001, Florida Statutes, is created to read:

345.0001 Short title.—This act may be cited as the "Northwest Florida Regional Transportation Finance Authority Act."

Section 44. Section 345.0002, Florida Statutes, is created to read:

345.0002 Definitions.—As used in this chapter, the term:

(1) "Agency of the state" means the state and any department of, or any corporation, agency, or instrumentality created, designated, or established by, the state.

(2) "Area served" means Escambia County. However, upon a contiguous county's consent to inclusion within the area served by the authority and with the agreement of the authority, the term shall also include the geographical area of such county contiguous to Escambia County.

(3) "Authority" means the Northwest Florida Regional Transportation Finance Authority, a body politic and corporate, and an agency of the state, established under this chapter.

(4) "Bonds" means the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in temporary or definitive form, which the authority may issue under this chapter.

(5) "Department" means the Department of Transportation.

(6) "Division" means the Division of Bond Finance of the State Board of Administration.

(7) "Federal agency" means the United States, the President

of the United States, and any department of, or any bureau, corporation, agency, or instrumentality created, designated, or established by, the United States Government.

(8) "Members" means the governing body of the authority, and the term "member" means one of the individuals constituting such governing body.

(9) "Regional system" or "system" means, generally, a modern system of roads, bridges, causeways, tunnels, and mass transit services within the area of the authority, with access limited or unlimited as the authority may determine, and the buildings and structures and appurtenances and facilities related to the system, including all approaches, streets, roads, bridges, and avenues of access for the system.

(10) "Revenues" means the tolls, revenues, rates, fees, charges, receipts, rentals, contributions, and other income derived from or in connection with the operation or ownership of a regional system, including the proceeds of any use and occupancy insurance on any portion of the system, but excluding state funds available to the authority and any other municipal or county funds available to the authority under an agreement with a municipality or county.

Section 45. Section 18. Section 345.0003, Florida Statutes, is created to read:

345.0003 Regional transportation finance authority formation and membership.—

(1) Escambia County, alone or together with any consenting contiguous county, may form a regional finance authority for the purposes of constructing, maintaining, and operating transportation projects in the northwest region of this state.

The authority shall be governed in accordance with this chapter. The area served by the authority may not be expanded beyond Escambia County without the approval of the county commission of each contiguous county that will be a part of the authority.

(2) The governing body of the authority shall consist of a board of voting members as follows:

(a) The county commission of each county in the area served by the authority shall appoint two members. Each member must be a resident of the county from which he or she is appointed and, if possible, must represent the business and civic interests of the community.

(b) The Governor shall appoint an equal number of members to the board as those appointed by the county commissions. The members appointed by the Governor must be residents of the area served by the authority.

(c) The district secretary of the department serving in the district that includes Escambia County.

(3) The term of office of each member shall be for 4 years or until his or her successor is appointed and qualified.

(4) A member may not hold an elected office during the term of his or her membership.

(5) A vacancy occurring in the governing body before the expiration of the member's term shall be filled for the remainder of the unexpired term by the respective appointing authority in the same manner as the original appointment.

(6) Before entering upon his or her official duties, each member must take and subscribe to an oath before an official authorized by law to administer oaths that he or she will honestly, faithfully, and impartially perform the duties of his

or her office as a member of the governing body of the authority and that he or she will not neglect any duties imposed on him or her by this chapter.

(7) The Governor may remove from office a member of the authority for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(8) Members of the authority shall designate a chair from among the membership.

(9) Members of the authority shall serve without compensation, but are entitled to reimbursement for per diem and other expenses in accordance with s. 112.061 while in performance of their official duties.

(10) A majority of the members of the authority shall constitute a quorum, and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting are effective without publication, posting, or any further action of the authority.

Section 46. Section 345.0004, Florida Statutes, is created to read:

345.0004 Powers and duties.—

(1) The authority shall plan, develop, finance, construct, reconstruct, improve, own, operate, and maintain a regional system in the area served by the authority. The authority may not exercise these powers with respect to an existing system for transporting people and goods by any means that is owned by another entity without the consent of that entity. If the authority acquires, purchases, or inherits an existing entity, the authority shall inherit and assume all rights, assets, appropriations, privileges, and obligations of the existing

entity.

(2) The authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the purposes of this section, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts in its own name.

(b) To adopt and use a corporate seal.

(c) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(d) To acquire, purchase, hold, lease as a lessee, and use any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority.

(e) To sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by the authority, including air rights, which the authority and the department have determined is not needed for the construction, operation, and maintenance of the system.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the use of any system owned or operated by the authority, which rates, fees, rentals, and other charges must be sufficient to comply with any covenants made with the holders of any bonds issued under this act. This right and power may be assigned or delegated by the authority to the department.

(g) To borrow money; to make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, in temporary or definitive form, to finance all or

part of the improvement of the authority's system and appurtenant facilities, including the approaches, streets, roads, bridges, and avenues of access for the system and for any other purpose authorized by this chapter, the bonds to mature no more than 30 years after the date of the issuance; to secure the payment of such bonds or any part thereof by a pledge of its revenues, rates, fees, rentals, or other charges, including municipal or county funds received by the authority under an agreement between the authority and a municipality or county; and, in general, to provide for the security of the bonds and the rights and remedies of the holders of the bonds. However, municipal or county funds may not be pledged for the construction of a project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the governing board of the municipality or county, on the date of its resolution pledging the funds, to be sufficient to cover the principal and interest of such obligations during the period when the pledge of funds is in effect.

1. The authority shall reimburse a municipality or county for sums spent from municipal or county funds used for the payment of the bond obligations.

2. If the authority elects to fund or refund bonds issued by the authority before the maturity of the bonds, the proceeds of the funding or refunding bonds, pending the prior redemption of the bonds to be funded or refunded, shall be invested in direct obligations of the United States, and the outstanding bonds may be funded or refunded by the issuance of bonds under this chapter.

(h) To make contracts of every name and nature, including,

but not limited to, partnerships providing for participation in ownership and revenues, and to execute each instrument necessary or convenient for the conduct of its business.

(i) Without limitation of the foregoing, to cooperate with, to accept grants from, and to enter into contracts or other transactions with any federal agency, the state, or any agency or any other public body of the state.

(j) To employ an executive director, attorney, staff, and consultants. Upon the request of the authority, the department shall furnish the services of a department employee to act as the executive director of the authority.

(k) To accept funds or other property from private donations.

(l) To act and do things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this act or any other law.

(3) The authority may not pledge the credit or taxing power of the state or a political subdivision or agency of the state. Obligations of the authority may not be considered to be obligations of the state or of any other political subdivision or agency of the state. Except for the authority, the state or any political subdivision or agency of the state is not liable for the payment of the principal of or interest on such obligations.

(4) The authority may not, other than by consent of the affected county or an affected municipality, enter into an agreement that would legally prohibit the construction of a road by the county or the municipality.

(5) The authority shall comply with the statutory requirements of general application which relate to the filing of a report or documentation required by law, including the requirements of ss. 189.015, 189.016, 189.051, and 189.08.

Section 47. Section 345.0005, Florida Statutes, is created to read:

345.0005 Bonds.—

(1) Bonds may be issued on behalf of the authority pursuant to the State Bond Act in such principal amount as the authority determines is necessary to achieve its corporate purposes, including construction, reconstruction, improvement, extension, and repair of the regional system; the acquisition cost of real property; interest on bonds during construction and for a reasonable period thereafter; and establishment of reserves to secure bonds.

(2) Bonds issued on behalf of the authority under subsection (1) must:

(a) Be authorized by resolution of the members of the authority and bear such date or dates; mature at such time or times not exceeding 30 years after their respective dates; bear interest at a rate or rates not exceeding the maximum rate fixed by general law for authorities; be in such denominations; be in such form, either coupon or fully registered; carry such registration, exchangeability, and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption; and be entitled to such priorities of lien on the revenues and other available moneys as such resolution or any resolution after the bonds' issuance provides.

(b) Be sold at public sale in the manner provided in the State Bond Act. Temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds pending the preparation of definitive bonds and may contain such terms and conditions as determined by the authority.

(3) A resolution that authorizes bonds may specify provisions that must be part of the contract with the holders of the bonds as to:

(a) The pledging of all or any part of the revenues, available municipal or county funds, or other charges or receipts of the authority derived from the regional system.

(b) The construction, reconstruction, improvement, extension, repair, maintenance, and operation of the system, or any part or parts of the system, and the duties and obligations of the authority with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter issued, or of any loan or grant by any federal agency or the state or any political subdivision of the state may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing, and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the system or any part of the system.

(e) The setting aside of reserves or sinking funds and the regulation and disposition of such reserves or sinking funds.

(f) Limitations on the issuance of additional bonds.

(g) The terms of any deed of trust or indenture securing the bonds, or under which the bonds may be issued.

(h) Any other or additional matters, of like or different

character, which in any way affect the security or protection of the bonds.

(4) The authority may enter into deeds of trust, indentures, or other agreements with banks or trust companies within or without the state, as security for such bonds, and may, under such agreements, assign and pledge any of the revenues and other available moneys, including any available municipal or county funds, under the terms of this chapter. The deed of trust, indenture, or other agreement may contain provisions that are customary in such instruments or that the authority may authorize, including, but without limitation, provisions that:

(a) Pledge any part of the revenues or other moneys lawfully available.

(b) Apply funds and safeguard funds on hand or on deposit.

(c) Provide for the rights and remedies of the trustee and the holders of the bonds.

(d) Provide for the terms of the bonds or for resolutions authorizing the issuance of the bonds.

(e) Provide for any additional matters, of like or different character, which affect the security or protection of the bonds.

(5) Bonds issued under this act are negotiable instruments and have the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) A resolution that authorizes the issuance of authority bonds and pledges the revenues of the system must require that revenues of the system be periodically deposited into

appropriate accounts in sufficient sums to pay the costs of operation and maintenance of the system for the current fiscal year as set forth in the annual budget of the authority and to reimburse the department for any unreimbursed costs of operation and maintenance of the system from prior fiscal years before revenues of the system are deposited into accounts for the payment of interest or principal owing or that may become owing on such bonds.

(7) State funds may not be used or pledged to pay the principal of or interest on any authority bonds, and all such bonds must contain a statement on their face to this effect.

Section 48. Section 345.0006, Florida Statutes, is created to read:

345.0006 Remedies of bondholders.—

(1) The rights and the remedies granted to authority bondholders under this chapter are in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or indenture providing for the issuance of bonds, or by any deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If the authority defaults in the payment of the principal or interest on the bonds issued under this chapter after such principal or interest becomes due, whether at maturity or upon call for redemption, as provided in the resolution or indenture, and such default continues for 30 days, or if the authority fails or refuses to comply with this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding are entitled as of right to the appointment of a

trustee to represent such bondholders for the purposes of the default if the holders of 25 percent in aggregate principal amount of the bonds then outstanding first give written notice to the authority and to the department of their intention to appoint a trustee.

(2) The trustee and a trustee under a deed of trust, indenture, or other agreement may, or upon the written request of the holders of 25 percent or such other percentages specified in any deed of trust, indenture, or other agreement, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in its own name:

(a) By mandamus or other suit, action, or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) Bring suit upon the bonds.

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders.

(d) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

(3) A trustee, if appointed under this section or acting under a deed of trust, indenture, or other agreement, and

regardless of whether all bonds have been declared due and payable, is entitled to the appointment of a receiver. The receiver may enter upon and take possession of the system or the facilities or any part or parts of the system, the revenues, and other pledged moneys, for and on behalf of and in the name of, the authority and the bondholders. The receiver may collect and receive revenues and other pledged moneys in the same manner as the authority. The receiver shall deposit such revenues and moneys in a separate account and apply all such revenues and moneys remaining after allowance for payment of all costs of operation and maintenance of the system in such manner as the court directs. In a suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and the receiver, if any, and all costs and disbursements allowed by the court must be a first charge on any revenues after payment of the costs of operation and maintenance of the system. The trustee also has all other powers necessary or appropriate for the exercise of any functions specifically described in this section or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) A receiver appointed pursuant to this section to operate and maintain the system or a facility or a part of a facility may not sell, assign, mortgage, or otherwise dispose of any of the assets belonging to the authority. The powers of the receiver are limited to the operation and maintenance of the system or any facility or part of a facility and to the collection and application of revenues and other moneys due the authority, in the name and for and on behalf of the authority and the bondholders. A holder of bonds or a trustee does not

have the right in any suit, action, or proceeding, at law or in equity, to compel a receiver, or a receiver may not be authorized or a court may not direct a receiver, to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

Section 49. Section 345.0007, Florida Statutes, is created to read:

345.0007 Department to construct, operate, and maintain facilities.—

(1) The department is the agent of the authority for the purpose of performing all phases of a project, including, but not limited to, constructing improvements and extensions to the system, with the exception of the transit facilities. The division and the authority shall provide to the department complete copies of the documents, agreements, resolutions, contracts, and instruments that relate to the project and shall request that the department perform the construction work, including the planning, surveying, design, and actual construction of the completion of, extensions of, and improvements to the system. After the issuance of bonds to finance construction of an improvement or addition to the system, the division and the authority shall transfer to the credit of an account of the department in the State Treasury the necessary funds for construction. The department shall proceed with construction and use the funds for the purpose authorized by law for construction of roads and bridges. The authority may alternatively, with the consent and approval of the department, elect to appoint a local agency certified by the department to administer federal aid projects in accordance with federal law

as the authority's agent for the purpose of performing each phase of a project.

(2) Notwithstanding subsection (1), the department is the agent of the authority for the purpose of operating and maintaining the system, with the exception of transit facilities. The costs incurred by the department for operation and maintenance shall be reimbursed from revenues of the system. The appointment of the department as agent for the authority does not create an independent obligation on the part of the department to operate and maintain a system. The authority shall remain obligated as principal to operate and maintain its system, and the authority's bondholders do not have an independent right to compel the department to operate or maintain the authority's system.

(3) The authority shall fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the authority's facilities, as otherwise provided in this chapter.

Section 50. Section 345.0008, Florida Statutes, is created to read:

345.0008 Department contributions to authority projects.—

(1) Subject to appropriation by the Legislature, the department may, at the request of the authority, pay all or part of the cost of financial, engineering, or traffic feasibility studies or of the design, financing, acquisition, or construction of an authority project or portion of the system that is included in the 10-year Strategic Intermodal Plan.

(a) Pursuant to chapter 216, the department shall include funding for such payments in its legislative budget request. The request for funding may be included in the 5-year Tentative Work

Program developed under s. 339.135; however, it must appear as a distinct funding item in the legislative budget request and must be supported by a financial feasibility test provided by the department.

(b) Funding provided for authority projects shall appear in the General Appropriations Act as a distinct fixed capital outlay item and must clearly identify the related authority project.

(c) The department may not make a budget request to fund the acquisition or construction of a proposed authority project unless the estimated net revenues of the proposed project will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of 12 years of operation and at least 100 percent of the debt service on the bonds by the end of 30 years of operation.

(2) The department may use its engineers and other personnel, including consulting engineers and traffic engineers, to conduct the feasibility studies authorized under subsection (1).

(3) The department may participate in authority-funded projects that, at a minimum:

(a) Serve national, statewide, or regional functions and function as part of an integrated regional transportation system.

(b) Are identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.

(c) Are consistent with the Strategic Intermodal System Plan developed under s. 339.64.

(d) Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

(4) Before approval, the department must determine that the proposed project:

(a) Is in the public's best interest;

(b) Does not require state funding, unless the project is on the State Highway System;

(c) Has adequate safeguards in place to ensure that no additional costs will be imposed on or service disruptions will affect the traveling public and residents of this state if the department cancels or defaults on the agreement; and

(d) Has adequate safeguards in place to ensure that the department and the authority have the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations.

(5) An obligation or expense incurred by the department under this section is a part of the cost of the authority project for which the obligation or expense was incurred. The department may require that money contributed by the department under this section be repaid from tolls of the project on which the money was spent, other revenue of the authority, or other sources of funds.

(6) The department shall receive from the authority a share of the authority's net revenues equal to the ratio of the department's total contributions to the authority under this section to the sum of: the department's total contributions

under this section; contributions by any local government to the cost of revenue-producing authority projects; and the sale proceeds of authority bonds after payment of costs of issuance. For the purpose of this subsection, the net revenues of the authority are determined by deducting from gross revenues the payment of debt service, administrative expenses, operations and maintenance expenses, and all reserves required to be established under any resolution under which authority bonds are issued.

Section 51. Section 345.0009, Florida Statutes, is created to read:

345.0009 Acquisition of lands and property.—

(1) For the purposes of this chapter, the authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, condemnation by eminent domain proceedings, or transfer from another political subdivision of the state, as the authority may find necessary for any of the purposes of this chapter, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the system or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. Each authority shall also

have the power to condemn any material and property necessary for such purposes.

(2) The authority shall exercise the right of eminent domain conferred under this section in the manner provided by law.

(3) An authority that acquires property for a transportation facility or in a transportation corridor is not liable under chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property or the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Section 52. Section 345.001, Florida Statutes, is created to read:

345.001 Cooperation with other units, boards, agencies, and individuals.—A county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in, or of, the state may make and enter into a contract, lease, conveyance, partnership, or other agreement with the authority which complies with this chapter. The authority may make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any federal agency,

corporation, or individual to carry out the purposes of this chapter.

Section 53. Section 345.0011, Florida Statutes, is created to read:

345.0011 Covenant of the state.—The state pledges to, and agrees with, any person, firm, or corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this chapter that the state will not limit or alter the rights vested by this chapter in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the rights vested in the authority and the department affect the rights of the holders of bonds issued under this chapter. The state further pledges to, and agrees with, the United States that if a federal agency constructs or contributes any funds for the completion, extension, or improvement of the system, or any parts of the system, the state will not alter or limit the rights and powers of the authority and the department in any manner that is inconsistent with the continued maintenance and operation of the system or the completion, extension, or improvement of the system, or that would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers granted in this section, so long as the powers are necessary or desirable to carry out the purposes of this chapter and the purposes of the United States in the completion, extension, or improvement of the system, or any part of the system.

Section 54. Section 345.0012, Florida Statutes, is created to read:

345.0012 Exemption from taxation.—The authority created under this chapter is for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. The authority performs essential governmental functions under this chapter, therefore, the authority is not required to pay any taxes or assessments of any kind or nature upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it. Also, the bonds issued by the authority, their transfer and the income from their issuance, including any profits made on the sale of the bonds, shall be free from taxation by the state or by any political subdivision, taxing agency, or instrumentality of the state. The exemption granted by this section does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

Section 55. Section 345.0013, Florida Statutes, is created to read:

345.0013 Eligibility for investments and security.—Bonds or other obligations issued under this chapter are legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds, and are also securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding any other law to the contrary.

Section 56. Section 345.0014, Florida Statutes, is created

to read:

345.0014 Applicability.—

(1) The powers conferred by this chapter are in addition to the powers conferred by other laws and do not repeal any other general or special law or local ordinance, but supplement them, and provide a complete method for the exercise of the powers granted in this chapter. The extension and improvement of a system, and the issuance of bonds under this chapter to finance all or part of the cost of such extension or improvement, may be accomplished through compliance with this chapter without regard to or necessity for compliance with the limitations or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. Approval of any bonds issued under this act by the qualified electors or qualified electors who are freeholders in the state or in any political subdivision of the state is not required for the issuance of such bonds under this chapter.

(2) This act does not repeal, rescind, or modify any other law relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration; however, this chapter supersedes any other law that is inconsistent with its provisions, including, but not limited to, s. 215.821.

Section 57. (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature recognizes that the existing fuel tax structure used to derive revenues for the funding of transportation projects in this state will soon be inadequate to meet the state's needs. To address this emerging need, the Legislature directs the Center for Urban Transportation Research to establish an extensive

study on the impact of implementing a system that charges drivers based on the vehicle miles traveled as an alternative, sustainable source of transportation funding and to establish the framework for implementation of a pilot demonstration project. The Legislature recognizes that, over time, the current fuel tax structure has become less viable as the primary funding source for transportation projects. While the fuel tax has functioned as a true user fee for decades, significant increases in mandated vehicle fuel efficiency and the introduction of electric and hybrid vehicles have significantly eroded the revenues derived from this tax. The Legislature also recognizes that there are legitimate privacy concerns related to a tax mechanism that would charge users of the highway system on the basis of miles traveled. Other concerns include the cost of implementing such a system and institutional issues associated with revenue sharing. Therefore, it is the intent of the Legislature that this study and demonstration design will, at a minimum, address these issues. To accomplish this task, the Center for Urban Transportation Research in consultation with the Florida Transportation Commission shall establish a project advisory board to assist the center in analyzing this alternative funding concept and in developing specific elements of the pilot project that will demonstrate the feasibility of transitioning Florida to a transportation funding system based on vehicle miles traveled.

(2) VEHICLE-MILES-TRAVELED STUDY.—The Center for Urban Transportation Research shall conduct a study on the viability of implementing a system in this state which charges drivers based on their vehicle miles traveled as an alternative to the

present fuel tax structure to fund transportation projects. The study will inventory previous research and findings from pilot projects being conducted in other states. The study will address at a minimum previous work conducted in these broad areas: assessment of technologies; behavioral and privacy concerns; equity impacts; and policy implications of a vehicle miles traveled road charging system. The effort will also quantify the current costs to collect traditional highway user fees. This study will synthesize findings of completed research and demonstrations in the area of vehicle-miles-traveled charges and analyze their applicability to Florida. The Center for Urban Transportation Research shall present the findings of this study phase to the Legislature no later than January 30, 2016.

(3) VEHICLE-MILES-TRAVELED PILOT PROJECT DESIGN.—

(a) In the course of the study, the Center for Urban Transportation Research in consultation with the Florida Transportation Commission shall establish the framework for a pilot project that will evaluate the feasibility of implementing a system that charges drivers based on their vehicle miles traveled.

(b) In the design of the pilot project framework, the Center for Urban Transportation Research shall address at a minimum these elements: the geographic location for the pilot; special fleets or classes of vehicles; evaluation criteria for the demonstration; consumer choice in the method of reporting miles traveled; privacy options for participants in the pilot project; the recording of miles traveled with and without locational information; records retention and destruction; and cyber security.

(c) Contingent upon legislative appropriation, the Center for Urban Transportation Research may expend up to $400,000 for the study and pilot project design.

(d) The pilot project design shall be completed no later than December 31, 2016, and submitted in a report to the Legislature so that implementation of a pilot project can occur in 2017.

Section 58. For the purpose of incorporating the amendment made by this act to section 333.01, Florida Statutes, in a reference thereto, subsection (6) of section 350.81, Florida Statutes, is reenacted to read:

350.81 Communications services offered by governmental entities.—

(6) To ensure the safe and secure transportation of passengers and freight through an airport facility, as defined in s. 159.27(17), an airport authority or other governmental entity that provides or is proposing to provide communications services only within the boundaries of its airport layout plan, as defined in s. 333.01(6), to subscribers which are integral and essential to the safe and secure transportation of passengers and freight through the airport facility, is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide shared-tenant service under s. 364.339, but not dial tone enabling subscribers to complete calls outside the airport layout plan, to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility is exempt from this section. An airport authority or other governmental

entity that provides or is proposing to provide communications services to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility, or to one or more subscribers outside its airport layout plan, is not exempt from this section. By way of example and not limitation, the integral, essential subscribers may include airlines and emergency service entities, and the nonintegral, nonessential subscribers may include retail shops, restaurants, hotels, or rental car companies.

Section 59. This act shall take effect July 1, 2015.

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 Committee on Appropriations

BILL:	CS/SB 1554
INTRODUCER:	Transportation Committee and Senator Brandes
SUBJECT:	Transportation
DATE:	April 20, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Sneed	Miller	ATD	**Recommend: Fav/CS**
3.	Sneed	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1554 reflects the Florida Department of Transportation's (FDOT) 2015 Legislative Package, as well as other transportation-related issues. More specifically, the bill:

- Increases from $15 million to $25 million the annual funding for the Florida Seaport Transportation and Economic Development (FSTED) program.
- Removes Port Citrus as an authorized member of the FSTED Council, as well as obsolete provisions regarding a related port feasibility study.
- Allows commercial motor vehicle operators to purchase temporary registration permits and provides for a reduced non-registration penalty under certain circumstances.
- Extends the allowable length of a trailer transporting manufactured buildings under a special permit from 54 feet to 80 feet.
- Extends the allowable length of certain semitrailers from 53 feet to 57 feet under certain conditions.
- Provides an exemption from required minimum following distance to users of driver-assistive truck platooning technology, a system that controls inter-vehicle spacing between two truck tractor-semitrailer combinations.
- Directs the Office of Economic and Demographic Research to evaluate and determine the economic benefits of the state's investment in the FDOT Work Program.
- Allows turnpike bonds to be validated at the option of the Division of Bond Finance, and limits the location of publication of bond-validation notices to Leon County.
- Substantially revises chapter 333, Florida Statutes, relating to airport zoning regulations.

- Authorizes the FDOT to assume certain review responsibilities under the National Environmental Policy Act (NEPA) with respect to highway projects, as authorized by federal law, and includes a limited waiver of the state's immunity from lawsuits in federal courts pursuant to the Eleventh Amendment to the U.S. Constitution, which are associated with the assumed responsibilities under NEPA.
- Requires consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology and revises existing statutes with regard to the definition and use of autonomous vehicle technology.
- Clarifies provisions relating to pedestrians and crosswalks in an effort to improve safety.
- Increases from three years to ten years the period after which a dormant prepaid toll account is presumed unclaimed.
- Creates the Shared-Use Nonmotorized Trail (SunTrail) Network as a component of the Florida Greenways and Trail System.
- Requires the Center for Urban Transportation Research to conduct a study, design a pilot project, and provide a report regarding the feasibility and means of implementing a vehicle-miles-traveled funding mechanism for transportation projects.
- Creates the Northwest Florida Regional Transportation Finance Authority Act, authorizing Escambia and Santa Rosa Counties, to form a regional transportation finance authority to develop transportation projects in the northwest region of the state.
- Revises the membership of a legislatively-created independent special district regulating for-hire transportation.
- Revises provisions relating to staffing and responsibilities of the Fort Meyers Urban Office of the FDOT.
- Modernizes language relating to FDOT's provision of 511 services.
- Removes obsolete language relating to the FDOT secretary's appointment of an inspector general.
- Repeals obsolete language relating to transportation corridors.
- Deletes references to toll facilities no longer owned by the FDOT.
- Repeals obsolete bond language relating to the already-repealed Broward County Expressway Authority.
- Makes other technical and conforming revisions.

The fiscal impact of the bill is indeterminate but likely insignificant. Please see Section V for specific details.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Florida Seaport Transportation and Economic Development Program (Sections 4 and 5)

Present Situation

Florida has 15 public seaports,[1] and Florida law reflects a number of seaport and seaport-related funding provisions. Section 311.07(2), F.S., requires a minimum of $15 million per year from the State Transportation Trust Fund (STTF) to fund the Florida Seaport Transportation and Economic Development (FSTED) Program.[2] The program represents a collaborative relationship between the Florida Department of Transportation (FDOT) and the seaports. FSTED funds are to be used on approved projects on a 50-50 matching basis.[3] Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port.
- The dredging or deepening of channels, turning basins, or harbors.
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing.
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for port purposes.
- The acquisition, improvement, enlargement, or extension of existing port facilities.
- Environmental protection projects: which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites; or which result from the funding of eligible projects.
- Transportation facilities which are not otherwise part of FDOT's adopted Work Program. [4]
- Intermodal access projects.
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in s. 311.09(1), F.S.,[5] with operating revenues of $5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports.
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.[6]

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[1] Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandino. Listed in s. 311.09(1), F.S.

[2] See also s. 311.09(9), directing the FDOT to include no less than $15 million annually in its legislative budget request for the FSTED Program.

[3] S. 311.07(3)(a), F.S.

[4] DOT's work program is adopted pursuant to s. 339.135, F.S.

[5] Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandino.

[6] Part II of ch. 163, F.S.

In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

The FSTED program is managed by the FSTED Council, which consists of the port director, or director's designee of the 15 public seaports, the Secretary of FDOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.[7]

Effect of Proposed Changes

Sections 4 and 5 amend s. 311.07(2) and s. 311.09(9), F.S., respectively, to increase the annual funding from the State Transportation Trust Fund for the FSTED Program from $15 million to $25 million. The bill requires FDOT to include no less than the $25 million in its annual legislative budget request to fund the program.

Port Citrus (Section 5)

Present Situation

The Florida Legislature in 2011 included a representative of Port Citrus as a member of the FSTED Council. Port Citrus was authorized to apply for a grant for a feasibility study through the FSTED Council until July 14, 2014, regarding the establishment of a port in Citrus County.

According to a recent article, by late 2011, Citrus County established a port authority and joined the Florida Ports Council and Gulf Ports Association of the Americas, with annual dues of $15,000. Backers of Port Citrus "envisioned development of a port near a key cut in the Cross Florida Barge Canal."[8] According to the article, the study found that the barge canal would be a good location for a marina, but not for a port, because the canal's 12-foot depth is too shallow. Efforts are underway to pursue a possible marina. However, members of the current Citrus County Commission have raised questions about whether the dues paid for membership in the groups joined are appropriate, noting that a marina does not need to be designated as a port.[9]

On January 24, 2015, the Citrus County Board of County Commissions, acting as the Citrus County Port Authority, voted to abolish Port Citrus. The Port Authority has requested statutory revision to reflect the abolishment.[10]

Effect of Proposed Changes

Section 5 amends s. 311.09(1) and repeals s. 311.09(12), F.S., to remove a representative of Port Citrus as an authorized member of the FSTED Council, as well as the dated provisions relating to application for a grant to conduct the feasibility study.

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[7] S. 311.09(1), F.S.

[8] See *Port Citrus talk: Sink or stay afloat?*, January 24, 2015, Citrus County Chronicle Online: http://www.chronicleonline.com/content/port-citrus-talk-sink-or-stay-afloat. Last visited March 19, 2015.

[9] *Id.*

[10] See Citrus Port Authority correspondence dated January 29, 2015. On file in the Senate Transportation Committee.

Commercial Motor Vehicles/Ports of Entry/Operating Credentials (Sections 6 and 11)

Present Situation

Interstate operators of commercial motor vehicles (CMVs) are required to obtain a number of credentials. Generally, for example, interstate operators of CMVs are required to obtain an International Fuel Tax Agreement (IFTA) license and decal[11] and, in some cases, to obtain overweight or over-dimensional permits.[12] Some states allow the purchase of some or all necessary credentials at weigh stations located close to routes entering their borders and at other locations, and these states are known as "port of entry" or "POE" states.[13] Because these credentials must be obtained prior to entering Florida, the state is known as a "non-POE" state.[14] If a CMV enters the state without proper credentials and the operator seeks to purchase them at any weigh station, the applicable fine is assessed depending on the type of credential at issue. Only then is the operator allowed to purchase the necessary credential.[15]

Another credential required before entering Florida is registration under the International Registration Plan (IRP). The IRP[16] is a plan for registering vehicles that are operated in two or more IRP-member jurisdictions while displaying just one registration license plate for each vehicle.

> All IRP member jurisdictions have agreed to allow one jurisdiction to collect the registration fees (apportioned fees) for each jurisdiction at one time. These fees are then distributed among the other IRP jurisdictions according to:
> - Percentage of mileage traveled in each jurisdiction;
> - Vehicle identification information; and
> - Maximum weight.
>
> Under the IRP, interstate truck operators are required to file an application with their base jurisdiction. The base jurisdiction, in turn, issues one registration cab card and one tag for the vehicle. In member jurisdictions, the single apportioned license plate and cab card are the only registration credentials required to operate interstate and intrastate.[17]

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[11] See ss. 207.004 and 316.545(4), F.S. The International Fuel Tax Agreement (IFTA) is an agreement among the states and the Canadian provinces to simplify the reporting of interstate fuel taxes. The motor carrier's base jurisdiction issues the IFTA license and decals, allowing the carrier to file one quarterly tax return reflecting the net tax and any refund due on fuel used in all jurisdictions.

[12] See s. 316.550, F.S.

[13] *See* the *Florida Port of Entry Feasibility Study*, September 2014, prepared for the FDOT, at 3.1 and 3.2. Copy on file in the Senate Transportation Committee. According to the study, 28 states are non-POE states, and 22 states and the District of Columbia consider themselves to be POE jurisdictions. Alabama is a POE state; Georgia is not. Further, the definitions of "POE" vary greatly by state.

[14] *Id.* at 1.1.

[15] *See* the FDOT 2015 Legislative Proposal form, *Port-of-Entry*, on file in the Senate Transportation Committee.

[16] Section 320.01(23), F.S., defines the IRP to mean "a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions."

[17] See the Florida Department of Highway Safety and Motor Vehicles *International Registration Plan Trucking Manual*, at 5. On file in the Senate Transportation Committee.

A "Full Reciprocity Plan" was instituted effective January 1, 2015, under which registrants are billed only for jurisdictions in which actual miles were accrued during the reporting period. If no miles were accrued in a given jurisdiction, registrants are billed based on the average distance of all registrants in each jurisdiction. Upon registration, the cab cards will reflect all jurisdictions.[18]

Section 320.0715(1), F.S., requires all apportionable vehicles[19] domiciled in this state to register under the International Registration Plan and to display the apportioned license plate. If a CMV domiciled elsewhere could be lawfully operated in this state because IRP registration had been obtained prior to entering Florida, but was not, a ten-day Florida trip permit may be obtained for $30. The permit allows the vehicle to be operated in interstate or intrastate commerce for the ten-day period.

A CMV not registered under the application provisions of ch. 320, F.S., is subject to a penalty of five cents per pound on the weight that exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen CMV.[20] Operators of CMVs that fail to obtain the temporary trip permit prior to entering Florida are fined accordingly and then allowed to purchase the temporary trip permit. All such penalties and permit fees are credited to the State Transportation Trust Fund to be used for repair and maintenance of Florida's roads and for enforcement purposes.[21]

Effect of Proposed Changes

The bill defines "port-of-entry" and reduces the existing penalty for IRP registration violations.

Section 6 creates s. 316.003(94), F.S., to define "port-of-entry" as a designated location that allows drivers of commercial motor vehicles to purchase temporary registration permits necessary to operate legally within Florida, and to direct the FDOT to determine the locations and the designated routes to such locations.

Section 11 amends s. 316.545(2)(b), F.S., to provide that if a CMV enters the state at a designated POE or is operating on an FDOT-designated route to a POE, and if the ten-day IRP trip permit is obtained at the POE, the penalty is limited to the difference between the CMV's gross weight and the declared gross vehicle weight at five cents per pound.

The penalty no longer is calculated based on five cents per pound of weight in excess of 35,000 pounds or 10,000 pounds, depending on the type of truck, combination, or whether the truck is

[18] *Id.*

[19] Section 320.01(24), F.S., defines "apportionable vehicle" to mean "any vehicle [with certain exceptions] which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and: (a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds; (b) Is a power unit having three or more axles, regardless of weight; or (c) Is sued in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight."

[20] See 316.545(2)(b), F.S.

[21] See s. 316.545(6), F.S.

laden, but on the difference between declared and actual weight. Existing penalties for failure to obtain other required credentials remain unchanged, including, but not limited to, IFTA violations and overweight and over-dimensional permit violations.

The FDOT advises three potential POE locations are under consideration:
- I-10 at the first eastbound weigh station entering the state;
- I-75 at the first southbound weigh station entering the state; and
- I-95 at the first southbound weigh station entering the state.

The designated route for each location would be the portion of the interstate from the state line to the weigh station.[22]

Commercial Motor Vehicles/Trailer Lengths/Manufactured Building/Special Permits (Section 10)

Present Situation

The Office of Commercial Vehicle Enforcement of the Florida Department of Highway Safety and Motor Vehicles (FDHSMV) administers a Weight Enforcement program. Protection of the public's investment in the highway system is the primary purpose of the program. To prevent heavy trucks from causing unreasonable damage to roads and bridges, maximum weight and size limits are established in ch. 316, F.S.[23] Section 316.515, F.S., sets out the maximum width, height, and length limitations, and s. 316.545, F.S., addresses unlawful weight.

The FDOT or a local authority may issue a special permit to operate or move a vehicle or combination of a size or weight exceeding the maximums specified. Issuance of such a permit must not be contrary to the public interest and is at the discretion of the FDOT or the local authority.[24] Significant penalties can result from failure to obtain a special permit or failure to comply with the specific terms of the permit.[25]

Generally, as to truck tractor-semitrailer combinations and length, the extreme overall outside dimension of the combination may not exceed 48 feet, measured from the front of the unit to the rear of the unit and the load carried.[26] However, a semitrailer that is more than 48 feet but not more than 53 feet may operate on non-restricted public roads, if the distance between the kingpin and the rear axle or axle group does not exceed a certain number of feet[27] and the vehicle is equipped with required rear end protection.

In addition, the FDOT is authorized to issue a special permit for a truck tractor-semitrailer combination if the total number of over-width deliveries of manufactured buildings may be reduced by permitting the use of an over-length trailer not exceeding 54 feet.[28] Issuance of this

[22] *Supra,* note 14.
[23] See the FDHSMV website: http://www.flhsmv.gov/fhp/CVE/WeightEnforcment.htm/. Last visited March 3, 2015.
[24] See s. 316.550, F.S.
[25] See s. 316.550(10), F.S.
[26] Section 316.550(3)(b)1., F.S.
[27] Generally, forty-one feet. For a semitrailer used exclusively or primarily to transportation vehicles in connection with motorsports competition events, 46 feet. Section 316.515(3)(b), F.S.
[28] Section 316.515(14), F.S.

type of over-length special permit does not exempt the combination vehicle from existing weight limitations or special permit requirements if the weight of the combination exceeds the maximums specified in ch. 316, F.S.

Effect of Proposed Changes

Section 10 amends s. 316.515(3)(b), F.S., to increase from 53 to 57 feet the allowable extreme overall outside dimension of a semitrailer exceeding 48 feet, if specified conditions are met. The Federal Highway Administration (FHWA) has reviewed the proposed language and deems it compliant with federal regulations.[29]

Section 10 also amends s. 316.515(14), F.S., to insert "multiple sections or single units" with reference to manufactured buildings transported on permitted, over-length trailers, and to increase the allowable over-length trailer from 54 to 80 feet.

The Federal Highway Administration has reviewed the proposed language and opined that it does not appear to conflict with federal regulations, as long as weight restrictions are not exceeded.[30] Transporters of manufactured buildings on truck tractor-semitrailer combinations continue to be required to obtain a permit for such combinations, even with a trailer length of 80 feet. Overweight permits also continue to be required when applicable. Issuance of such permits remains within the discretion of the FDOT.

Driver-Assistive Truck Platooning (Sections 6, 7, and 9)

Present Situation

In August of 2014, the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking, following NHTSA's earlier announcement that the agency will begin working on a regulatory proposal to require vehicle-to-vehicle (V2V) devices in passenger cars and light trucks in a future year. V2V is a crash avoidance technology, relying on communication of information between nearby vehicles to warn drivers about dangerous situations that could lead to a crash.[31] NHTSA advises that, "Using V2V technology, vehicles ranging from cars to trucks and buses to trains could one day be able to communicate important safety and mobility information to one another that can help save lives, prevent injuries, ease traffic congestion, and improve the environment."[32]

One form of V2V technology is known as driver-assistive truck platooning (DATP), which allows trucks to communicate with each other and to travel as close as thirty feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption.[33]

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[29] See the FHWA email, March 17, 2015. On filed in the Senate Transportation Committee.
[30] See the FHWA email, February 11, 2015. On file in the Senate Transportation Committee.
[31] See the U.S. Department of Transportation Fact Sheet on Vehicle-To-Vehicle Communication Technology. On file in the Senate Transportation Committee.
[32] See the NHTSA website: http://www.safercar.gov/v2v/index.html. Last visited March 16, 2015.
[33] See the GBT Global News website: http://www.gobytrucknews.com/driver-survey-platooning/123. Last visited March 16, 2015.

> The DATP concept is based on a system that controls inter-vehicle spacing based on information from forward-looking radars and direct vehicle-to-vehicle communications. Braking and other operational data is constantly exchanged between the trucks, enabling the control system to automatically adjust engine and brakes in real-time. This allows equipped trucks to travel closer together than manual operations would safely allow. Platooning technology is increasingly a subject of interest in the truck community, with multiple companies developing prototypes.[34]

One such system uses integrated sensors, controls, and wireless communications for "connected" trucks. The system is cloud-based, determining in real time whether specific trucks are clear to engage in platooning operations. The system synchronizes acceleration and braking between tractor-trailers, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver's response time. The following vehicle is provided video showing the lead truck's line of sight while the lead vehicle is provided video showing the area behind the following truck. If another vehicle enters between platooning trucks, the system will automatically increase following distance or delink the trucks and then relink once the cut-in risk has passed. If data transfer between platooning trucks ceases, the driver is immediately notified that manual acceleration and braking control is about to resume.[35]

Section 316.0895(2), F.S., currently deems it unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. That subsection expressly does not prevent overtaking and passing and does not apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.

Effect of Proposed Changes

Section 6 creates s. 316.003(95), F.S., to define driver-assistive truck platooning.

Section 7 amends s. 316.0895 (2), F.S., to exclude from the 300-foot distance limitation two-truck tractor-semitrailer combinations, equipped and connected with driver-assistive truck platooning technology and operating on a multilane, limited access facility. The exclusion applies only if the owner or operator complies with the financial responsibility requirement of s. 316.86, F.S., which requires submission to the DHSMV of proof of insurance acceptable to the DHSMV in the amount of $5 million. Tandem trailer trucks are not included in the authorized exclusion.

Section 9 amends s. 316.303(1) and (3), respectively, to allow vehicles equipped and operating with driver-assistive truck platooning technology to be equipped with video equipment visible from the driver's seat, and to authorize an electronic display used by the operator of a vehicle equipped and operating with truck platooning technology.

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[34] See the American Transportation Research Institute website: http://atri-online.org/2014/11/17/atri-seeks-input-on-driver-assistive-truck-platooning/. Last visited March 16, 2015.

[35] *See* http://www.peloton-tech.com/faq/. Last visited March 16, 2015.

Return on Transportation Investment (Section 40)

Present Situation

Section 334.046, F.S., provides prevailing principles to be considered in planning and developing an integrated, balanced statewide transportation system. The principles are preserving the existing transportation infrastructure, enhancing Florida's economic competitiveness, and improving travel choices to ensure mobility.

As to economic competitiveness, the statute requires the FDOT to ensure a clear understanding of the economic consequences of transportation investments and how such investments affect the state's economic competitiveness. The FDOT is directed to develop a macroeconomic analysis of the linkages between transportation investment and economic performance and a method to quantifiably measure the economic benefits of the district-work-program investments. The FDOT must analyze the state's and districts' economic performance relative to competition, the business environment viewed from the perspective of companies evaluating the state as a place in which to do business, and the state's capacity to sustain long-term growth.[36]

The FDOT in January 2015 completed its "Macroeconomic Analysis of Florida's Transportation Investments,"[37] estimating the economic effects of its Work Program for fiscal years 2013-2014 through 2017-2018. The analysis indicates that almost all Work Program spending was covered, including highway, rail, seaport, and transit modes. According to the analysis, "on average, every dollar invested in the Work Program will yield about $4.40 in economic benefits for Florida from the beginning of the Work Program to FY 2043."[38]

Effect of Proposed Changes

Section 40 directs the Office of Economic and Demographic Research (EDR) to evaluate and determine the economic benefits[39] of the state's investment in the FDOT Adopted Work Program for fiscal year 2015-2016, including the following four fiscal years. At a minimum, a separate return on investment shall be projects for roads and highways, rails, public transit, aviation, and seaports.

The analysis is limited to funding anticipated by the Adopted Work Program but may address the continuing economic impact of the transportation projects in the five years beyond the conclusion of the Adopted Work Program. The number of jobs created, the increase or decrease in personal income, and the impact on gross domestic product from the direct, indirect, and induced effects on the state's investment in each area must be evaluated.

The FDOT and each of its district offices are required to provide the EDR full access to all data necessary to complete the analysis, including any confidential data, and the EDR must provide

[36] Section 334.046(4)(b), F.S.
[37] The analysis is available at: http://www.dot.state.fl.us/planning/weeklybriefs/2015/011915.shtm. Last visited March 16, 2015.
[38] *Id*. at 1.
[39] Defined per the bill in s. 288.005, F.S., meaning the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.

the analysis to the President of the Senate and Speaker of the House of Representatives by January 1, 2016.

Turnpike Revenue Bonds/Bond Validation (Sections 2 and 7)

Present Situation

The Division of Bond Finance (DBF) is authorized to issue bonds on behalf of the FDOT to finance or refinance the cost of legislatively approved turnpike projects. Such bonds must be validated under ch. 75, F.S., through proceedings instituted by attorneys for the DBF.[40] In any action to validate bonds issued pursuant to s. 338.227, F.S., the complaint must be filed in the circuit court of Leon County; the notice required by s. 75.06, F.S., must be published in a newspaper of general circulation *in Leon County and in two other newspapers of general circulation in the state*;[41] and the complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending (the Second Circuit).

Section 75.06(2), F.S., requires the clerk, before the date set for hearing on a complaint to validate turnpike bonds, to publish a copy of the court's order requiring appearance at the hearing in Leon County at least once each week for two consecutive weeks, commencing with the first publication, which may not be less than 20 days before the date set for hearing, *in a newspaper in each of the counties where the proceeds of the bonds are to be expended, and in a newspaper published in Leon County*.[42]

However, if publication pursuant to s. 215.82, F.S., would require publication in more newspapers than would publication pursuant to s. 75.06, F.S., then publication pursuant to s. 75.06, F.S., controls. [43] The required publication is dependent upon the geographic reach of the project(s) for which funding through bond issuance is sought.

According to the DBF:

> Bond validation is a judicial procedure through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.[44]

[40] See s. 215.82(1), F.S.
[41] Emphasis added.
[42] Emphasis added.
[43] See s. 215.82(2), F.S.
[44] See copy of email from Ben Watkins, Director, Florida Division of Bond Finance, to House staff dated January 27, 2015. On file in the Senate Transportation Committee.

Effect of Proposed Changes

The bill in general leaves validation of turnpike bonds to the discretion of the DBF and limits provisions relating to publication of the required notice.

Section 2 amends s. 215.82(2), F.S., to strike the reference to s. 338.227, F.S., in favor of the language in newly created s. 338.227(5), F.S.

Section 7 creates subsection (5) of s. 338.227, F.S., to:
- Provide turnpike bonds issued pursuant to that section are not required to be validated pursuant to ch. 75, F.S., notwithstanding s. 215.82, F.S.;
- Provide for validation at the option of the DBF; and
- Require the notice under s. 75.06, F.S., to be published only in Leon County.

Airport Zoning/Chapter 333 Re-Write (Sections 12 through 26)

Chapter 333, Florida Statutes, contains airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the chapter:
- Addresses permitting for structures exceeding federal obstruction standards;
- Requires adoption of certain airport zoning regulations;
- Provides a process for seeking variances from the zoning regulations;
- Sets out a process for appeal of decisions based on the zoning regulations;
- Requires boards of adjustment to hear and decide appeals;
- Provides for judicial review of any board of adjustment decision; and
- Establishes penalties and remedies for violations.

The FDOT in 2012 created a stakeholder working group to address problems with implementing this chapter. Representatives from airports, local planning and zoning departments, the Florida Defense Alliance, the League of Cities, the Florida Airports Council, the real estate development community, and the FDOT participated in the working group. The FDOT advises the working group determined that ch. 333, F.S., "contains outdated and inconsistent provisions when compared to applicable federal regulations, contains internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing."

As examples, the FDOT reports the need to update current definitions consistent with federal regulations, advises that zoning variances and permitting processes are mixed in the chapter, and notes that required creation of separate boards often duplicate existing local governing body structures and functions. The result is inconsistent local application of the provisions governing airspace and land use at or near airports with outcomes that may be unpredictable.[45]

The FDOT advises it expects no substantive changes as a result of the bill's proposed revisions; e.g., the existing requirements for issuance of permits are substantively unchanged. The number of permits issued or denied is not expected to change. Rather, the changes are designed to

[45] See the FDOT 2015 Agency Proposal, *Airspace and Land Use at Public Airports*. On file in the Senate Transportation Committee.

facilitate more uniform permitting, appeals, and review processes applied at the local level and provide clarity and predictability for those subject to airport zoning regulations.[46]

Definitions

Present Situation

Section 333.01, F.S., contains definitions related to airport zoning that need updating for internal chapter consistency and for consistency with federal regulations.

Effect of Proposed Changes

Section 12 amends s. 333.01, F.S., to provide, revise, and delete definitions to:

- Reflect terminology used in federal regulations;
- Provide for consistency with Federal Aviation Administration (FAA) advisements;
- Define terms used but undefined elsewhere in the chapter and delete terms not used elsewhere in the chapter;
- Remove antiquated terminology;
- Delete variances from definitions to reflect the streamlined permitting process effected in the bill; and
- Otherwise provide clarity through editorial and grammatical changes.

Permitting for Structures Exceeding Federal Obstruction Standards

Present Situation

The Code of Federal Regulations (CFR) sets forth standards for structures that present a hazard within an area in an airport due to obstruction of the airspace required for aircraft to take off, maneuver, or land. Section 333.025, F.S., requires a permit from the FDOT for any proposed construction or alteration of a structure that would exceed the federal standards, if the standards will be exceeded within a 10-nautical mile radius of the geographical center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use.[47] A permit from the FDOT is not required if a political subdivision[48] has adopted adequate airspace protection regulations and filed them with the FDOT. The facilities at airports shown on the airport master plan, or on an airport layout plan submitted to the Federal Aviation Administration (FAA) or comparable military documents, are to be protected. Certain planned or proposed facilities are also protected.

The FDOT must issue or deny a permit within 30 days of receipt of an application for erection, alteration, or modification of any structure that would exceed the federal obstruction standards. The FDOT is required to consider a list of factors in determining whether to issue or deny a permit. As a permit condition, the FDOT is directed to require obstruction and lighting of the permitted structure. The FDOT is prohibited from approving a permit to erect a structure unless the applicant submits both documentation showing compliance with federal notification requirements and a valid aeronautical evaluation.

[46] Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.
[47] Public airports are licensed under the provisions of ch. 330, F.S.
[48] Generally, a local governmental entity. Section 333.03(9), F.s

Effect of Proposed Changes

Section 13 amends s. 333.025, F.S., to replace the term "geographic center" with "airport reference point," which is located at the approximate geometric center of all usable runways and to update references to current federal regulations. Per the FDOT, the airport reference point is not the same as the geographic center of the airport.[49]

When a political subdivision has adopted adequate airport protection zoning regulations which are on file with the FDOT *and* the political subdivision has established a permitting process, a permit from the FDOT is not required for a structure. To evaluate the technical consistency of a permit application submitted to a local government, the bill provides a 15-day FDOT review period concurrent with the established local permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not exceeding 18 consecutive months are exempt from the FDOT review, unless the FDOT requests review.

The FDOT is required to review permit applications in conformity with s. 120.60, F.S., relating to licensing. The list of factors to be considered by the FDOT when granting or denying a permit is revised to remove ambiguity and duplication, and to provide clarity. The FDOT must require the owner of the permitted structure or vegetation to install, operate, and maintain marking and lighting in conformance with FAA standards, at the owner's expense. A reference to aeronautical "evaluation" is revised to aeronautical "study" in accordance with the new definition. The denial of a permit is subjected to the administrative review provisions of the Administrative Procedures Act.

Adoption of Airport Zoning Regulations

Present Situation

Section 333.03, F.S., requires political subdivisions with an airport hazard area[50] to adopt, administer, and enforce airport zoning regulations for the area. If the airport is owned or controlled by a political subdivisions and has a hazard area outside of its territorial limits, the owning or controlling political subdivision and the political subdivision within which the hazard area is located must either adopt zoning regulations by interlocal agreement or create a joint airport zoning board with the power to do so. The airport zoning regulations must, at a minimum, require:

- A variance for erection, alteration, or modification of any structure that would exceed the federal obstruction standards;
- Obstruction marking and lighting per s. 333.07(3);

[49] See the FDOT document provided to staff, *Proposed ch. 333, F.S. Amendments and Legislative Support Documentation*. On file in the Senate Transportation Committee.

[50] The bill defines "airport hazard" to mean any area of land or water upon which an airport hazard might be established. "Airport hazard area" is defined in the bill to mean any obstruction which exceeds the federal obstruction standards in the specified sections of the Code of Federal Regulations and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing; or is otherwise hazardous to such activity and for which no permit has been obtained. The bill generally defines "obstruction" to mean any object of natural growth, terrain, or permanent or temporary construction or alteration thereof, existing or proposed, that exceeds the federal obstruction standards.

- Documentation of compliance with federal proposed construction notification and a valid aeronautical evaluation submitted by each person applying for a variance;
- Consideration of the same list of factors when determining whether to issue or deny a variance as required of the FDOT when considering permit applications; and
- That no variance be approved solely on the basis that a proposed structure will not exceed the federal obstruction standards.

The FDOT is required to issue copies of the federal obstruction standards in the CFR to each political subdivision with an airport hazard area, and issue certain airport zoning maps at no cost.

Interim land use compatibility zoning regulations must be adopted, unless the political subdivision has adopted land development regulations addressing the use of land consistent with this section. Interim land use compatibility zoning regulations must consider whether sanitary landfills are located within certain areas and whether any landfill will attract or sustain hazardous bird movements, with attendant reporting requirements and bird management considerations. If a public-use airport has conducted a specified federal noise study, residential construction and construction of certain educational facilities are prohibited within the area defined by the study to be incompatible with such construction. If no study is conducted, the same construction is prohibited within a certain distance.

Airport zoning regulations restricting new incompatible uses, activities, or construction within runway clear zones must be adopted, including uses that result in congregations of people, emissions of light or smoke, or attract birds. Certain limited exceptions for construction of educational facilities in specified areas are authorized.

Effect of Proposed Changes

Section 14 amends s. 333.03, F.S., to eliminate the duplicative requirement for obtaining a variance for structures that would exceed federal obstruction standards, in favor of a local permitting process. Every political subdivision having an airport hazard area is required to adopt, by either of the two authorized methods, airport *protection* zoning regulations. In addition to editorial and grammatical revisions, this section revises language to:

- Replace references to a "variance" with "permit."
- Update references to the federal obstruction standards contained in the CFR;
- Replace aeronautical "evaluation" with "study" consistent with the new definition;
- Remove the FDOT's duty to provide copies of the federal obstruction standards and issue maps and replace it with making the FDOT available to provide assistance with respect to the standards;
- Eliminate the reporting requirements related to birds at airports near landfills in favor of requiring the landfill operator to incorporate bird management techniques;
- Allow alternative noise studies approved by the FAA, and their application;
- Include substantial modification of existing incompatible uses in the required adopted regulations restricting such uses within runway *protection* zones;
- Remove the limited exceptions for construction of educational facilities
- Require all updates and amendments to local airport codes to be filed with the FDOT within 30 days after adoption.
- Delete outdated language; and

- Authorize an airport authority, local government, or other governing body operating a public-use airport to adopt more restrictive airport protection zoning regulations, per the FDOT, to allow restrictions appropriate to the local context of the airport.[51]

Guidelines Regarding Land Use Near Airports

Present Situation

Section 333.065, F.S., requires the FDOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. The guidelines must use certain acceptable and established quantitative measures.

Effect of Proposed Changes

Section 18 repeals s. 333.065, F.S. The FDOT advises the deletion reflects completion of the FDOT's Airport Compatible Land Use Guidebook.[52]

Permits, Variances, and Appeals

Present Situation

Section 333.07, F.S., authorizes any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired. All such regulations must require a permit before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted.

If a nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down or deteriorated, a permit may not be issued under certain conditions. The owner of a nonconforming structure or tree may be compelled, at the owner's expense, to under certain actions necessary to conform to the regulations. If the owner does not, the required action may be accomplished by the administrative agency and the costs may be assessed against the nonconforming object or the land on which it is located. If the assessment is not paid within 90 days, a lien at the annual rate of 6 percent interest is applied.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the adopted airport zoning regulations is authorized to apply to a board of adjustment for a variance from the regulations. The FDOT has 45 days to comment or waive that right. Conditions for allowance of variations are provided. The FDOT is authorized to appeal any variance granted and to apply for judicial relief.

As a condition of any granted permit or variance, the administrative agency or board of adjustment must require the structure or tree owner to install, operate, and maintain at the

[51] *Supra*, note 48.
[52] *Supra*, note 48.

owner's expense marking and lighting necessary to indicate to aircraft pilots the presence of an obstruction.

Section 333.08, F.S., authorizes any person or taxpayer affected by any decision of an administrative agency in its administration of adopted airport zoning regulations or of any governing body of a political subdivision, or the Department of Transportation, or any joint airport zoning board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Effect of Proposed Changes

Section 19 amends s. 333.07, F.S., to streamline the permitting process, repeal the duplicative variance process, and facilitate implementation of the permitting process by local entities. More specifically, rather than authorizing any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired, the bill simply requires a permit to erect, construct, alter, increase the height of any structure, permit the growth of any vegetation, or otherwise use his or her property in violation of the adopted regulations.

The political subdivision or its administrative agency must consider virtually the same standards as must be considered by the FDOT when issuing or denying a permit for structures exceeding federal obstruction standards. All variance provisions are removed in favor of the permitting process. In addition, the provisions relating to a lien resulting from an owner's failure to take action to bring a nonconforming structure or tree into regulatory compliance are removed. The FDOT's 45-day comment period is removed in favor of the shortened 15-day period of review for technical consistency described above. Obstruction marking and lighting is required in conformance with specific standards established by the FAA. Outdated language is repealed.

Section 20 repeals s. 333.08, F.S., authorizing and providing requirements for appeals of zoning regulation decisions, in favor of relocated, modified appeals language in s. 333.09, F.S.

Section 22 repeals s. 333.10, F.S., currently requiring all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances, consistent with repeal of the variance provisions in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

Administration of Airport Zoning Regulations

Present Situation

Section 333.09, F.S., requires all adopted airport zoning regulations to provide for administration and enforcement by an administrative agency, which may be an agency created by the regulations; or by any official, board, or other existing agency of the political subdivision adopting the regulations; or by one of the subdivisions that participated in creating a joint airport zoning board adopting the regulations. The duties of any such administrative agency include hearing and deciding all permits under s. 333.07, F.S., but not any of the powers delegated to the board of adjustment.

Effect of Proposed Changes

Section 21 amends s. 333.09, F.S., to remove the list of entities that may be an administrative agency, per the FDOT, to reflect correct community planning terminology.[53] Administration and enforcement is left to the affected political subdivision or its administrative agency. Also removed is the prohibition against an administrative agency exercising the powers delegated to the board of adjustment.

Political subdivisions required to adopt airport zoning regulations must establish a process to:

- Issue or deny permits consistent with s. 333.07, F.S., including requests for exceptions to airport zoning regulations;
- Notify the FDOT of receipt of a complete permit application; and
- Enforce any permit, order, requirement, decision, or determination made by the administrative agency with respect the airport zoning regulations.

If a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the permitting and appeals process. Otherwise, the political subdivision must implement the permitting and appeals process.

Any person, political subdivision or its administrative agency, or any joint airport zoning board, may use the process established for an appeal. Appeals must be taken with a reasonable time provided by the political subdivision or its administrative agency by filing a notice of appeal specifying the grounds for appeal. An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies pursuant to the rules for appeal that a stay would cause imminent peril to life or property. In such case, proceedings may be stayed only by an order from the political subdivision or its administrative agency following notice to the entity from which the appeal is taken and for good cause shown.

The political subdivision or its administrative agency must set a reasonable time for a hearing and provide notice to the public and the parties in interest. A party may appear in person, by agent, or by attorney. The subdivision or agency may reverse, affirm, or modify the underlying order, requirement, decision, or determination from which the appeal is taken in accordance with the provisions of ch. 333, F.S.

Judicial Review

Present Situation

Section 333.11, F.S., authorizes any person aggrieved or any taxpayer affected by a decision of a board of adjustment, any governing body of a political subdivision, the FDOT, any joint airport zoning board, or any administrative agency to apply for judicial relief in the judicial circuit court where the board of adjustment is located. That section provides procedural provisions related to the board of adjustment, describes the court's authorized review of a decision by a board of adjustment, and prohibits judicial review in provisions related to a board of adjustment.

[53] *Supra*, note 48.

Effect of Proposed Changes

Section 23 amends s. 333.11, F.S., to remove the FDOT from authorization to apply for judicial relief and reference to the board of adjustment, but otherwise leave the authorization to apply for judicial review in place. Any person, political subdivision or its administrative agency, or any joint zoning board is authorized to apply for judicial relief. The judicial review prohibition is revised. An appellant is required to exhaust all remedies through application for local government permits, exceptions, and appeals before seeking judicial review. These revisions reflect the elimination of the requirement that adopted airport zoning regulations provide for a board of adjustment, consistent with repeal of the variance provisions in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

Transition Provisions

Section 25 of the bill creates s. 333.135, F.S., to:

- Provide that a provision of airport zoning regulation in effect on July 1, 2015, and in conflict with the revised ch. 333, F.S., must be amended to conform by July 1, 2016.
- Requires any political subdivision with an airport that has not adopted airport zoning regulations to do so by October 1, 2017, consistent with the chapter.
- Require the FDOT to administer the permitting process as provided in s. 333.025, F.S., for political subdivisions that have not yet adopted the required regulations.

Technical Revisions

The following sections of the bill primarily make grammatical and editorial revisions to existing language in ch. 333, F.S., and modify sections of the chapter for internal consistency with definitions.

Section 15 amends s. 333.04, F.S., to replace the following phrases as follows:

- "Zoning ordinance" with "plan or policy."
- "Trees" with "vegetation."

Section 16 amends s. 333.05, F.S., to reference amended or deleted regulations and administering and enforcing regulations, in addition to those adopted.

Section 17 amends s. 333.06, F.S., to replace references to "runway clear zones" with "runway protection zones, and "tree" to "vegetation."

Section 24 amends s. 333.12, F.S., to provide editorial changes; replace the term "navigation easement" with "avigation easement;"[54] and replace "tree" with "vegetation."

Section 26 repeals s. 333.14, the short title citing of ch. 333, F.S., as the "Airport Zoning Law of 1945."

Section 58 reenacts s. 350.81, F.S., to incorporate the amendment to s. 333.01, F.S.

[54] The bill describes "avigation" easement as an easement conveying the airspace over another property for use by the airport.

National Environmental Policy Act/Delegation of Responsibilities to States (Section 28)

Present Situation

The National Environmental Policy Act (NEPA) "establishes national environmental policy for the protection, maintenance, and enhancement of the environment and provides a process for implementing the goals within the federal agencies." Federal agencies are required to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions that significantly affect the environment. [55]

NEPA requirements also apply to state highway projects eligible for federal funding. According to the FDOT, when a highway project is advanced and is federally eligible, project development occurs consistent with NEPA requirements, in consultation with and subject to the oversight of the Federal Highway Administration (FHWA). The FDOT utilizes two processes to meet NEPA requirements. One process, the Efficient Transportation Decision Making process, is used during the project's planning phase to initiate contact with agencies and other stakeholders and obtain multiple-party input and information used to inform the second process. The Project Development and Environment (PD&E) process is used to analyze, perform outreach, guide agency coordination, and meet regulatory requirements before a project may be advanced. The FDOT prepares necessary documents, analyzes alternatives, consults with agencies, and makes recommendations. This information is provided to the FHWA, which is the lead agency for review, comment, and ultimate approval.[56]

Following an initial pilot project conducted in California, Congress in 2012 enacted the Moving Ahead for Progress in the 21st Century Act, which established a permanent surface transportation project delivery program.[57] Under the program, in which Texas is already participating, the U.S. Department of Transportation (USDOT) secretary may assign, and any state may assume, pursuant to a written agreement, all or part of the secretary's responsibilities under NEPA with respect to projects or classes of projects. The written agreement must provide that the state:

- Agrees to assume all or part of the described responsibilities;
- Expressly consents, on behalf of the state, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the secretary assumed by the state;[58]
- Certifies that state laws and regulations are in effect that authorize the state to take the actions necessary to carry out the responsibilities; and
- Agrees to maintain the financial resources necessary to carry out the responsibilities.[59]

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[55] See the U.S. Environmental Protection Agency website: http://www.epa.gov/compliance/basics/nepa.html. Last visited March 17, 2015.

[56] See the FDOT 2015 Legislative Proposal form, *Authorization to Participate in Certain Federal Transportation Programs*. On file in the Senate Transportation Committee.

[57] 23 U.S.C. s. 327 (2013).

[58] This requirement apparently exists to address the Eleventh Amendment to the U.S. Constitution, which generally prohibits suits in law or equity against one of the United States by its citizens, citizens of another state, or subjects of any foreign state.

[59] *Supra*, note 56.

The USDOT secretary is authorized to terminate the participation of any state if the state is not adequately carrying out the responsibilities and the secretary notifies the state of the determination of noncompliance. If the state fails to take corrective action as determined by the USDOT secretary within 30 days after notice, the agreement is terminated.[60]

With respect to the consent to Federal court jurisdiction, the FDOT advises:

> This waiver is limited to only those actions delegated to the Department by the USDOT and related to carrying out its NEPA duties on state highway projects. Challenges to NEPA decision making are filed in federal district court pursuant to the Federal Administrative Procedures Act and are limited to a review of the underlying administrative record. The standard for review is whether the Department's action is arbitrary and capricious. To the extent that a challenger is successful, the remedy is to require additional review, analysis and documentation to support the action. The state's exposure is further limited by 23 USC 327(a)(2)(G), which provides that a state assuming the responsibilities of the Secretary [of the USDOT] under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys' fees directly attributable to eligible activities associated with the project.[61]

Effect of Proposed Changes

Section 28 amends s. 334.044, F.S., to authorize the FDOT to assume responsibilities of the USDOT under 23 U.S.C. s. 327 with respect to highway projects, and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project, within Florida. The FDOT is authorized to enter into one or more agreements with the U.S. Secretary of Transportation related to the federal surface transportation project delivery program for the delivery of transportation projects, including highway projects. The FDOT is authorized to adopt implementing rules and to adopt relevant federal environmental standards as the standards for this state for the program. The FDOT advises the delegation allows direct consultation between the FDOT and federal regulatory agencies and maximizes efficiency by consolidating all NEPA reviews under the FDOT.

Sovereign immunity to civil suit in federal court is waived consistent with 23 U.S.C. s. 327 and limited to the compliance, discharge, or enforcement of a responsibility assumed by the FDOT. The FDOT advises its district offices would continue to conduct the PD&E process, with the FHWA's project review, legal sufficiency, and approval authority delegated to the FDOT's Central Office and with the FHWA retaining program level oversight. The waiver of sovereign immunity is limited only to those actions delegated to the FDOT and related to carrying out its NEPA duties on state highway projects. The standard for review is whether the FDOT's action is arbitrary and capricious. The remedy for a successful challenge is to require additional review, analysis, and documentation to support the project. Further, a state assuming the NEPA

[60] *Id.*

[61] *Supra*, note 55.

responsibilities may use certain apportioned state funds for attorneys' fees directly attributable to eligible activities associated with a project.[62]

Autonomous Vehicles (Sections 9, 10, 35, and 36)

Present Situation

Autonomous or "self-driving" vehicles are those operated "without direct driver input to control the steering, acceleration, and braking and … designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode."[63] According to the National Highway Traffic Safety Administration, autonomous vehicles have the potential to improve highway safety, increase environmental benefits, expand mobility, and create new economic opportunities for jobs and investment.[64]

A review of material obtained via a simple Internet search reveals that common availability and use of such vehicles was not previously anticipated for at least a couple of decades. However, some expect increased availability and use in the relative near future, perhaps no longer than in the next five years.[65]

Transportation Planning and Autonomous Vehicles

Current law requires metropolitan planning organizations (MPOs) to develop a long-range transportation plan addressing at least a 20-year planning horizon. The plans must be consistent, to the maximum extent feasible, with local government comprehensive plans of the local governments located within the jurisdiction of the MPO.

Section 339.64, F.S., requires the FDOT to develop and update every five years, in cooperation with MPOs, regional planning councils, local governments, and other transportation providers, a Strategic Intermodal System (SIS) Plan. The plan must be consistent with the Florida Transportation Plan.[66]

Current law makes no specific mention of taking into consideration planning for infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicles, in developing MPO long-range transportation plans or when updating the SIS Plan.

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[62] *Supra*, note 56.

[63] See the National Highway Traffic Safety Administration's Press Release: *U.S. Department of Transportation Releases Policy on Automated Vehicle Development.* On file in the Senate Transportation Committee.

[64] See NHTSA's statement of policy on automated vehicles.

[65] *See*, e.g.: *Autonomous Cars are Closer Than You Think*: http://techcrunch.com/2015/01/18/autonomous-cars-are-closer-than-you-think/. Last visited February 21, 2015.

[66] The Florida Transportation Plan is a statewide transportation plan that considers the needs of the entire state transportation system and examines the use of all modes of transportation to meet such needs. The purpose of the plan is to establish and define the state's long-range transportation goals and objectives over a period of at least 20 years. See s. 339.155, F.S.

Electronic Displays in Autonomous Vehicles
A motor vehicle operated on the highways of this state may not be equipped with television-type receiving equipment that is visible from the driver's seat. The prohibition does not apply to an electronic display used in conjunction with a vehicle navigation system.[67]

Definitions
The definitions of the terms "autonomous vehicle" and "autonomous technology" are currently contained together in one subsection of s. 316.003, F.S.

Effect of Proposed Changes

Section 35 amends s. 339.175(3)(c)2., F.S., to include in an MPO's capital investment assessment the goal of improving safety while making the most efficient use of existing transportation facilities. In addition, MPOs are required to consider in developing long-range transportation plans infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments.

Similarly, section 36 amends s. 339.64, F.S., to require the FDOT to coordinate with federal, regional, and local partners, as well as industry representatives, to consider when updating the SIS Plan infrastructure and technological improvements to the SIS necessary to accommodate advances in vehicle technology. The bill also requires the same consideration to be included in the needs assessment.

Section 9 amends s. 316.303(1) and (3), F.S., respectively, to allow autonomous vehicles to be equipped with television-type receiving equipment visible from the driver's seat, and to authorize an operator of an autonomous vehicle to use an electronic display in conjunction with a vehicle navigation system, both while the vehicle is being operated in autonomous mode.

Section 10 amends s. 316.003, F.S., to separate the definitions of the terms "autonomous vehicle" and "autonomous technology," currently contained in one subsection, to facilitate ease of reference.

Pedestrian Safety/Crosswalks (Sections 6 and 8)

Present Situation

The FDOT advises that it conducts public opinion surveys and on-the-street observation surveys to elicit feedback relating to pedestrian safety.

> It is the opinion of the department's safety office that these results indicate that both the general population and law enforcement have a challenging time with the crosswalk definition as it is written.[68]

Current law defines "crosswalk" to mean:

[67] See s. 316.303(1) and (3), F.S.
[68] See the FDOT email to Senate and House Committee staff, February 9, 2015. On file in the Senate Transportation Committee.

- That part of the roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.
- Any portion of a roadway at an intersection *or elsewhere* distinctly indicated for pedestrian crossing by lines or other markings on the surface.[69]

This definition is quite similar, but not identical, to the definition contained in the Manual on Uniform Traffic Control Devices (MUTCD), which is a national, uniform system of traffic control devices adopted by the American Association of State Highway Officials. States must adopt the 2009 National MUTCD as their legal standard for traffic control devices within two years from the effective date.[70] The FDOT has adopted the MUTCD pursuant to direction in s. 316.0745, F.S., which in part recognizes the potential need for revisions to a uniform system "to meet local and state needs." Further, a review of the MUTCD reveals numerous references to the need to exercise engineering judgment in applying the provisions of the MUTCD, depending upon factors such as traffic volume, terrain, and posted speed limit, etc.

According to a Federal Highway Administration (FHWA) Study:

> Pedestrians have a right to cross roads safely, and planners and engineers have a professional responsibility to plan, design, and install safe and convenient crossing facilities. Pedestrians should be included as design users for all streets.
>
> Providing marked crosswalks traditionally has been one measure used in an attempt to facilitate crossings. Such crosswalks commonly are used at uncontrolled locations (i.e., sites not controlled by a traffic signal or stop sign) and sometimes at *midblock* locations.[71]

While current Florida law, the MUTCD, and the FHWA recognize the existence of midblock crosswalks, the term, "midblock crosswalk," is not currently defined in the Florida Statutes.

The FDOT also seeks to revise the current definition of "sidewalk"; *i.e.*, "That portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians."[72]

Section 316.130, F.S., generally requires a pedestrian to obey the instructions of any applicable official traffic control device, including, but not limited, to signals and signage at crosswalks. That section also contains direction to drivers with respect to stopping or yielding to pedestrians

[69] See s. 316.003(6), F.S. Emphasis added.
[70] See the FHWA website: http://mutcd.fhwa.dot.gov/index.htm. Last visited February 18, 2015.
[71] Emphasis added. See *Safety Effects of Marked Versus Unmarked Crosswalks at Uncontrolled Locations, Final Report and Recommended Guidelines*, 2005, at 1. On file in the Senate Transportation Committee.
[72] See s. 316.003(47), F.S.

at intersections having a traffic control signal in place,[73] at crosswalks where signage so indicates,[74] and at crosswalks with no traffic control signals and no signage.[75]

Generally, a driver must stop and remain stopped when encountering a pedestrian at these crosswalks when the pedestrian steps in or is in the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. However, pedestrians crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided must yield to all vehicles on the roadway.[76]

Effect of Proposed Changes

The current definitions of "crosswalk" and "sidewalk" are revised in an attempt to clarify the terms with more easily understood language. The provisions relating to stopping for pedestrians at crosswalks where signage so indicates; i.e., crosswalks with stop signs, and at crosswalks with no traffic control signals and no signage are edited and collapsed into one subsection for clarity and brevity.

Section 6 amends s. 316.003(6), F.S., by deleting the current two-part definition of "crosswalk" and replacing it as follows:

- "Unmarked crosswalk" is defined to mean an unmarked part of the roadway at an intersection used by pedestrians for crossing the roadway.
- "Marked crosswalk" is defined to mean pavement marking lines on the roadway surface, which may include contrasting pavement texture, style, or colored[77] portions of the roadway at an intersection used by pedestrians for crossing the roadway.
- "Midblock crosswalk" is defined to mean a location between intersections where the roadway surface is marked by pavement marking lines on the roadway surface, which may include contrasting pavement texture, style or colored portion of the roadway at a signalized or unsignalized crosswalk used for pedestrian roadway crossings and may include a pedestrian refuge island.

The bill also amends s. 316.003(47), F.S., to define "sidewalk" to mean: "That portion of a street intended for use by pedestrians, adjacent to the roadway between the curb or edge of the roadway and the property line. The current definitions of "crosswalk" and "sidewalk" are revised with "plain language." According to the FDOT, plain language provides pedestrians with tools necessary to make safer choices, which often results in fewer crashes. In addition, law enforcement officials are assisted in enforcing compliance with relevant laws. The FDOT further advises these changes will not result in fewer crosswalks getting marked; rather, the sole purpose is to utilize plain language to assist pedestrians and law enforcement.[78]

[73] Section 316.130(7)(a), F.S.
[74] Section 316.130(7)(b), F.S.
[75] Section 316.130(7)(c), F.S.
[76] *Id.*
[77] The current MUTCD definition of "crosswalk" also references "contrasting pavement texture, style, or color." *Supra*, note 69. The definition is found on p. 13 of the MUTCD, available by link on the FHWA website.
[78] *Supra*, note 69.

Section 8 amends s. 316.130(7)(b), F.S., to make that paragraph applicable to crosswalk locations where the approach is not controlled by a traffic signal or by, in plain language, a stop sign. A driver continues to be required to stop and remain stopped when encountering a pedestrian at these crosswalks when the pedestrian steps in or is in the crosswalk and is upon the half of the roadway upon which the vehicle is traveling and, the bill adds, when turning, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Such locations may include midblock crosswalks. Paragraph (c) relating to crosswalks with no traffic control signals or signs is repealed, but a pedestrian's duty to yield to all vehicles on the roadway when crossing at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided is retained and moved to paragraph (b).

Turnpike Tolls/Dormant Prepaid Accounts (Section 34)

Present Situation

SunPass is the Florida Turnpike's electronic, prepaid tolls program. SunPass is accepted on all Florida toll roads and nearly all toll bridges. The system uses electronic devices, called transponders, which are attached to the inside of a vehicle's windshield. The transponder sends a signal when the vehicle goes through a tolling location, and the toll is deducted from the customer's pre-paid account. The pre-paid accounts may be set up and replenished with a credit card or with cash.[79]

Under current law, any prepaid toll account of any kind which has been inactive for three years is presumed unclaimed. The Department of Financial Services (DFS) is required to process any such inactive account in accordance with applicable provisions of ch. 717, F.S., relating to the disposition of unclaimed property, and the FDOT is directed to close such accounts.[80]

Effect of Proposed Changes

Section 34 amends s. 338.231(3)(c), F.S., to increase the period after which a dormant prepaid toll account is presumed unclaimed from three years to ten years, thereby delaying disposition by the DFS and closing of the account by the FDOT. The FDOT advises:

> [T]he deletion is desired because, with multi-state toll interoperability already implemented, and national toll interoperability mandated by federal law,[81] prepaid customers may live outside Florida and use their Florida prepaid toll account only when vacationing or otherwise visiting the state.
>
> We believe that the affected citizens and businesses would react positively to the proposal as funds on a prepaid toll account continue to be managed by the Department. This provides the customers that have had no activity

[79] *See* SunPass website, *Frequently Asked Questions:* https://www.sunpass.com/faq. Last visited February 11, 2015.
[80] See s. 338.231(3)(c), F.S.
[81] The Moving Ahead for Progress in the 21st Century Act (MAP-21) requires implementation of technologies or business practices that provide for the interoperability of electronic toll collection on all Federal-aid highway toll facilities by October 1, 2016. See the FHWA website, *Investment* heading, *Tolling [1512]* subheading: http://www.fhwa.dot.gov/map21/summaryinfo.cfm. Last visited February 13, 2015.

on a prepaid toll account for the 10 year time with continued direct access to the same agency with whom they established the account.[82]

Shared-Use Nonmotorized Trail (SunTrail) Network (Sections 3, 30, 37, 38, and 39)

Present Situation

Trail Development

The development of Florida's bicycle and pedestrian infrastructure did not begin in earnest until the late 20th Century. With the deregulation of the American railroad industry by the Staggers Rail Act of 1980[83], the state was presented with an immediate abundance of abandoned rail corridors. With the assistance of organizations such as The Rails-to-Trails Conservancy and The Trust for Public Land, the Florida Department of Transportation (FDOT), and the Florida Department of Environmental Protection (FDEP) coordinated to develop numerous abandoned rail corridors as shared-use "rail-trails" for nonmotorized transportation and recreation. Many of Florida's premier nonmotorized trails, including the Pinellas Trail, Tallahassee-St. Marks Trail, and the West Orange Trail, are a result of rail-trail conversions.

The second major thrust in trail development came in 1991 when Congress shifted transportation policy. The Intermodal Surface Transportation Efficiency Act, for the first time, identified pedestrian and bicycle facilities as components of the nation's transportation infrastructure, and created a dedicated funding source for multiuse trails and paths. With local governments serving as project sponsors,[84] many of the resulting projects are community-centric, short-distance trails, initiated by local governments and other governmental entities not traditionally associated with transportation development, such as water management districts and school districts.

Trail Connectivity

Although locales throughout the state benefited from federal trail funding, an unintended consequence of trail development being initiated by numerous state entities and local governments is a collection of random trails rather than a statewide system. As a result, many trails lack connectivity with other trails and often serve no meaningful origins and destinations. Trail users are often required to use roads, sidewalks, and highways to connect trails or complete a trip. Many trail trips are "out-and-back" trips in which the origin and destination are the same. Such trips serve little to no transportation function and do not realize the full economic potential of a trail network.

A widely accepted tenet in trail development holds that the longer a given trail is, the greater its propensity for becoming a "destination trail," and the greater distance users will travel to use. Users traveling farther stay in the area longer and, consequently, increase spending in the area. Users of the Great Allegheny Passage/C&O Towpath, a 335-mile system of biking and hiking trails that connects Pittsburgh to Washington, DC, travel an average of 131 miles to a trailhead.

[82] See the FDOT 2015 Legislative Proposal, *Dormant Accounts/Tolls/SunPass*. On file in the Senate Transportation Committee.
[83] Staggers Rail Act of 1980, Pub. L. 96-448, 94 Stat. 1895. Approved 1980-10-14.
[84] Resources for the Future Backgrounder "Federal Funding for Conservation and Recreation Trails" Joe Maher, February 2009 (http://www.rff.org/RFF/Documents/RFF-BCK-ORRG_DOT.pdf).

Those traveling 50 miles or more had daily expenditures approximately twice that of users that traveled less.[85]

Recognizing this potential, the Florida Greenways and Trails Foundation (FGTF),[86] recently announced its priority to "close the gaps" on a 275-mile corridor between the Canaveral National Seashore near Titusville and St. Petersburg.[87] The "Coast-to-Coast Connector" will link communities along this destination trail, providing a year-round eco-tourism engine throughout the region. The Connector includes two of the state's most popular trails, the Pinellas Trail and the West Orange Trail, each of which have served approximately one million users per year and fueled the economic transformation of trail communities, particularly Dunedin and Winter Garden. Components of the Connector will also serve other planned trails including multi-day loop trails such as the 250-mile Heart of Florida Greenway[88] and the 300-mile St. Johns River-to-Sea Loop.[89]

Trail Benefits

In addition to the intrinsic values nonmotorized travel bring to community mobility, sustainable transportation, and personal health, trails provide the framework for, and access to, conservation lands and wildlife corridors. Trails also produce numerous quantifiable economic benefits:

- *Trails increase the value of nearby properties.* Based on an analysis of comparable trails from across the country, the presence of Miami-Dade County's Ludlam Trail will increase properties values within 1/2 mile of the trail, 0.32 percent to 0.73 percent faster than other properties throughout the county. This translates into a total property value increase over a 25 year period of between $121 million and $282 million.[90] A survey co-sponsored by the National Association of Home Builders and the National Association of Realtors found that proximity to nonmotorized trails came in second only to highway access when recent home buyers were asked about the "importance of community amenities."[91] A study of property values near trails in Delaware found that properties within 50 meters of the bike paths sell for $8,800 more than other similar homes.[92]
- *Trails boost spending at local businesses.* An economic impact analysis of Orange County trails found that in 2010, average spending per trail user is $20 per visit, representing food and beverages, transportation, books and maps, bike maintenance, rentals and more. The West Orange Trail supported 61 jobs, and represented an estimated economic impact of $5

[85]The Great Allegheny Passage Economic Impact Study (2007–2008) Detailed Report The Progress Fund/Job #07-294b 91 March 9, 2009, page 70. (http://www.atatrail.org/docs/GAPeconomicImpactStudy200809.pdf)

[86] The FGTF, a direct support organization, exists to support the mission and programs of the Florida Department of Environmental Protection's Office of Greenways and Trails (OGT) as it continues toward establishing a statewide system of greenways and trails for recreation, conservation and alternative transportation.

[87] Florida Greenways and Trails Foundation Website: Coast-to-Coast Connector (http://fgtf.org/coast-to-coast/) (Last visited: 2/25/15)

[88] Florida Greenways and Trails Foundation Website: Heart of Florida Greenway (http://fgtf.org/maps/hof/overview.pdf) (Last visited 2/25/15)

[89]St. Johns River-to-Sea Loop Trail Status Update, September 2011. ETM, Inc. http://www.etminc.com/SJR2C/sg_userfiles/SJR2C_Summary_Report_09-19-11.pdf

[90] Miami-Dade County Trail Benefits Study: Ludlam Trail Case Study (http://atfiles.org/files/pdf/Miami-Dade-Ludlam-Trail-Benefits.pdf)

[91] (http://www.americantrails.org/resources/benefits/homebuyers02.html)

[92] Lindsey et al, "Property Values, Recreation Values, and Urban Greenways," Journal of Park and Recreation Administration, V22(3) pp.69-90.

million for Downtown Winter Garden. Longer, "destination trails," increase spending and benefit hotels, bed and breakfasts, and outdoor outfitters. A study of the Great Allegheny Passage, a 132-mile corridor in Pennsylvania, found that users reporting longer average travel distances to the trail, were more likely to spend successive days on or near the trail. Those who reported an overnight stay in conjunction with their trip averaged spending $203 per person.[93] A survey on the Greenbrier River Trail, an 81-mile corridor in West Virginia, found an overwhelming majority of trail users were highly educated professionals with high income levels, 2/3 were from outside of West Virginia, 93 percent were staying in the area from one to four days, 58 percent spent between $100 and $500 in the area, and 93 percent indicated that they were highly likely to plan a return trip.[94]

- *Trails influence business location and relocations decisions.* Companies often choose to locate in communities that offer a high level of amenities to employees as a means of attracting and retaining top-level workers. Trails can make communities attractive to businesses looking to expand or relocate both because of the amenities they offer to employees and the opportunities they offer to cater to trail visitors.[95]
- *Trails revitalize depressed areas.* In Dunedin, Florida, after the abandoned CSX railroad was transformed into the Pinellas Trail, the downtown went from a 30 percent storefront vacancy rate to a 95 percent storefront occupancy.[96]
- *Trails provide sustainable tourism opportunities.* The Outer Banks of North Carolina generates $60 million in economic activity through bicycle tourism. The one-time investment of $6.7 million on bicycle infrastructure has resulted in an annual nine-to-one return. Outer Banks shows bicycle tourists tend to be affluent (half earn more than $100,000 a year, 87 percent earn more than $50,000) and educated (40 percent have a masters or doctoral degree). More than half of survey respondents said bicycling had a strong influence on their decision to return to the area. Two-thirds of respondents said that riding on bike facilities made them feel safer and three-fourths said that more paths, shoulders and lanes should be built.[97] A trail can be regarded as a product that is able to provide a sustainable form of tourism resting on a 'quadruple bottom line' of environmental, social, economic and climate responsiveness."[98]
- *Trail development creates more jobs than road development.* A national comparison of the number of jobs created per $1 million spent on various types of transportation projects found

[93] *The Great Allegheny Passage Economic Impact Study* (2007–2008) Detailed Report The Progress Fund/Job #07-294b 91 March 9, 2009, page 91 (http://www.atatrail.org/docs/GAPeconomicImpactStudy200809.pdf)
[94] *Maximizing Economic Benefits from a Rails-to-Trails Project in Southern West Virginia – A Case Study of the Greenbrier River Trail*, May 2001. Raymond Busbee, Ph.D. Marshall University.
[95] Economic Impacts of Protecting Rivers, Trails, and Greenway Corridors: Corporate Relocation and Retention. Rivers, Trails and Conservation Assistance Program, National Park Service 1995
[96] FDEP Presentation: "*The Impact of Trails on Communities*" Office of Greenways and Trails. (http://www.opportunityflorida.com/pdf/Jim%20Wood%20-%20Trails%20and%20Economic%20Impact%20-%20Rural%20Summit.pdf)
[97] Lawrie, et al, "*Pathways to Prosperity: the economic impact of investments in bicycling facilities*," N.C. Department of Transportation Division of Bicycle and Pedestrian Transportation, Technical Report, July 2004. http://www.ncdot.org/transit/bicycle/safety/safety_economicimpact.html.
[98] Reis, A.C.; Jellum, C. (2012). Rail trails development: a conceptual model for sustainable tourism. Tourism Planning and Development,9(2): 133-148

that for every $1 million spent on the development of multi-use trails, 9.57 jobs were created while road-only development yielded 7.75 jobs.[99]

Effect of Proposed Changes

Generally, the bill creates the Shared-Use Nonmotorized Trail (SunTrail) Network as a component of the Florida Greenways and Trail System. The FDOT is given primary responsibility for developing and maintaining the SunTrail network, although provisions are included to allow the FDOT to outsource maintenance and to enter into trail sponsorship agreements with public and private entities. Specific provisions of the bill follow.

Section 3 amends s. 260.0144 F.S., to remove SunTrail components from existing provisions for sponsorship of state trails by not-for-profit or private sector entities. Other greenways and trails remain eligible for sponsorship under the section. Section 11 of the bill creates a new s. 339.83, F.S., to provide for sponsorship of SunTrail components.

Section 30 amends s. 335.065, F.S., to remove the FDOT's authority to enter contracts for commercial sponsorship of multi-use trails. This authority is provided in new section 339.83, F.S., which expands sponsorship opportunities for SunTrail components.

Section 37 creates s. 339.81, F.S., to establish the Florida SunTrail Network as a component of the Florida Greenways and Trails System established in ch. 260 of the Florida Statutes. SunTrail components will provide nonmotorized travel opportunities between and within communities, conservation areas, state parks, beaches and other natural and cultural attractions.

SunTrail components will not include sidewalks, nature trails, or loop trails in a single park. Bicycle lanes on roadways may not be considered components of the SunTrail network unless the lane is used to connect two or more nonmotorized trails and is no more than one-half mile long. Exceptions are provided to include some on-road components of the Florida Keys Overseas Heritage Trail within the SunTrail Network.

The FDOT will include SunTrail projects within its five-year work program. The FDOT and other agencies and units of government are authorized to expend funds and accept gifts and grants of funds, property, and property rights for the development of the SunTrail network. The FDOT is authorized to enter into memoranda of agreement with other governmental entities and contract with private entities to provide maintenance services on individual components of the network and may adopt rules to assist in developing and maintaining the network.

Section 38 creates s. 339.82, F.S., directing the FDOT to develop the SunTrail Network Plan in coordination with FDEP, MPOs, local governments, other public agencies, and the Florida Greenways and Trails Council. The plan must include:

- A needs assessment, including a comprehensive inventory of existing facilities;
- A process that prioritizes projects that:
  - Are identified by the Florida Greenways and Trails Council as priority projects;
  - Connect components by closing gaps in the network; and

[99] Pedestrian And Bicycle Infrastructure: A National Study Of Employment Impacts Heidi Garrett-Peltier Political Economy Research Institute University of Massachusetts, Amherst June 2011

- Maximize use of federal, local, and private funds;
- A map showing existing and planned facilities;
- A finance plan in five- and ten-year cost-feasible increments;
- Performance measures focusing on trail access and connectivity;
- A timeline for completion of the base network; and
- A marketing plan prepared in conjunction with Visit Florida.

Section 39 creates s. 339.83, F.S., to provide for sponsorship of SunTrail components by not-for-profit or private sector entities. The bill provides guidance on sponsor signs, markings, and exhibits and provides for trail marketing materials to recognize sponsors.

Vehicle Miles Traveled Pilot (Section 57)

Present Situation

Concern regarding the sustainability of transportation funding sources remains as a focus of attention in the transportation arena. A number of factors have together caused a reduction in transportation revenues:

- The bulk of federal surface transportation funding comes from the federal taxes on gasoline and diesel fuel assessed on a per-gallon basis, and the tax rates are not adjusted for inflation.
- The total number of vehicle miles traveled (VMT) has declined in recent years, resulting in fewer gallons of gas and diesel sold upon which to assess federal, state, and local taxes. This number is not expected to return to previously realized growth levels.
- Vehicle fuel efficiency continues to increase, also lowering the demand for gallons of gas and diesel.[100]

Various alternatives to the existing gas and diesel taxes have been considered. One alternative is to replace those taxes with a "vehicle-miles-traveled tax" or a "mileage-based user fee":

> Mileage-based user fees (MBUF) are an alternative way to finance the construction and maintenance of roads. Rather than the current gas tax method, which is based on the amount of fuel purchased at the pump, a VMT tax is based on how many miles are driven.[101]

According to the Mileage-based User Fee Alliance (MBUFA), use of a distance-traveled mechanism is already being successfully implemented in several European nations and in New Zealand. Domestically, "…states are taking a lead in helping to resolve many of the implementation questions by working with academia, industry partners and each other to devise mileage-based user fee pilot projects around the country."[102]

[100] See the Center for Urban Transportation Research, *Florida MPOAC Transportation Revenue Study*, July 2012. On file in the Senate Transportation Committee.
[101] See Mileage-Based User Fee Alliance website: http://mbufa.org/about.html. Last visited February 26, 2015.
[102] See MBUFA website: http://mbufa.org/where.html. Last visited February 26, 2015. Colorado, Minnesota, Nevada, New York City, Texas, Washington, the University of Iowa, and the I-95 Corridor Coalition have all undertaken efforts with respect to a mileage-based fee.

The State of Oregon appears to have made the most progress in the United States, having already completed two pilots and planning implementation of a voluntary program, beginning July 1, 2015, using 5,000 vehicles.[103] Interest has been expressed in developing a Florida-specific, implementable pilot project to determine the efficacy of a VMT fee as a viable alternative to per-gallon gas and diesel taxes.

Effect of Proposed Changes

Section 57 directs the Center for Urban Transportation Research at the University of South Florida (CUTR) to conduct a study on the viability of implementing a system that charges drivers based on their vehicle miles traveled (VMT), as an alternative to the present fuel tax structure, to fund transportation projects. The study is to inventory previous research and findings from pilot projects conducted in other states.

At a minimum, the study must address previous work conducted in the following broad areas.

- Assessment of technologies;
- Behavioral and privacy concerns;
- Equity impacts; and
- Policy implications of a VMT road charging system.

The study must also quantify the current costs to collect traditional highway user fees, synthesize findings of completed research and demonstrations, and analyze their applicability to Florida. The CUTR must present the findings of the study phase to the Legislature by January 30, 2016.

In the course of the study, and in consultation with the Florida Transportation Commission, the CUTR is directed to establish the framework for a pilot project that will evaluate the feasibility of implementing a VMT charging system. In designing the framework, the CUTR is directed to address at a minimum the following elements:

- The geographic location for the pilot;
- Special fleets or classes of vehicles;
- Evaluation criteria for the demonstration;
- Consumer choice in the method of reporting miles traveled;
- Privacy options for participants in the pilot project;
- The recording of miles traveled with and without locational information;
- Records retention and destruction; and
- Cyber security.

The pilot project design must be completed by December 31, 2016, and submitted in a report to the Legislature, so that implementation can occur in 2017.

[103] See *Oregon's VMT Pilot to Begin its Third Phase – Road usage Charge Program Update*: http://www.nlc.org/media-center/news-search/oregon%E2%80%99s-vmt-pilot-to-begin-its-third-phase-road-usage-charge-program-update. Last visited February 26, 2015.

Northwest Florida Regional Transportation Finance Authority (Sections 42 through 56)

Present Situation

Escambia and Santa Rosa counties, are currently served by the Northwest Florida Transportation Corridor Authority and the Santa Rosa Bay Bridge Authority. According to a report by the Florida Transportation Commission (FTC), the NFTCA is not currently operating any facility and is operating under an agreement using federal funding for administration, professional services, and regional transportation planning. The Santa Rosa Bay Bridge Authority owns the Garcon Point Bridge in southwest Santa Rosa County. Florida's Turnpike Enterprise provides toll operations.[104]

Effect of Proposed Changes

The bill creates ch. 345 of the Florida Statutes, the Northwest Florida Regional Transportation Finance Authority Act, consisting of ss. 345.0001 – 345.0014, F.S. The bill authorizes Escambia County, alone or together with a consenting Santa Rosa County, to form a regional finance authority in the northwest region of the state. The governing body of the Authority consists of two resident members from each participating county appointed by the county commission of each county, an equal number to be appointed by the Governor, and the FDOT's District Three secretary. County commission appointees must represent the business and civic interests of the relevant community, if possible.

The Authority is authorized to construct, operate, and maintain a regional system in the area served, except for an existing system for transporting people and goods owned by another non-consenting entity. Broad powers are granted to the Authority, including, but not limited to:

- The exercise of eminent domain;
- The establishment and collection of rates and fees, which power may be assigned or delegated to the FDOT;
- The power to borrow money and issue bonds[105] to finance the system and to secure the payment of such bonds by a pledge of system revenues, including any municipal or county funds received by the Authority under an agreement with the municipality or county.
- The power to enter into contracts, including, but not limited to, partnerships providing for participation in system ownership and revenues;
- The power to employ an executive director, attorney, staff, and consultants, with the FDOT furnishing the services of an FDOT employee to act as the executive director upon the request of the Authority.

[104] Florida Transportation Commission, *Transportation Authority Monitoring and Oversight Fiscal Year 2013 Report*, at 163, *available at*: http://www.ftc.state.fl.us/reports/TAMO.shtm. Last visited February 16, 2015.

[105] A resolution authorizing issuance of bonds on behalf of the authority under the State Bond Act and pledging system revenues must require periodic deposits of system revenues into appropriate accounts in amounts sufficient to pay the costs of O&M for the current fiscal year and to reimburse the FDOT for any unreimbursed O&M costs from prior fiscal years before revenues of the system are deposited for payment of principal and interest on such bonds.

The FDOT is deemed the Authority's agent for performing all construction, extension, and improvement phases of a project. After the issuance of bonds to finance construction, the Division of Bond Finance and the Authority are required to transfer the necessary funds to the credit of the State Transportation Trust Fund. Alternatively, with the FDOT's consent and approval, the Authority may appoint a local, FDOT-certified agency to administer federal-aid projects.

The FDOT is also deemed the Authority's agent for operating and maintaining the system, except for transit facilities, and the costs incurred by the FDOT must be reimbursed from system revenues. However, the Authority remains obligated as principal to operate and maintain the system.

At the request of the Authority and subject to appropriation by the Legislature, the FDOT may pay the cost of financial, engineering, or traffic feasibility studies or of the design, financing, acquisition, or construction of an Authority project that is included in the ten-year Strategic Intermodal System (SIS) Plan.[106] The FDOT is required to include funding for such payments in its legislative budget request. The request for funding may be included in the FDOT's five-year Tentative Work Program. However, the request must appear as a distinct funding item in the legislative budget request and be supported by a financial feasibility test.

The FDOT may not make a budget request unless the estimated net revenues of the proposed project will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of 12 years of operation, and at least 100 percent of the same by the end of 30 years of operation.[107] Funding for a project must appear in the General Appropriations Act as a distinct fixed capital outlay item and must clearly identify the related project.

The FDOT may participate in projects that, at a minimum, serve national, statewide, or regional functions; are identified in the capital improvements element of a comprehensive plan; comply with local government policies in such plans relative to corridor management; are consistent with the SIS; and have a local, regional, or private financial match.

Before approving a proposed project, the FDOT must determine that the project:

- Is in the public's best interest;
- Does not require the use of state funds, unless the project is on the State Highway System;
- Has adequate safeguards in place to ensure no additional imposed costs or service disruptions if the FDOT cancels or defaults on the agreement, and to ensure that the FDOT and the Authority have the opportunity to add capacity to the project and other transportation facilities serving similar origins and destinations.

[106] The Strategic Intermodal System (SIS) is the statewide network of high priority transportation facilities, including the state's largest and most significant airports, spaceports, deepwater seaports, freight rail terminals, interregional rail and bus terminals, rail corridors, urban fixed guideway transit corridors, waterways, and highways. The SIS is the state's highest statewide priority for transportation capacity improvements. See the FDOT SIS brochure, available at: http://www.dot.state.fl.us/planning/sis/Strategicplan/. Last visited February 17, 2015.

[107] Equivalent to the economic feasibility test for proposed Turnpike projects under s. 338.221(8)(a), F.S.

The FDOT may require any contribution to be repaid from tolls of the project, other Authority revenue, or other sources of funds. The FDOT must receive a share of the Authority's net revenues equal to the ratio of the FDOT's total contributions to the Authority to the sum of:

- The FDOT's total contributions;
- Any local government contributions to the cost of revenue-producing Authority projects; and
- The sale proceeds of Authority bonds after payment of costs of issuance.

The Authority is exempt from paying any taxes or assessments upon any Authority property, rates, fees, or income, etc., or upon bonds issued by the Authority. Issuance of bonds to finance the cost of extension or improvement of a system is authorized without compliance with any other law.

Independent Special Districts Regulating Vehicles For Hire (Section 31)

Present Situation

The Hillsborough County Public Transportation Commission (HPTC) is a legislatively-created independent special district regulating vehicles for hire. The HPTC regulates such vehicles in that county pursuant to authority granted to counties in s. 125.01(1)(n), F.S., to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county. The Commission appears to be the only independent special district with such responsibilities.[108]

The HPTC currently has seven members.[109] The Board of County Commissioners appoints three members from the board, the City Council of Tampa appoints two members, and the City Commission of Plant City and the City Council of Temple Terrace appoint one member each. Each member serves a two-year term.

Effect of Proposed Changes

Section 31 creates s. 335.21, F.S., to revise the appointment of membership to a legislatively-created independent special district regulating vehicles for hire, notwithstanding any provision of local law. The Governor appoints four members, the city council of the largest municipality in the district appoints one member, and the board of county commissioners of the county in which the district is located appoints two members. All seven members must be residents of the county they serve. Entities authorized under s. 163.567, F.S., or under chapters 343, 348, or 349, F.S.; e.g., generally, regional transportation authorities and expressway and bridge authorities, are excluded from the revised appointment provisions.

Fort Myers Urban Office/Staffing and Responsibilities (Section 1)

Present Situation

Current law organizes the operations of the FDOT into seven districts, each headed by a district secretary, as well as a turnpike enterprise and a rail enterprise. Section 20.23(4)(b), F.S., authorizes each district secretary to appoint up to three district directors. Section 20.23(4)(d),

[108] The HPTC is an independent special district first created in 1983. See ch. 83-423, Laws of Florida.
[109] See ch. 2001-299, Laws of Florida.

F.S., makes the district director for the Fort Myers Urban Office of the FDOT responsible for developing the five-year Transportation Plan for Charlotte, Collier, DeSoto, Glades, Hendry, and Lee Counties, and makes the Urban Office responsible for providing policy, direction, local government coordination, and planning for those counties. The office and the counties are contained within FDOT's District One, which currently provides policy, direction, and planning for all counties in District One, not just those listed above.

The FDOT also has Urban Area offices located in Jacksonville and Orlando. The FDOT advises all urban offices are satellite offices for their main District Office, and all are under the direction of the respective District Secretary. However, only the Fort Myer's Urban Office is referenced in statute with express direction as to staffing and responsibilities.

The FDOT advises that insertion of the specific staffing and responsibility assignment was in the nature of a precursor to what might have, but did not, become an FDOT District Eight. No district director is currently physically housed in the Fort Myers Urban Office. Responsibility for providing policy, direction, and planning for the listed counties occurs at the District One level, leaving the Fort Myers Urban Office largely responsible for local government coordination in support of those activities, as well as coordination of joint participation and local funding agreements for transportation projects, in the listed counties.[110]

Effect of Proposed Changes

Section 1 repeals s. 20.23(4)(d), F.S., to remove the Fort Myers Urban Office District Director responsibility for developing the five-year Transportation Plan for the specified counties and remove the specified Urban Office responsibilities. The FDOT advises the existence of the Fort Myers Urban Office is in no way affected, and the office will continue to provide local government coordination in the specified counties. The FDOT advises the revisions provide flexibility to make efficient best-practices human resource decisions, while it continues to provide service in the specified counties.[111]

511 Traveler Information Services (Sections 27, 28, and 29)

Present Situation

511 is a national abbreviated dialing code assigned by the Federal Communications Commission (FCC) to be used exclusively for access to travel information services.[112] The code enables a caller to connect to a location in a network without using a seven or ten-digit telephone number. The network is pre-programmed to translate a three-digit code into the appropriate seven or ten-digit code and route the call accordingly.[113]

All of Florida's interstates, toll roads, and other major metropolitan roadways are covered by the 511 system. Currently, in addition to provision of services via the toll-free 511 telephone system, motorists may also receive travel information by:

[110] Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.
[111] See the FDOT 2015 Legislative Proposal form, *Fort Myers Urban Office.* On file in the Senate Transportation Committee.
[112] See Federal Communications Commission Order No. 00-256*, Third Report and Order and Order on Reconsideration*, July 21, 2000. Copy on file in the Senate Transportation Committee.
[113] *Id.*, at 4.

- Visiting FL511.com for interactive roadway maps showing traffic congestion and crashes, travel times, and traffic camera views;
- Downloading a free mobile app available on Google Play or Apple App Store; or
- Following one of the 12 statewide, regional, or roadway specific Twitter feeds (#FL511).[114]

The FDOT, as the state's lead agency for implementing 511 services and the point of contact for coordinating 511 services with *telecommunications*[115] service providers, is statutorily tasked with the following duties:

- Implementation and administration of 511 services in the state;
- Coordination with other transportation authorities in the state to provide multimodal traveler information through 511 services and other means;
- Development of uniform standards and criteria for the collection and dissemination of traveler information using the 511 number or other interactive voice response systems; and
- Entrance into joint participation agreements or contracts with highway authorities and public transit districts to share the costs of implementation and administration.[116]

"511" or "511 services" are currently defined as three-digit *telecommunications dialing to access interactive voice response telephone*[117] traveler information services as defined by the FCC Order No. 00-256, July 1, 2000.[118] "Interactive voice response" is defined as a software application that accepts a combination of voice *telephone* input and touch-tone keypad selection and provides appropriate responses in the form of voice, fax, callback, e-mail, and other media.[119] The FDOT's existing rulemaking authority is similarly limited to coordination of 511 traveler information *phone* services.[120] And the FDOT's existing powers and duties likewise limit the FDOT's provision of services to *interactive voice response telephone systems access.*[121]

The referenced duties and definitions are essentially limited to *telephonic* access to traveler information and do not recognize the additional methods by which travelers may obtain the information using more recent technology, such as a web site, mobile apps, Twitter accounts, and text alerts.

Effect of Proposed Changes

The bill in general revises 511 traveler information services statutes to remove language limiting the provision of services through only telephonic access. These revisions recognize newer technologies and methods for providing traveler information.

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[114] See 511News.com January 20, 2015, press release http://www.511news.com/news-releases/fdots-511-on-the-lookout-to-help-birdwatchers-travel-to-space-coast/ for additional information on Florida 511 features. Last visited February 4, 2015.
[115] Emphasis added.
[116] See s. 334.60, F.S.
[117] Emphasis added.
[118] See s. 334.03(36), F.S.
[119] See s. 334.03(37), F.S.
[120] See s. 334.60, F.S.
[121] See s. 334.044(31), F.S.

Section 27 amends s. 334.03(36), F.S., to remove from the definition reference to *three-digit telecommunications dialing to access interactive voice response telephone* traveler information in favor of *all* traveler information services. That section also amends s. 334.03(37), F.S., to repeal the definition of "interactive voice response," as the phrase is no longer to be used.

Section 28 amends s. 334.044(31), F.S., to revise the FDOT's 511 oversight duty by deleting reference to *the provision of interactive voice response telephone systems* and a reference to the 511 *number*, leaving the FDOT responsible for oversight via the 511 *services* as assigned by the FCC.

Section 29 amends s. 334.60, F.S., striking reference to the FDOT's coordination *with telecommunications service providers*, to allow the FDOT's continued coordination of *all* traveler information services with providers using newer technologies and methods. A reference to the 511 *number or other interactive voice response systems* is removed, in favor of 511 *services*, and a reference to *phone* services is deleted.

The FDOT advises that the effectiveness of disseminating traveler information through interactive voice response is becoming less advantageous. While the FDOT may decide to discontinue providing an interactive voice response system, traveler information will be provided via the most advanced technologies, thereby ensuring distribution of information to the largest possible audience. Armed with the information, users are able to make informed travel decisions, which improves safety and mobility on Florida roadways.[122]

Inspector General Appointment (Section 1)

Present Situation

Prior to 2014, agency inspectors general were appointed by and reported to agency heads. The Legislature in 2014 revised the law with respect to agency inspector general appointment to provide, for agencies such as the FDOT under the jurisdiction of the Governor, agency inspectors general are to be appointed by and report to the Chief Inspector General.[123] Section 20.23(3)(d), F.S., continues to require the FDOT Secretary to appoint an inspector general directly responsible to and serving at the pleasure of the Secretary, in direct conflict with the revisions made in 2014 to s. 20.55, F.S.

Effect of Proposed Changes

Section 1 repeals s. 20.23(3)(d), F.S., to remove the directly conflicting and obsolete direction to the FDOT Secretary regarding inspector general appointment, thereby conforming to the revisions to s. 20.55, F.S., made by the 2014 Legislature.

[122] See the FDOT 2015 Legislative Proposal form, *Modify definition/responsibilities of 511*, on file in the Senate Transportation Committee.
[123] See Enrolled HB 1385 (2014).

Transportation Corridors (Section 41)

Present Situation

Section 341.0532, F.S., enacted in 2003, currently defines "statewide transportation corridor" as a system of transportation infrastructure that collectively provides for the efficient movement of significant volumes of intrastate, interstate, and international commerce by seamlessly linking multiple modes of transport. That section also lists eight corridors deemed "Florida's statewide transportation corridors."

In the same year, the Legislature enacted the Strategic Intermodal System (SIS). [124] SIS facilities collectively serve 56 percent of State Highway System traffic, 70 percent of State Highway System truck traffic, 89 percent of interregional bus and rail passengers, 99 percent of commercial air passengers and cargo, and 100 percent of rail and waterborne freight tonnage and cruise ship passengers.[125] SIS facilities are designated by the FDOT based on criteria provided in ss. 339.61 through 339.64, F.S. The corridors currently listed in s. 341.0532, F.S., with limited exception,[126] are also part of the SIS. Section 341.0532, F.S., is not referenced elsewhere in the Florida Statutes, and the FDOT advises that section is not used in performing any of its duties and responsibilities. The statute appears to be obsolete.

Effect of Proposed Changes

Section 41 repeals s. 341.0532, F.S., which created Florida's statewide transportation corridors. The corridors continue to be managed through their inclusion in the SIS.

Obsolete References/Beeline-East Expressway and Navarre Bridge (Section 32)

Present Situation

Section 338.165(4), F.S., authorizes the FDOT to request the DBF to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the FDOT's adopted work program. The Beeline-East Expressway (re-named the Beachline East Expressway) became part of the Turnpike Enterprise on July 1, 2012, pursuant to ch. 2012-128, L.O.F.[127] The Navarre Bridge is now county-owned and no longer used for toll revenue. The references to each facility in s. 338.165(4), F.S., are now obsolete.

Effect of Proposed Changes

Section 32 s. 338.165(4), F.S., to remove obsolete references to the Beeline-East Expressway and the Navarre Bridge within the FDOT's authority to request issuance of bonds secured by toll revenues from certain toll facilities, as the expressway and bridge are no longer owned by the FDOT.

[124] See the web link, *supra*, note 105, for additional information on the SIS.
[125] See the 2014 FDOT *Strategic Intermodal System Briefing*. On file in the Senate Transportation Committee.
[126] See the FDOT email, March 2, 2015. On file in the Senate Transportation Committee.
[127] See s. 338.165(10), F.S.

Broward County Expressway Authority/Obsolete Bond Language (Section 34)

Present Situation

The Broward County Expressway Authority built the Sawgrass Expressway, a 23-mile facility in Broward County. The expressway opened to traffic in 1986 and extends from I-75 in Weston to its interchange with the Florida Turnpike and Southwest 10th Street in Deerfield Beach. In 1990, the FDOT acquired the expressway, and it became a part of Florida's Turnpike System.[128] The Expressway Authority was abolished in 2011.[129] Section 338.221(5), F.S., generally authorizes the FDOT, in each fiscal year during which any of the Broward County Expressway Authority bond series 1984 and series 1986-A remain outstanding, to pledge revenues from the turnpike system to the payment of such bonds and the operation and maintenance of the Sawgrass Expressway. No such bonds are currently outstanding, and the language is obsolete.

Effect of Proposed Changes

Section 34 repeals the obsolete language in s. 338.231(5), F.S., relating to bonds of the abolished Broward County Expressway Authority.

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:

The following sections of CS/SB 1554 will have the indicated impact on the private sector:

Sections 3, 30, 37, 38, and 39: Significant positive economic development is expected from development of the SunTrail Network.

[128] See the FDOT website: http://www.floridasturnpike.com/about_system.cfm#7. Last visited February 23, 2015.
[129] See s. 18, ch. 2011-64, Laws of Florida.

Section 4 and 5: Increased FSTED funding may generate a positive economic impact for the private sector.

Sections 6 and 11: The trucking industry is expected to experience a positive fiscal impact due to the decreased fines assessed for IRP violations.

Sections 6 and 8: To the extent that the bill reduces the number and severity of bicycle and pedestrian deaths and injuries, a positive but indeterminate fiscal impact to bicyclists and pedestrians is expected.

C. Government Sector Impact:

The following sections of the bill will have the indicated impacts:

Sections 3, 30, 37, 38, and 39: Funding for the SunTrail Network in the amount of $50 million is authorized for Fiscal Year 2015-2016 in SB 2500 (the Senate's General Appropriation Bill for Fiscal Year 2015-2016).

Sections 4 and 5: The additional $10 million in FSTED funding will assist seaports with various projects and is expected to generate a positive economic impact by helping to increase the competitiveness of Florida's seaports. Projects planned for various ports include dredging, berth rehabilitation, and the expansion of facilities. The additional FSTED funding will require the FDOT to reallocate budget authority within the state's $9.3 billion transportation work program.

Sections 6 and 11: The FDOT advises it expects a negative annual fiscal impact of approximately $1.6 million due to a decrease in the fines assessed for IRP violations.[130] A portion of the decrease, approximately $500,000, is attributed to the revised IRP Full Reciprocity Plan.

Section 10: The FDOT may experience an indeterminate positive fiscal impact if the increased allowable trailer length used to transport manufactured buildings results in issuance of more special permits.

Section 40: According to the Office of Economic and Demographic Research (EDR), the additional workload and resources associated with the evaluation and determination of the economic benefits of the state's investment in the FDOT Adopted Work Program annually can be absorbed by existing staff. The FDOT and its district offices may experience additional workload to provide the necessary data to EDR; however, the workload is currently indeterminate.

Sections 35 and 36: MPOs may experience minimal expenses in considering autonomous vehicle technology when developing long-range transportation plans. Likewise for the FDOT when updating the SIS Plan.

[130] See the FDOT's response to House committee staff's *DOT Package Questions from Committee Staff*, on file in the Senate Transportation Committee.

Section 57: The bill authorizes the Center for Urban Transportation Research at the University of South Florida to expend up to $400,000 for the vehicle miles traveled study and pilot project design, contingent upon legislative appropriation. There is no funding in SB 2500 for this study.

Sections 42 through 56: The fiscal impact of authorizing creation of the Northwest Florida Regional Transportation Finance Authority is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.23, 215.82, 260.0144, 311.07, 311.09, 316.003, 316.0895, 316.130, 316.303, 316.515, 316.545, 333.01, 333.025, 333.03, 333.04, 333.05, 333.06, 333.07, 333.09, 333.11, 333.12, 334.03, 334.044, 334.60, 335.065, 338.165, 338.227, 338.231, 339.175, and 339.64.

This bill creates the following sections of the Florida Statutes: 333.135, 335.21, 339.81, 339.82, 339.83, 345.0001, 345.0002, 345.0003, 345.0004, 345.0005, 345.0006, 345.0007, 345.0008, 345.0009, 345.001, 345.0011, 345.0012, 345.0013, and 345.0014.

This bill repeals the following sections of the Florida Statutes: 333.065, 333.08, 333.10, 333.14, and 341.0532.

This bill reenacts section 350.81 of the Florida Statutes.

The bill creates three undesignated sections of Florida law.

IX. Additional Information:

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

CS by Transportation on March 29, 2015:
The CS modifies the bill by:

- Revising several sections of the bill dealing with ch. 333, F.S., relating to airport zoning regulations, to make final glitch corrections and provide uniformity in the language;
- Authorizing the FDOT to assume responsibilities under the National Environmental Policy Act with respect to highway projects, as authorized by federal law;

- Providing that the provisions revising the membership of a legislatively-created independent special district do not apply to certain entities;
- Adding provisions of SB 1186 requiring a vehicle-miles-traveled study, requiring consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology, creating the Northwest Florida Regional Transportation Authority Act, extending the allowable length of certain trailers, and repealing obsolete language;
- Defining "driver-assistive truck platooning," excluding certain vehicles equipped with such technology from provisions relating to vehicles following too closely, and including such vehicles in the provisions relating to television-type or other electronic displays visible to a driver.
- Removing Port Citrus from membership on the FSTED Council and repealing related provisions;
- Removing authorization of a public transit provider to contract with a transportation network company to provide public transit services;
- Removing direction to the Commission for the Transportation Disadvantaged and the Center for Urban Transportation Research to develop and implement a pilot program with a public transit provider to provide paratransit services; and
- Extending from 53 to 57 feet the allowable length of certain semitrailers authorized to operate on public roads.

B. Amendments:

None.

By the Committee on Transportation; and Senator Brandes

596-02567-15 20151554c1

A bill to be entitled

An act relating to transportation; amending s. 20.23, F.S.; deleting the requirement that the Secretary of Transportation appoint an inspector general pursuant to s. 20.055, F.S.; deleting the requirement that the district director for the Fort Myers Urban Office of the Department of Transportation be responsible for developing the 5-year Transportation Plan and other duties for specified counties; amending s. 215.82, F.S.; deleting a cross-reference; amending s. 260.0144, F.S.; providing that certain commercial sponsorship may be displayed on state greenway and trail facilities not included within the Florida Shared-Use Nonmotorized Trail Network; deleting provisions relating to the authorization of sponsored state greenways and trails at specified facilities or property; amending s. 311.07, F.S.; increasing the minimum amount that shall be made available annually from the State Transportation Fund to fund the Florida Seaport Transportation and Economic Development Program; amending s. 311.09, F.S.; reducing the number of members of the Florida Seaport Transportation and Economic Development Council; removing Port Citrus from the council membership; increasing the amount per year the department must include in its annual legislative budget request for the Florida Seaport Transportation and Economic Development Program; deleting obsolete language; amending s. 316.003, F.S.; defining and redefining terms; amending s. 316.0895,

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F.S.; providing that provisions prohibiting a driver from following certain vehicles within a certain distance do not apply to truck tractor-semitrailer combinations under certain conditions; providing for financial responsibility; amending s. 316.130, F.S.; revising traffic regulations relating to pedestrians crossing roadways; amending s. 316.303, F.S.; providing exceptions to the prohibition of certain television-type receiving equipment and certain electronic displays in vehicles; amending s. 316.515, F.S.; extending the allowable length of certain semitrailers authorized to operate on public roads under certain conditions; authorizing the Department of Transportation to permit truck tractor-semitrailer combinations where the total number of overwidth deliveries of manufactured buildings may be reduced by the transport of multiple sections or single units on an overlength trailer of no more than a specified length under certain circumstances; amending s. 316.545, F.S.; providing a specified penalty for commercial motor vehicles that obtain temporary registration permits entering the state at, or operating on designated routes to, a port-of-entry location; amending s. 333.01, F.S.; defining and redefining terms; amending s. 333.025, F.S.; revising requirements relating to securing a permit for the proposed construction or alteration of structures that would exceed specified federal obstruction standards; requiring such permits only within an airport hazard

area if the proposed construction is within a set radius of a certain airport reference point; providing that existing, planned, and proposed facilities at public-use airports contained in certain plans or documents will be protected from structures that exceed federal obstruction standards; providing that a permit is not required when political subdivisions have adopted adequate airport protection zoning regulations and have established a permitting process, subject to certain requirements; providing for a review period by the department to run concurrent with such permitting process, subject to certain requirements and exemptions; specifying certain factors the department shall consider in determining whether to issue or deny a permit; directing the department to require an owner of a permitted obstruction or vegetation to install, operate, and maintain marking and lighting subject to certain requirements; prohibiting a permit from being approved solely on the basis that a proposed structure will not exceed specified federal obstruction standards; providing certain administrative review for the denial of a permit; amending s. 333.03, F.S.; revising the requirements relating to the adoption of airport protection zoning regulations by certain political subdivisions; revising the requirements of such adopted airport protection zoning regulations; providing that the department is available to assist political subdivisions with regard to federal

obstruction standards; revising requirements relating to airport land use compatibility zoning regulations that address, at a minimum, landfill locations and noise contours; requiring adoption of airport zoning regulations that restrict substantial modifications to existing incompatible uses within runway protection zones; requiring that updates and amendments to local airport zoning codes, rules, and regulations be filed with the department within a certain time after adoption; revising requirements relating to educational structures or sites; providing that a governing body operating a public-use airport may establish more restrictive airport protection zoning regulations for certain purposes; amending s. 333.04, F.S.; revising provisions relating to comprehensive plan or policy regulations, including airport protection zoning regulations under certain circumstances; amending s. 333.05, F.S.; revising provisions relating to the procedure for adoption, amendment, or deletion of airport zoning regulations; revising provisions relating to airport zoning commissions; amending s. 333.06, F.S.; revising provisions relating to airport zoning requirements, and airport master plans that are prepared by certain public-use airports; repealing s. 333.065, F.S., relating to guidelines regarding land use near airports; amending s. 333.07, F.S.; revising provisions relating to permits for use of structures or vegetation in violation of airport protection

zoning regulations; specifying factors a political subdivision or its administrative agency must consider when determining whether to issue or deny a permit; deleting provisions relating to applying for a variance from zoning regulations; revising provisions relating to obstruction marking and lighting requirements when a political subdivision or its administrative agency issues a permit; repealing s. 333.08, F.S., relating to appeals in regard to airport zoning regulations; amending s. 333.09, F.S.; requiring all airport zoning regulations to provide for the administration and enforcement of such regulations by the affected political subdivisions or an administrative agency created by the subdivisions; requiring a political subdivision that must adopt airport zoning regulations to provide a permitting process subject to certain requirements and exceptions; providing for an appeals process for decisions in the administration of airport zoning regulations, subject to certain requirements; repealing s. 333.10, F.S., relating to boards of adjustment provided for by all airport zoning regulations; amending s. 333.11, F.S.; revising provisions relating to judicial review for decisions made by any governing body of a political subdivision, joint airport zoning board, or administrative agency; requiring the appellant to exhaust all its remedies through application for local government permits, exceptions, and appeals before judicial appeal is

permitted; amending s. 333.12, F.S.; revising provisions relating to the acquisition of air rights; providing that a certain political subdivision may acquire air right, avigation easement, other estate, or interest in a nonconforming structure or use that presents an air hazard and cannot be removed, lowered, or otherwise terminated, subject to certain requirements; creating s. 333.135, F.S.; requiring that certain airport zoning regulations be amended to conform by a certain date; requiring certain political subdivisions to adopt airport zoning regulations by a certain date; directing the department to administer the permitting process for local governments that have not adopted airport protection zoning regulations; repealing s. 333.14, F.S., relating to a short title; amending s. 334.03, F.S.; redefining the term "511" or "511 services"; deleting the term "interactive voice response"; amending s. 334.044, F.S.; removing the provision of interactive voice response telephone systems accessible via the 511 number that may be included in traveler information systems; removing a requirement that applied uniform standards and criteria for collection and dissemination of traveler information using interactive voice response systems; authorizing the department to assume certain responsibilities under the National Environmental Policy Act with respect to highway projects within the state and certain related responsibilities relating to review or approval of a highway project; authorizing

the department to enter into certain agreements related to the federal surface transportation project delivery program under certain federal law; authorizing the department to adopt implementing rules; authorizing the department to adopt certain relevant federal environmental standards; providing a limited waiver of sovereign immunity to civil suit in federal court consistent with certain federal law; amending s. 334.60, F.S.; revising provisions relating to the 511 traveler information system; amending s. 335.065, F.S.; deleting provisions relating to certain commercial sponsorship displays on multiuse trails and related facilities; deleting provisions relating to funding a statewide system of interconnected multiuse trails; creating s. 335.21, F.S.; requiring the governing body of any independent special district created to regulate the operation of public vehicles on public highways to consist of a certain number of members; providing appointment requirements for such members; providing exceptions; amending s. 338.165, F.S.; removing an option to issue certain bonds secured by toll revenues collected on the Beeline-East Expressway and the Navarre Bridge; amending s. 338.227, F.S.; providing that bonds issued are not required to be validated pursuant to ch. 75, F.S., but may be validated at the option of the Division of Bond Finance; providing filing, notice, and service requirements relating to complaints for such validation; amending s. 338.231, F.S.; increasing the

number of years before an inactive prepaid toll account shall be presumed unclaimed; deleting provisions relating to using the revenues from the turnpike system to pay the principal and interest of a specified series of bonds and certain expenses of the Sawgrass Expressway; amending s. 339.175, F.S.; requiring certain long-range transportation plans to include assessment of capital investment and other measures necessary to make the most efficient use of existing transportation facilities to improve safety; requiring the assessments to include consideration of infrastructure and technological improvements necessary to accommodate advances in vehicle technology; amending s. 339.64, F.S.; requiring the Department of Transportation to coordinate with certain partners and industry representatives to consider infrastructure and technological improvements necessary to accommodate advances in vehicle technology in Strategic Intermodal System facilities; requiring the Strategic Intermodal System Plan to include a needs assessment regarding such infrastructure and technological improvements; creating s. 339.81, F.S.; creating the Florida Shared-Use Nonmotorized Trail Network; specifying the composition, purpose, and requirements of the network; authorizing the department certain powers related to the planning, development, operation, and maintenance of the network; creating s. 339.82, F.S.; directing the department to develop a Shared-Use Nonmotorized

Trail Network Plan, subject to certain requirements; creating s. 339.83, F.S.; creating a trail sponsorship program, subject to certain requirements and restrictions; directing the Office of Economic and Demographic Research to evaluate and determine the economic benefits of the state's investment in the Department of Transportation's adopted work program for a certain timeframe, subject to certain requirements; directing the Department of Transportation and each of its district offices to provide the Office of Economic and Demographic Research full access to certain data; requiring the Office of Economic and Demographic Research to submit the analysis to the Legislature by a certain date; repealing s. 341.0532, F.S., relating to statewide transportation corridors; providing a directive to the Division of Law Revision and Information; creating s. 345.0001, F.S.; providing a short title; creating s. 345.0002, F.S.; defining terms; creating s. 345.0003, F.S.; authorizing certain counties to form the Northwest Florida Regional Transportation Finance Authority to construct, maintain, or operate transportation projects in a given region of the state; specifying procedural requirements; creating s. 345.0004, F.S.; specifying the powers and duties of the authority, subject to certain restrictions; requiring that the authority comply with certain reporting and documentation requirements; creating s. 345.0005, F.S.; authorizing the issuing of bonds on

behalf of the authority under the State Bond Act and by the authority itself; specifying requirements and restrictions for such bonds under certain circumstances; creating s. 345.0006, F.S.; providing rights and remedies of bondholders; creating s. 345.0007, F.S.; designating the Department of Transportation as the agent of the authority for specified purposes; authorizing the administration and management of projects by the department; limiting the powers of the department as an agent; establishing the fiscal responsibilities of the authority; creating s. 345.0008, F.S.; authorizing the department to provide for or commit its resources for the authority project or system, if approved by the Legislature, subject to legislative budget request procedures and prohibitions and appropriation procedures; authorizing the payment of expenses incurred by the department on behalf of the authority; requiring the department to receive a share of the revenue from the authority; providing calculations for disbursement of revenues; creating s. 345.0009, F.S.; authorizing the authority to acquire private or public property and property rights for a project or plan; establishing the rights and liabilities and remedial actions relating to property acquired for a transportation project or corridor; creating s. 345.001, F.S.; authorizing contracts between governmental entities and the authority; creating s. 345.0011, F.S.; pledging that the state will not limit or alter the vested rights of the

authority or the department with regard to any issued bonds or other rights relating to the bonds if such vested rights affect the rights of bondholders; creating s. 345.0012, F.S.; exempting the authority from certain taxes and assessments; providing exceptions; creating s. 345.0013, F.S.; providing that bonds or obligations issued under this chapter are legal investments for specified entities; creating s. 345.0014, F.S.; providing applicability; providing legislative findings and intent relating to transportation funding; directing the Center for Urban Transportation Research to conduct a study on implementing a system in this state which charges drivers based on their vehicle miles traveled as an alternative to the present fuel tax structure to fund transportation projects; specifying requirements of the study; requiring that the findings of the study be presented to the Legislature by a certain date; directing the center, in consultation with the Florida Transportation Commission, to establish the framework for a pilot project that will evaluate the feasibility of implementing a system that charges drivers based on their vehicle miles traveled; specifying requirements for the design of the pilot project framework; authorizing the center to expend up to a certain amount for the study and pilot project design contingent upon legislative appropriation; requiring that the pilot project design be completed by a certain date and submitted in a report to the

Legislature; reenacting s. 350.81(6), F.S., relating to the definition of the term "airport layout plan," to incorporate the amendment made to s. 333.01, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) and paragraph (d) of subsection (4) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(3)

~~(d) The secretary shall appoint an inspector general pursuant to s. 20.055 who shall be directly responsible to the secretary and shall serve at the pleasure of the secretary.~~

(4)

~~(d) The district director for the Fort Myers Urban Office of the Department of Transportation is responsible for developing the 5-year Transportation Plan for Charlotte, Collier, DeSoto, Glades, Hendry, and Lee Counties. The Fort Myers Urban Office also is responsible for providing policy, direction, local government coordination, and planning for those counties.~~

Section 2. Subsection (2) of section 215.82, Florida Statutes, is amended to read:

215.82 Validation; when required.—

(2) Any bonds issued pursuant to this act which are

validated shall be validated in the manner provided by chapter 75. In actions to validate bonds to be issued in the name of the State Board of Education under s. 9(a) and (d), Art. XII of the State Constitution and bonds to be issued pursuant to chapter 259, the Land Conservation Act of 1972, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending. In any action to validate bonds issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1), Art. XII of the State Constitution or issued pursuant to s. 215.605 ~~or s. 338.227~~, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published in a newspaper of general circulation in the county where the complaint is filed and in two other newspapers of general circulation in the state, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending; provided, however, that if publication of notice pursuant to this section would require publication in more newspapers than would publication pursuant to s. 75.06, such publication shall be made pursuant to s. 75.06.

Section 3. Section 260.0144, Florida Statutes, is amended to read:

260.0144 Sponsorship of state greenways and trails.—The department may enter into a concession agreement with a not-for-

profit entity or private sector business or entity for commercial sponsorship to be displayed on state greenway and trail facilities not included within the Florida Shared-Use Nonmotorized Trail Network established in chapter 339 ~~or property specified in this section~~. The department may establish the cost for entering into a concession agreement.

(1) A concession agreement shall be administered by the department and must include the requirements found in this section.

(2)(a) Space for a commercial sponsorship display may be provided through a concession agreement on certain state-owned greenway or trail facilities or property.

(b) Signage or displays erected under this section shall comply with the provisions of s. 337.407 and chapter 479, and shall be limited as follows:

1. One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.

2. One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.

(c) Before installation, each name or sponsorship display must be approved by the department.

(d) The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

~~(c) Sponsored state greenways and trails are authorized at the following facilities or property:~~

~~1. Florida Keys Overseas Heritage Trail.~~

~~2. Blackwater Heritage Trail.~~

~~3. Tallahassee-St. Marks Historic Railroad State Trail.~~

~~4. Nature Coast State Trail.~~

~~5. Withlacoochee State Trail.~~

~~6. General James A. Van Fleet State Trail.~~

~~7. Palatka-Lake Butler State Trail.~~

(e) ~~(f)~~ The department may enter into commercial sponsorship agreements for other state greenways or trails as authorized in this section. A qualified entity that desires to enter into a commercial sponsorship agreement shall apply to the department on forms adopted by department rule.

(f) ~~(g)~~ All costs of a display, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.

(3) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or any provision of this section.

(4) Commercial sponsorship pursuant to a concession

agreement is for public relations or advertising purposes of the not-for-profit entity or private sector business or entity, and may not be construed by that not-for-profit entity or private sector business or entity as having a relationship to any other actions of the department.

(5) This section does not create a proprietary or compensable interest in any sign, display site, or location.

(6) Proceeds from concession agreements shall be distributed as follows:

(a) Eighty-five percent shall be deposited into the appropriate department trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties.

(b) Fifteen percent shall be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

(7) The department may adopt rules to administer this section.

Section 4. Subsection (2) of section 311.07, Florida Statutes, is amended to read:

311.07 Florida seaport transportation and economic development funding.—

(2) A minimum of $25 ~~$15~~ million per year shall be made available from the State Transportation Trust Fund to fund the Florida Seaport Transportation and Economic Development Program. The Florida Seaport Transportation and Economic Development Council created in s. 311.09 shall develop guidelines for project funding. Council staff, the Department of

Transportation, and the Department of Economic Opportunity shall work in cooperation to review projects and allocate funds in accordance with the schedule required for the Department of Transportation to include these projects in the tentative work program developed pursuant to s. 339.135(4).

Section 5. Subsections (1), (9), and (12) of section 311.09, Florida Statutes, are amended to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(1) The Florida Seaport Transportation and Economic Development Council is created within the Department of Transportation. The council consists of the following 16 ~~17~~ members: the port director, or the port director's designee, of each of the ports of Jacksonville, Port Canaveral, ~~Port Citrus,~~ Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina; the secretary of the Department of Transportation or his or her designee; and the director of the Department of Economic Opportunity or his or her designee.

(9) The Department of Transportation shall include at least $25 ~~no less than $15~~ million per year in its annual legislative budget request for the Florida Seaport Transportation and Economic Development Program funded under s. 311.07. Such budget shall include funding for projects approved by the council which have been determined by each agency to be consistent. The department shall include the specific approved Florida Seaport Transportation and Economic Development Program projects to be funded under s. 311.07 during the ensuing fiscal year in the tentative work program developed pursuant to s. 339.135(4). The

total amount of funding to be allocated to Florida Seaport Transportation and Economic Development Program projects under s. 311.07 during the successive 4 fiscal years shall also be included in the tentative work program developed pursuant to s. 339.135(4). The council may submit to the department a list of approved projects that could be made production-ready within the next 2 years. The list shall be submitted by the department as part of the needs and project list prepared pursuant to s. 339.135(2)(b). However, the department shall, upon written request of the Florida Seaport Transportation and Economic Development Council, submit work program amendments pursuant to s. 339.135(7) to the Governor within 10 days after the later of the date the request is received by the department or the effective date of the amendment, termination, or closure of the applicable funding agreement between the department and the affected seaport, as required to release the funds from the existing commitment. Notwithstanding s. 339.135(7)(c), any work program amendment to transfer prior year funds from one approved seaport project to another seaport project is subject to the procedures in s. 339.135(7)(d). Notwithstanding any provision of law to the contrary, the department may transfer unexpended budget between the seaport projects as identified in the approved work program amendments.

~~(12) Until July 1, 2014, Citrus County may apply for a grant through the Florida Seaport Transportation and Economic Development Council to perform a feasibility study regarding the establishment of a port in Citrus County. The council shall evaluate such application pursuant to subsections (5)-(8) and, if approved, the Department of Transportation shall include the~~

~~feasibility study in its budget request pursuant to subsection (9). If the study determines that a port in Citrus County is not feasible, the membership of Port Citrus on the council shall terminate.~~

Section 6. Subsections (6), (47), and present subsection (90) of section 316.003, Florida Statutes, are amended, present subsections (91), (92), and (93) of that section are redesignated as subsections (93), (95), and (96), respectively, and new subsections (90), (92), and (94) are added to that section, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(6) CROSSWALK.—

(a) Unmarked crosswalk.—An unmarked part of the roadway at an intersection used by pedestrians for crossing the roadway ~~That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway~~.

(b) Marked crosswalk.—Pavement marking lines on the roadway surface, which may include contrasting pavement texture, style, or colored portions of the roadway at an intersection used by pedestrians for crossing the roadway ~~Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface~~.

(c) Midblock crosswalk.—A location between intersections where the roadway surface is marked by pavement marking lines,

which may include contrasting pavement texture, style or colored portion of the roadway at a signalized or unsignalized crosswalk used for pedestrian roadway crossings and may include a pedestrian refuge island.

(47) SIDEWALK.—That portion of a street ~~between the curbline, or the lateral line, of a roadway and the adjacent property lines,~~ intended for use by pedestrians, adjacent to the roadway between the curb or edge of the roadway and the property line.

(90) AUTONOMOUS TECHNOLOGY.—Technology installed on a motor vehicle which has the capability to drive the vehicle on which the technology is installed without the active control of or monitoring by a human operator.

(91)~~(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with autonomous technology. ~~The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator.~~ The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

(92) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle

automation technology that integrates sensor array, wireless communications, vehicle controls, and specialized software to synchronize acceleration and braking between up to two truck tractor-semitrailer combinations, while leaving each vehicle's steering control and systems command in the control of the vehicle's driver.

(94) PORT-OF-ENTRY.—A designated location that allows drivers of commercial motor vehicles to purchase temporary registration permits necessary to operate legally within the state. The locations and the designated routes to such locations shall be determined by the Department of Transportation.

Section 7. Subsection (2) of section 316.0895, Florida Statutes, is amended to read:

316.0895 Following too closely.—

(2) It is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles. This subsection does not apply to two truck tractor-semitrailer combinations equipped and connected with driver-assistive truck-platooning technology, as defined in s. 316.003, and operating on a multilane limited access facility, if the owner or operator complies with the financial responsibility requirement of s. 316.86.

Section 8. Paragraphs (b) and (c) of subsection (7) of section 316.130, Florida Statutes, are amended to read:

316.130 Pedestrians; traffic regulations.—

(7)

(b) The driver of a vehicle at any crosswalk location where the approach is not controlled by a traffic signal or stop sign must ~~signage so indicates shall~~ stop and remain stopped to allow a pedestrian to cross a roadway when the pedestrian is in the crosswalk or steps into the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or turning, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided must yield the right-of-way to all vehicles upon the roadway.

~~(c) When traffic control signals are not in place or in operation and there is no signage indicating otherwise, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.~~

Section 9. Subsections (1) and (3) of section 316.303, Florida Statutes, are amended to read:

316.303 Television receivers.—

(1) No motor vehicle operated on the highways of this state shall be equipped with television-type receiving equipment so located that the viewer or screen is visible from the driver's seat, unless the vehicle is equipped with autonomous technology, as defined in s. 316.003(90), and is being operated in autonomous mode, as provided in s. 316.85(2); or unless the vehicle is equipped and operating with driver-assistive truck-platooning technology, as defined in s. 316.003(92).

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system; or an electronic display used by an operator of a vehicle equipped with autonomous technology, as defined in s. 316.003(90), while the vehicle is being operated in autonomous mode, as provided in s. 316.85(2); or an electronic display used by the operator of a vehicle equipped and operating with driver-assistive truck platooning technology, as defined in s. 316.003(92).

Section 10. Paragraph (b) of subsection (3) and subsection (14) of section 316.515, Florida Statutes, are amended to read:

316.515 Maximum width, height, length.—

(3) LENGTH LIMITATION.—Except as otherwise provided in this section, length limitations apply solely to a semitrailer or trailer, and not to a truck tractor or to the overall length of a combination of vehicles. No combination of commercial motor vehicles coupled together and operating on the public roads may consist of more than one truck tractor and two trailing units. Unless otherwise specifically provided for in this section, a combination of vehicles not qualifying as commercial motor vehicles may consist of no more than two units coupled together; such nonqualifying combination of vehicles may not exceed a

total length of 65 feet, inclusive of the load carried thereon, but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Notwithstanding any other provision of this section, a truck tractor-semitrailer combination engaged in the transportation of automobiles or boats may transport motor vehicles or boats on part of the power unit; and, except as may otherwise be mandated under federal law, an automobile or boat transporter semitrailer may not exceed 50 feet in length, exclusive of the load; however, the load may extend up to an additional 6 feet beyond the rear of the trailer. The 50-feet length limitation does not apply to non-stinger-steered automobile or boat transporters that are 65 feet or less in overall length, exclusive of the load carried thereon, or to stinger-steered automobile or boat transporters that are 75 feet or less in overall length, exclusive of the load carried thereon. For purposes of this subsection, a "stinger-steered automobile or boat transporter" is an automobile or boat transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit. Notwithstanding paragraphs (a) and (b), any straight truck or truck tractor-semitrailer combination engaged in the transportation of horticultural trees may allow the load to extend up to an additional 10 feet beyond the rear of the vehicle, provided said trees are resting against a retaining bar mounted above the truck bed so that the root balls of the trees rest on the floor and to the front of the truck bed and the tops of the trees extend up over and to the rear of the truck bed, and provided the overhanging portion of the load is covered with

protective fabric.

(b) *Semitrailers.*—

1. A semitrailer operating in a truck tractor-semitrailer combination may not exceed 48 feet in extreme overall outside dimension, measured from the front of the unit to the rear of the unit and the load carried thereon, exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads, unless it complies with subparagraph 2. A semitrailer which exceeds 48 feet in length and is used to transport divisible loads may operate in this state only if issued a permit under s. 316.550 and if such trailer meets the requirements of this chapter relating to vehicle equipment and safety. Except for highways on the tandem trailer truck highway network, public roads deemed unsafe for longer semitrailer vehicles or those roads on which such longer vehicles are determined not to be in the interest of public convenience shall, in conformance with s. 316.006, be restricted by the Department of Transportation or by the local authority to use by semitrailers not exceeding a length of 48 feet, inclusive of the load carried thereon but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Truck tractor-semitrailer combinations shall be afforded reasonable access to terminals; facilities for food, fuel, repairs, and rest; and points of loading and unloading.

2. A semitrailer which is more than 48 feet but not more than 57 ~~53~~ feet in extreme overall outside dimension, as measured pursuant to subparagraph 1., may operate on public roads, except roads on the State Highway System which are

restricted by the Department of Transportation or other roads restricted by local authorities, if:

a. The distance between the kingpin or other peg that locks into the fifth wheel of a truck tractor and the center of the rear axle or rear group of axles does not exceed 41 feet, or, in the case of a semitrailer used exclusively or primarily to transport vehicles in connection with motorsports competition events, the distance does not exceed 46 feet from the kingpin to the center of the rear axles; and

b. It is equipped with a substantial rear-end underride protection device meeting the requirements of 49 C.F.R. s. 393.86, "Rear End Protection."

(14) MANUFACTURED BUILDINGS.—The Department of Transportation may, in its discretion and upon application and good cause shown therefor that the same is not contrary to the public interest, issue a special permit for truck tractor-semitrailer combinations where the total number of overwidth deliveries of manufactured buildings, as defined in s. 553.36(13), may be reduced by permitting the use of multiple sections or single units on an overlength trailer of no more than 80 ~~54~~ feet.

Section 11. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle, as defined in s. 316.003(66), to determine if its gross weight is

in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle, as defined in s. 316.003(66), is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003(94), or operating on designated routes to a port-of-entry location, which obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5 cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment as defined in s. 316.003(48), which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or

operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 12. Section 333.01, Florida Statutes, is amended to read:

333.01 Definitions.—For the purpose of this chapter, the following words, terms, and phrases shall have the following meanings ~~herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires~~:

(1) "Aeronautical study" means a Federal Aviation Administration review conducted pursuant to 14 C.F.R. part 77, concerning the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft. ~~"Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.~~

(2) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and

utilized or to be utilized in the interest of the public for such purpose.

(3) "Airport hazard" means any obstruction that exceeds ~~structure or tree or use of land which would exceed~~ the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and 77.29~~ and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing, or that is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has ~~previously~~ obtained a permit ~~or variance~~ pursuant to s. 333.025 or s. 333.07.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established ~~if not prevented as provided in this chapter~~.

(5) "Airport land use compatibility zoning" means airport zoning regulations governing ~~restricting~~ the use of land adjacent to or in the immediate vicinity of airports in the manner provided ~~enumerated~~ in ss. 333.03(2) ~~s. 333.03(2) to activities~~ and (3) ~~purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare~~.

(6) "Airport layout plan" means a scaled ~~detailed, scale engineering~~ drawing or set of drawings in either paper or electronic form of the existing~~, including pertinent dimensions, of an airport's current~~ and planned airport facilities which provides a graphic representation of the existing and long-term development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency

of the airport~~, their locations, and runway usage~~.

(7) "Airport master plan" means a comprehensive plan for an airport that describes the immediate and long-term development plans to meet future aviation demand.

(8) "Airport protection zoning" means airport zoning regulations governing airport hazards in the manner provided in s. 333.03.

(9) "Department" means the Department of Transportation as created by s. 20.23.

(10) "Educational facility" means any structure, land, or use thereof that includes a public or private kindergarten through grade 12 school, charter school, magnet school, college campus, or university campus. Space used for educational purposes within a multitenant building may not be treated as an educational facility for the purpose of this chapter.

(11) "Landfill" has the same meaning as in s. 403.703.

(12)~~(7)~~ "Obstruction" means any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including existing or proposed appurtenances, or lateral dimensions, including equipment or material used therein, which exceeds ~~existing or proposed manmade object or object of natural growth or terrain that violates~~ the standards contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and 77.29~~.

(13)~~(8)~~ "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or

body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(14)~~(9)~~ "Political subdivision" means the local government of any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(15) "Public-use airport" means an airport, publicly or privately owned and licensed by the state, which is open for use by the public.

(16)~~(10)~~ "Runway protection ~~clear~~ zone" or "RPZ" means an area at ground level beyond the ~~a~~ runway end which is intended to enhance the safety and protection of people and property on the ground ~~clear zone as defined in 14 C.F.R. s. 151.9(b)~~.

(17)~~(11)~~ "Structure" means any object, constructed, erected, altered, or installed ~~by humans~~, including, but without limitation ~~thereof~~, buildings, towers, smokestacks, utility poles, power generation equipment, and overhead transmission lines.

(18) "Substantial modification" means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

~~(12) "Tree" includes any plant of the vegetable kingdom.~~

Section 13. Section 333.025, Florida Statutes, is amended to read:

333.025 Permit required for structures exceeding federal obstruction standards.—

(1) A person proposing the construction or alteration ~~In order to prevent the erection~~ of structures hazardous ~~dangerous~~ to air navigation, subject to the provisions of subsections (2), (3), and (4), must ~~each person shall~~ secure from the department ~~of Transportation~~ a permit for the proposed construction or ~~erection,~~ alteration~~, or modification~~ of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and 77.29~~. However, permits from the department ~~of Transportation~~ will be required only within an airport hazard area where federal obstruction standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the airport reference point, located at the approximate geometric ~~geographical~~ center of all useable runways of public-use airports or ~~a publicly owned or operated airport,~~ a military airport~~, or an airport licensed by the state for public use~~.

(2) Existing, planned, and proposed ~~Affected airports will be considered as having those~~ facilities at public-use airports contained in an ~~which are shown on the~~ airport master plan, on ~~or~~ an airport layout plan submitted to the Federal Aviation Administration Airport District Office, or in comparable military documents~~, and~~ will be ~~so~~ protected from structures that exceed federal obstruction standards. ~~Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal Aviation Administration or to the Department of Transportation shall also be protected.~~

(3) Permit requirements of subsection (1) do ~~shall~~ not apply to structures ~~projects~~ which received construction permits

from the Federal Communications Commission for structures exceeding federal obstruction standards prior to May 20, 1975~~,~~ ~~provided such structures now exist~~; nor does subsection (1) ~~shall it~~ apply to previously approved structures now existing, or any necessary replacement or repairs to such existing structures, so long as the height and location is unchanged.

(4) When political subdivisions have adopted adequate airport ~~airspace~~ protection zoning regulations in compliance with s. 333.03~~,~~ and such regulations are on file with the department ~~of Transportation~~, and have established a permitting process in compliance with s. 333.09(2), a permit for such structure shall not be required from the department ~~of Transportation~~. To evaluate technical consistency with this section, there is a 15-day department review period concurrent with the permitting process prescribed by s. 333.09. Upon receipt of a complete permit application, the local government shall forward to the department's Aviation Office by certified mail, return receipt requested, or by delivery service that provides a receipt evidencing delivery, a copy of the application. Cranes, construction equipment, and other temporary structures, in use or in place for a period not to exceed 18 consecutive months, are exempt from this requirement, unless requested by the department's Aviation Office.

(5) The department ~~of Transportation~~ shall, within 30 days of the receipt of an application for a permit, issue or deny a permit for the construction or ~~erection,~~ alteration~~, or modification~~ of any structure ~~the result of~~ which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25,~~

~~77.28, and 77.29~~. The department shall review permit applications in conformity with s. 120.60.

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The safety of persons on the ground and in the air ~~The nature of the terrain and height of existing structures~~.

(b) The safe and efficient use of navigable airspace ~~Public and private interests and investments~~.

(c) The nature of the terrain and height of existing structures ~~The character of flying operations and planned developments of airports~~.

(d) Whether the construction of the proposed structure would impact the state licensing standards for a public-use airport, contained in chapter 330 and chapter 14-60, Florida Administrative Code ~~Federal airways as designated by the Federal Aviation Administration~~.

(e) The character of existing and planned flight operations and developments at public-use airports ~~Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport~~.

(f) Federal airways; visual flight rules, flyways and corridors; and instrument approaches as designated by the Federal Aviation Administration ~~Technological advances~~.

(g) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport ~~The safety of persons on the ground and in the air~~.

(h) The cumulative effects on navigable airspace of all existing structures and all other known and proposed structures

in the area ~~Land use density~~.

~~(i) The safe and efficient use of navigable airspace.~~

~~(j) The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.~~

(7) When issuing a permit under this section, the department ~~of Transportation~~ shall~~, as a specific condition of such permit,~~ require the owner ~~obstruction marking and lighting~~ of the permitted structure or vegetation to install, operate, and maintain thereon, at his or her own expense, marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~structure as provided in s. 333.07(3)(b)~~.

(8) The department may ~~of Transportation shall~~ not approve a permit for the construction or alteration ~~erection~~ of a structure unless the applicant submits both documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study ~~evaluation~~, and no permit shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, or 77.23 ~~77.21, 77.23, 77.25, 77.28, or 77.29~~, or any other federal aviation regulation.

(9) The denial of a permit under this section is subject to the administrative review provisions of chapter 120.

Section 14. Section 333.03, Florida Statutes, is amended to read:

333.03 Requirement ~~Power~~ to adopt airport zoning

regulations.—

(1)(a) Every ~~In order to prevent the creation or establishment of airport hazards, every~~ political subdivision having an airport hazard area within its territorial limits shall~~, by October 1, 1977,~~ adopt, administer, and enforce~~, under the police power and~~ in the manner and upon the conditions ~~hereinafter~~ prescribed in this section, airport protection zoning regulations for ~~such~~ airport hazards ~~hazard area~~.

(b) Where an airport is owned or controlled by a political subdivision and an ~~any~~ airport hazard area ~~appertaining to such airport~~ is located wholly or partly outside the territorial limits of the ~~said~~ political subdivision, the political subdivision owning or controlling the airport and any ~~the~~ political subdivision within which the airport hazard area is located, must ~~shall~~ either:

1. By interlocal agreement, ~~in accordance with the provisions of chapter 163,~~ adopt, administer, and enforce a set of airport protection zoning regulations applicable to the airport hazard area ~~in question~~; or

2. By ordinance, regulation, or resolution duly adopted, create a joint airport zoning board, which must ~~board shall have the same power to~~ adopt, administer, and enforce a set of airport protection zoning regulations applicable to the airport hazard area in each ~~question as that vested in paragraph (a) in the~~ political subdivision in ~~within~~ which the airport hazard ~~such~~ area is located. Each such joint airport zoning board shall have as members two representatives appointed by each participating political subdivision ~~participating in its creation~~ and, in addition, a chair elected by a majority of the

members so appointed. The ~~However, the~~ airport manager or representative of each airport in ~~managers of~~ the ~~affected~~ participating political subdivisions shall serve on the board in a nonvoting capacity.

(c) Airport protection zoning regulations adopted under paragraph (a) must ~~shall~~, at ~~as a~~ minimum, require:

1. A permit ~~variance~~ for the ~~erection,~~ construction or alteration~~, or modification~~ of any structure that ~~which~~ would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23. ~~77.21, 77.23, 77.25, 77.28, and 77.29;~~

2. Obstruction marking and lighting for structures exceeding the federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23, as specified in s. 333.07(3). ~~;~~

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study ~~evaluation~~ submitted by each person applying for a permit. ~~variance;~~

4. Consideration of the criteria in s. 333.025(6), when determining whether to issue or deny a permit. ~~variance; and~~

5. That a permit may not ~~no variance shall~~ be approved solely on the basis that the ~~such~~ proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, or 77.23 ~~77.21, 77.23, 77.25, 77.28, or 77.29~~, or any other federal aviation regulation.

(d) The department is available to provide assistance to political subdivisions with regard to federal obstruction standards ~~shall issue copies of the federal obstruction~~

~~standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients~~.

(2) In the manner provided in subsection (1), ~~interim~~ airport land use compatibility zoning regulations must ~~shall~~ be adopted, administered, and enforced. Airport land-use compatibility zoning ~~When political subdivisions have adopted land development~~ regulations must, at a minimum, ~~in accordance with the provisions of chapter 163 which~~ address the ~~use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider the~~ following:

(a) Prohibiting any new and restricting any existing ~~Whether sanitary~~ landfills ~~are located~~ within the following areas:

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbine ~~turbojet or turboprop~~ aircraft.

2. Within 5,000 feet from the nearest point of any runway used only by nonturbine ~~piston-type~~ aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. part 77.19 ~~77.25~~. Case-by-case review of such landfills is advised.

(b) Where ~~Whether~~ any landfill is located and constructed so that it attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft~~. The political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body, shall consider whether~~ the landfill operator will be required to incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. ~~The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.~~

(c) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has conducted a noise study in accordance with the provisions of 14 C.F.R. part 150, or where the public-use airport owner has established noise contours pursuant to another public study approved by the Federal Aviation Administration, incompatible uses, as established in 14 C.F.R. part 150, appendix A noise study, or as a part of an alternative FAA-approved public study, may not be permitted within the noise contours established by that study, except where such use is specifically contemplated by such study with appropriate mitigation or similar techniques described in the study ~~neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that~~

~~is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies~~.

(d) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has not conducted a noise study, neither residential construction nor any educational facility ~~as defined in chapter 1013~~, with the exception of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

(3) In the manner provided in subsection (1), airport zoning regulations ~~shall be adopted~~ which restrict new incompatible uses~~, activities,~~ or substantial modifications to existing incompatible uses ~~construction~~ within runway protection ~~clear~~ zones shall be adopted ~~, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing~~

~~the construction outweigh health and safety concerns prohibiting such a location.~~

~~(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.~~

(4)~~(5)~~ The department ~~of Transportation~~ shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning regulation ~~code~~. A copy of all local airport zoning codes, rules, ~~and~~ regulations, and amendments and proposed and granted permits ~~variances thereto,~~ shall be filed with the department. All updates and amendments to local airport zoning codes, rules, and regulations must be filed with the department within 30 days after adoption.

(5)~~(6)~~ ~~Nothing in~~ Subsection (2) and ~~or~~ subsection (3) may not ~~shall be construed to~~ require the removal, alteration, sound conditioning, or other change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993~~, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, as of July 1, 1993~~.

(6) This section may not preclude an airport authority, local government, or other governing body operating a public-use airport from establishing airport protection zoning regulations more restrictive than herein prescribed in order to protect the safety and welfare of the public in the air and on the ground.

Section 15. Section 333.04, Florida Statutes, is amended to

read:

333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—

(1) INCORPORATION.—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive plan or policy ~~zoning ordinance~~ regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive plans or policies ~~zoning regulations~~, and be administered and enforced in connection therewith.

(2) CONFLICT.—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or vegetation ~~trees~~, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Section 16. Section 333.05, Florida Statutes, is amended to read:

333.05 Procedure for adoption of zoning regulations.—

(1) NOTICE AND HEARING.—~~No~~ Airport zoning regulations may not ~~shall~~ be adopted, amended, or deleted ~~changed~~ under this chapter except by action of the legislative body of the political subdivision ~~in question~~, or the joint board provided in s. 333.03(1)(b) by the political subdivisions ~~bodies~~ therein

provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in an official paper, or a paper of general circulation, in the political subdivision or subdivisions where ~~in which are located~~ the airport zoning regulations are ~~areas~~ to be adopted, amended, or deleted ~~zoned~~.

(2) AIRPORT ZONING COMMISSION.—Prior to the initial zoning of any airport area under this chapter the political subdivision or joint airport zoning board which is to adopt, administer, and enforce the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take any action until it has received the final report of such commission, and at least 15 days shall elapse between the receipt of the final report of the commission and the hearing to be held by the latter board. Where a planning ~~city plan~~ commission, airport commission, or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Section 17. Section 333.06, Florida Statutes, is amended to read:

333.06 Airport zoning requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted

under this chapter shall be reasonable and ~~none~~ shall not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area and runway protection ~~clear~~ zones, the character of the neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) INDEPENDENT JUSTIFICATION.—The purpose of all airport zoning regulations adopted under this chapter is to provide both airspace protection and land uses ~~use~~ compatible with airport operations. Each aspect of this purpose requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway protection ~~clear~~ zone which does not exceed airspace height restrictions is not conclusive ~~evidence per se~~ that such use, activity, or construction is compatible with airport operations.

(3) NONCONFORMING USES.—No airport protection zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or vegetation ~~tree~~ not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

(4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED

LOCAL GOVERNMENTS.—An airport master plan shall be prepared by each public-use ~~publicly owned and operated~~ airport licensed by the department ~~of Transportation~~ under chapter 330. The authorized entity having responsibility for governing the operation of the airport, when either requesting from or submitting to a state or federal governmental agency with funding or approval jurisdiction a "finding of no significant impact," an environmental assessment, a site-selection study, an airport master plan, or any amendment to an airport master plan, shall submit simultaneously a copy of said request, submittal, assessment, study, plan, or amendments by certified mail to all affected local governments. For the purposes of this subsection, "affected local government" is defined as any city or county having jurisdiction over the airport and any city or county located within 2 miles of the boundaries of the land subject to the airport master plan.

Section 18. Section 333.065, Florida Statutes, is repealed.

Section 19. Section 333.07, Florida Statutes, is amended to read:

333.07 Local government permitting of airspace obstructions ~~Permits and variances~~.—

(1) PERMITS.—

(a) Any person proposing to erect, construct, or alter any structure, increase the height of any structure, permit the growth of any vegetation, or otherwise use his or her property in violation of the airport protection zoning regulations adopted under this chapter shall apply for a permit. A ~~Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No~~ permit may not ~~shall~~ be issued ~~granted~~ that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or vegetation ~~tree~~ or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(b) Whenever the political subdivision or its administrative agency determines that a nonconforming use or nonconforming structure or vegetation ~~tree~~ has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, a ~~no~~ permit may not ~~shall~~ be granted that would allow the ~~said~~ structure or vegetation ~~tree~~ to exceed the applicable height limit or otherwise deviate from the zoning regulations. ~~; and,~~ Whether an application is made for a permit under this subsection or not, the ~~said agency may by appropriate action, compel the~~ owner of the nonconforming structure or vegetation may be required ~~tree~~, at his or her own expense, to lower, remove, reconstruct, alter, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or vegetation neglects or refuses ~~tree~~

~~shall neglect or refuse~~ to comply with the ~~such~~ order for 10 days after notice ~~thereof~~, the ~~said~~ agency may report the violation to the political subdivision involved therein. The~~,~~ ~~which~~ subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, altered, or equipped, and assess the cost and expense thereof upon the object or the land where ~~whereon~~ it is or was located~~, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85~~.

~~(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.~~

(2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.—In determining whether to issue or deny a permit, the political subdivision or its administrative agency must consider the following, as applicable:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c) The nature of the terrain and height of existing structures.

(d) The construction or alteration of the proposed

structure on the state licensing standards for a public-use airport, contained in chapter 330 and chapter 14-60 of the Florida Administrative Code.

(e) The character of existing and planned flight operations and developments at public-use airports.

(f) Federal airways; visual flight rules, flyways and corridors; and instrument approaches as designated by the Federal Aviation Administration.

(g) The construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.

(h) The cumulative effects on navigable airspace of all existing structures, and all other known proposed structures in the area.

(i) Requirements contained in s. 333.03(2) and (3).

(j) Additional requirements adopted by the local jurisdiction pertinent to evaluation and protection of airspace and airport operations.

~~(2) VARIANCES.—~~

~~(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The~~

~~department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.~~

~~(b) The Department of Transportation shall have the authority to appeal any variance granted under this chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.~~

(3) OBSTRUCTION MARKING AND LIGHTING.—

(a) In issuing a ~~granting any~~ permit ~~or variance~~ under this section, the political subdivision or its administrative agency ~~or board of adjustment~~ shall require the owner of the structure

or vegetation ~~tree in question~~ to install, operate, and maintain thereon, at his or her own expense, ~~such~~ marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~as may be necessary to indicate to aircraft pilots the presence of an obstruction~~.

(b) Such marking and lighting shall conform to the specific standards established by rule by the department ~~of Transportation~~.

~~(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.~~

Section 20. Section 333.08, Florida Statutes, is repealed.

Section 21. Section 333.09, Florida Statutes, is amended to read:

333.09 Administration of airport zoning regulations.—

(1) ADMINISTRATION AND ENFORCEMENT.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by the political subdivisions or their ~~by an~~ administrative agency ~~which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment~~. The duties of any administrative agency designated

pursuant to this chapter shall include that of hearing and deciding all permits under s. 333.07 ~~s. 333.07(1), deciding all matters under s. 333.07(3),~~ as they pertain to such agency, and all other matters under this chapter applying to said agency~~, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment~~.

(2) LOCAL GOVERNMENT PROCESS.—

(a) Any political subdivision required to adopt airport zoning regulations under this chapter must provide a process to:

1. Issue or deny permits consistent with s. 333.07, including requests for exceptions to airport zoning regulations.

2. Notify the department of receipt of a complete permit application consistent with s. 333.025(4).

3. Enforce any permit, order, requirement, decision, or determination made by the administrative agency with respect to the airport zoning regulations.

(b) Where a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the permitting and appeals process. Otherwise, the political subdivision shall implement the permitting and appeals process in a manner consistent with its constitutional powers and areas of jurisdiction.

(3) APPEALS.—

(a) Any person, political subdivision or its administrative agency, or any joint airport zoning board, which contends that the decision made by a political subdivision or its administrative agency is an improper application of airport zoning regulations may use the process established for an appeal.

(b) All appeals taken under this section must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing with the entity from which appeal is taken a notice of appeal specifying the grounds for appeal.

(c) An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies pursuant to the rules for appeal that by reason of the facts stated in the certificate, a stay would, in its opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by an order of the political subdivision or its administrative agency following notice to the entity from which the appeal is taken and on good cause shown.

(d) The political subdivision or its administrative agency must set a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, a party may appear in person, by agent, or by attorney.

(e) The political subdivision or its administrative agency may, in conformity with the provisions of this chapter, reverse, affirm, or modify the underlying order, requirement, decision, or determination from which the appeal is taken.

Section 22. Section 333.10, Florida Statutes, is repealed.

Section 23. Section 333.11, Florida Statutes, is amended to read:

333.11 Judicial review.—

(1) Any person, ~~aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a~~

political subdivision or its administrative agency, or ~~the Department of Transportation or~~ any joint airport zoning board affected by a decision of a political subdivision~~,~~ or its ~~of any~~ administrative agency ~~hereunder~~, may apply for judicial relief to the circuit court in the judicial circuit where the political subdivision ~~board of adjustment~~ is located within 30 days after rendition of the decision ~~by the board of adjustment~~. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

~~(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.~~

~~(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

(2)~~(4)~~ The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review~~, in whole or in part,~~ and if need be, to order further proceedings by the political subdivision or its administrative agency ~~board of adjustment~~. The findings of fact by the political subdivision or its administrative agency ~~board~~, if supported by substantial evidence, shall be accepted by the

court as conclusive. An~~, and no~~ objection to a decision of the political subdivision or its administrative agency may not ~~board shall~~ be considered by the court unless such objection was raised in the underlying proceeding ~~shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so~~.

(3)~~(5)~~ If ~~In any case in which~~ airport zoning regulations adopted under this chapter~~, although generally reasonable,~~ are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(4)~~(6)~~ ~~No~~ Judicial appeal ~~shall be or~~ is not permitted under this section~~,~~ to any courts until the appellant has exhausted all its remedies through application for local government permits, exceptions, and appeals~~, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his or her remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder~~.

Section 24. Section 333.12, Florida Statutes, is amended to

read:

333.12 Acquisition of air rights.—When ~~In any case which: it is desired to remove, lower or otherwise terminate~~ a nonconforming structure or use presents an air hazard and the structure cannot be removed, lowered, or otherwise terminated; or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such air right, avigation ~~navigation~~ easement conveying the airspace over another property for use by the airport, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, vegetation ~~tree~~, structure, or use, in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property, ~~or any~~ easement, or estate or interest therein or the acquisition of the same by the power of eminent domain, the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury, or destruction of property also pay the cost

of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

Section 25. Section 333.135, Florida Statutes, is created to read:

333.135 Transition provisions.—

(1) A provision of an airport zoning regulation in effect on July 1, 2015, that conflicts with this chapter must be amended to conform to the requirements of this chapter by July 1, 2016.

(2) By October 1, 2017, a political subdivision having an airport within its territorial limits, which has not adopted airport zoning regulations, must adopt airport zoning regulations which are consistent with this chapter.

(3) For those political subdivisions that have not yet adopted airport zoning regulations pursuant to this chapter, the department shall administer the permitting process as provided in s. 333.025.

Section 26. Section 333.14, Florida Statutes, is repealed.

Section 27. Subsections (36) and (37) of section 334.03, Florida Statutes, are amended to read:

334.03 Definitions.—When used in the Florida Transportation Code, the term:

(36) "511" or "511 services" means all ~~three-digit telecommunications dialing to access interactive voice response telephone~~ traveler information services provided in the state to include, but not be limited to, the terms ~~as~~ defined by the Federal Communications Commission in FCC Order No. 00-256, July 31, 2000.

~~(37) "Interactive voice response" means a software~~

~~application that accepts a combination of voice telephone input and touch-tone keypad selection and provides appropriate responses in the form of voice, fax, callback, e-mail, and other media.~~

Section 28. Subsection (31) of section 334.044, Florida Statutes, is amended, and subsection (34) of that section is created, to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(31) To provide oversight of traveler information systems ~~that may include the provision of interactive voice response telephone systems accessible~~ via ~~the~~ 511 services ~~number~~ as assigned by the Federal Communications Commission for traveler information services. The department shall ensure that uniform standards and criteria for the collection and dissemination of traveler information are applied ~~using interactive voice response systems~~.

(34) The department may assume responsibilities of the United States Department of Transportation with respect to highway projects within the state under the National Environmental Policy Act of 1969 (42 U.S.C. s. 4321 et seq.) and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project within the state. The department may assume responsibilities under 23 U.S.C. s. 327 and enter into one or more agreements, including memoranda of understanding, with the United States Secretary of Transportation related to the federal surface transportation project delivery program for the delivery

of highway projects, as provided by 23 U.S.C. s. 327. The department may adopt rules to implement this subsection and may adopt relevant federal environmental standards as the standards for this state for a program described in this subsection. Sovereign immunity to civil suit in federal court is waived consistent with 23 U.S.C. s. 327 and limited to the compliance, discharge, or enforcement of a responsibility assumed by the department under this subsection.

Section 29. Section 334.60, Florida Statutes, is amended to read:

334.60 511 traveler information system.—The department is the state's lead agency for implementing 511 services and is the state's point of contact for coordinating all 511 services ~~with telecommunications service providers~~.

(1) The department shall:

(a) ~~(1)~~ Implement and administer 511 services in the state;

(b) ~~(2)~~ Coordinate with other transportation authorities in the state to provide multimodal traveler information through 511 services and other means;

(c) ~~(3)~~ Develop uniform standards and criteria for the collection and dissemination of traveler information using ~~the~~ 511 services ~~number or other interactive voice response systems~~; and

(d) ~~(4)~~ Enter into joint participation agreements or contracts with highway authorities and public transit districts to share the costs of implementing and administering 511 services in the state. The department may also enter into other agreements or contracts with private firms relating to the 511 services to offset the costs of implementing and administering

511 services in the state.

(2) The department shall adopt rules to administer the coordination of 511 traveler information ~~phone~~ services in the state.

Section 30. Subsections (3) and (4) of section 335.065, Florida Statutes, are amended to read:

335.065 Bicycle and pedestrian ways along state roads and transportation facilities.—

(3) The department, in cooperation with the Department of Environmental Protection, shall establish a statewide integrated system of bicycle and pedestrian ways in such a manner as to take full advantage of any such ways which are maintained by any governmental entity. ~~The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship displays on multiuse trails and related facilities and use any concession agreement revenues for the maintenance of the multiuse trails and related facilities. Commercial sponsorship displays are subject to the requirements of the Highway Beautification Act of 1965 and all federal laws and agreements, when applicable. For the purposes of this section, bicycle facilities may be established as part of or separate from the actual roadway and may utilize existing road rights-of-way or other rights-of-way or easements acquired for public use.~~

~~(a) A concession agreement shall be administered by the department and must include the requirements of this section.~~

~~(b)1. Signage or displays erected under this section shall comply with s. 337.407 and chapter 479 and shall be limited as follows:~~

~~a. One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.~~

~~b. One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.~~

~~2. Before installation, each name or sponsorship display must be approved by the department.~~

~~3. The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:~~

~~...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....~~

~~4. All costs of a display, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.~~

~~(c) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or this section.~~

~~(4)(a) The department may use appropriated funds to support~~

~~the establishment of a statewide system of interconnected multiuse trails and to pay the costs of planning, land acquisition, design, and construction of such trails and related facilities. The department shall give funding priority to projects that:~~

~~1. Are identified by the Florida Greenways and Trails Council as a priority within the Florida Greenways and Trails System under chapter 260.~~

~~2. Support the transportation needs of bicyclists and pedestrians.~~

~~3. Have national, statewide, or regional importance.~~

~~4. Facilitate an interconnected system of trails by completing gaps between existing trails.~~

~~(b) A project funded under this subsection shall:~~

~~1. Be included in the department's work program developed in accordance with s. 339.135.~~

~~2. Be operated and maintained by an entity other than the department upon completion of construction. The department is not obligated to provide funds for the operation and maintenance of the project.~~

Section 31. Section 335.21, Florida Statutes, is created to read:

335.21 Governing bodies of independent special districts regulating the operation of public vehicles on public highways.—Notwithstanding any provision of local law, the membership of the governing body of any independent special district created for the purpose of regulating the operation of public vehicles upon the public highways under the jurisdiction of any such independent special district shall consist of seven members.

Four members shall be appointed by the Governor, one member shall be appointed by the governing body of the largest municipality situated within the jurisdiction of the independent special district, and two members shall be appointed by the governing body of the county in which the independent special district has jurisdiction. All appointees must be residents of the county in which the independent special district has jurisdiction. This section does not apply to any entity authorized under s. 163.567 or under chapter 343, chapter 348, or chapter 349.

Section 32. Subsection (4) of section 338.165, Florida Statutes, is amended to read:

338.165 Continuation of tolls.—

(4) Notwithstanding any other law to the contrary, pursuant to s. 11, Art. VII of the State Constitution, and subject to the requirements of subsection (2), the Department of Transportation may request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge~~, the Beeline-East Expressway, the Navarre Bridge,~~ and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program of the department.

Section 33. Subsection (5) is added to section 338.227, Florida Statutes, to read:

338.227 Turnpike revenue bonds.—

(5) Notwithstanding s. 215.82, bonds issued pursuant to this section are not required to be validated pursuant to chapter 75, but may be validated at the option of the Division of Bond Finance. Any complaint for such validation must be filed

in the circuit court of the county where the seat of state government is situated. The notice required to be published by s. 75.06 must be published only in the county where the complaint is filed. The complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending.

Section 34. Paragraph (c) of subsection (3) of section 338.231, Florida Statutes, and subsections (5) and (6) of that section, are amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.—The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

(3)

(c) Notwithstanding any other provision of law to the contrary, any prepaid toll account of any kind which has remained inactive for 10 ~~3~~ years shall be presumed unclaimed and its disposition shall be handled by the Department of Financial Services in accordance with all applicable provisions of chapter 717 relating to the disposition of unclaimed property, and the prepaid toll account shall be closed by the department.

~~(5) In each fiscal year while any of the bonds of the Broward County Expressway Authority series 1984 and series 1986-~~

~~A remain outstanding, the department is authorized to pledge revenues from the turnpike system to the payment of principal and interest of such series of bonds and the operation and maintenance expenses of the Sawgrass Expressway, to the extent gross toll revenues of the Sawgrass Expressway are insufficient to make such payments. The terms of an agreement relative to the pledge of turnpike system revenue will be negotiated with the parties of the 1984 and 1986 Broward County Expressway Authority lease-purchase agreements, and subject to the covenants of those agreements. The agreement must establish that the Sawgrass Expressway is subject to the planning, management, and operating control of the department limited only by the terms of the lease-purchase agreements. The department shall provide for the payment of operation and maintenance expenses of the Sawgrass Expressway until such agreement is in effect. This pledge of turnpike system revenues is subordinate to the debt service requirements of any future issue of turnpike bonds, the payment of turnpike system operation and maintenance expenses, and subject to any subsequent resolution or trust indenture relating to the issuance of such turnpike bonds.~~

(5) ~~(6)~~ The use and disposition of revenues pledged to bonds are subject to ss. 338.22-338.241 and such regulations as the resolution authorizing the issuance of the bonds or such trust agreement may provide.

Section 35. Paragraph (c) of subsection (7) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(7) LONG-RANGE TRANSPORTATION PLAN.—Each M.P.O. must develop a long-range transportation plan that addresses at least

a 20-year planning horizon. The plan must include both long-range and short-range strategies and must comply with all other state and federal requirements. The prevailing principles to be considered in the long-range transportation plan are: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the M.P.O. Each M.P.O. is encouraged to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

(c) Assess capital investment and other measures necessary to:

1. Ensure the preservation of the existing metropolitan transportation system including requirements for the operation, resurfacing, restoration, and rehabilitation of major roadways and requirements for the operation, maintenance, modernization, and rehabilitation of public transportation facilities; and

2. Make the most efficient use of existing transportation facilities to relieve vehicular congestion, improve safety, and maximize the mobility of people and goods. Such efforts shall include, but not be limited to, consideration of infrastructure

and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments.

In the development of its long-range transportation plan, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan. The long-range transportation plan must be approved by the M.P.O.

Section 36. Paragraph (c) is added to subsection (3) of section 339.64, Florida Statutes, and paragraph (a) of subsection (4) of that section is amended, to read:

339.64 Strategic Intermodal System Plan.—

(3)

(c) The department also shall coordinate with federal, regional, and local partners, as well as industry representatives, to consider infrastructure and technological improvements necessary to accommodate advances in vehicle technology, such as autonomous vehicle technology and other developments, in Strategic Intermodal System facilities.

(4) The Strategic Intermodal System Plan shall include the following:

(a) A needs assessment. Such assessment shall include, but not be limited to, consideration of infrastructure and technological improvements necessary to accommodate advances in

vehicle technology, such as autonomous vehicle technology and other developments.

Section 37. Section 339.81, Florida Statutes, is created to read:

339.81 Florida Shared-Use Nonmotorized Trail Network.—

(1) The Florida Shared-Use Nonmotorized Trail Network is created as a component of the Florida Greenways and Trails System established in chapter 260. The network consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provide nonmotorized transportation opportunities for bicyclists and pedestrians between and within a wide range of points of origin and destinations, including, but not limited to, communities, conservation areas, state parks, beaches, and other natural or cultural attractions for a variety of trip purposes, including work, school, shopping, and other personal business, as well as social, recreational, and personal fitness purposes.

(2) Network components do not include sidewalks, nature trails, loop trails wholly within a single park or natural area, or on-road facilities, such as bicycle lanes or routes other than:

(a) On-road facilities that are no greater than one-half mile in length connecting two or more nonmotorized trails, if the provision of non-road facilities is unfeasible and if such on-road facilities are signed and marked for nonmotorized use; or

(b) On-road components of the Florida Keys Overseas Heritage Trail.

(3) The department shall include a project to be constructed as part of the Shared-Use Nonmotorized Trail Network in its work program developed pursuant to s. 339.135.

(4) The planning, development, operation, and maintenance of the Shared-Use Nonmotorized Trail Network is declared to be a public purpose, and the department, together with other agencies of this state and all counties, municipalities, and special districts of this state, may spend public funds for such purposes and may accept gifts and grants of funds, property, or property rights from public or private sources to be used for such purposes.

(5) The department may enter into a memorandum of agreement with a local government or other agency of the state to transfer maintenance responsibilities of an individual network component. The department may contract with a not-for-profit entity or private sector business or entity to provide maintenance services on an individual network component.

(6) The department may adopt rules to aid in the development and maintenance of components of the network.

Section 38. Section 339.82, Florida Statutes, is created to read:

339.82 Shared-Use Nonmotorized Trail Network Plan.—

(1) The department shall develop a Shared-Use Nonmotorized Trail Network Plan in coordination with the Department of Environmental Protection, metropolitan planning organizations, affected local governments and public agencies, and the Florida Greenways and Trails Council. The plan must be consistent with

the Florida Greenways and Trails Plan developed under s. 260.014 and must be updated at least once every 5 years.

(2) The Shared-Use Nonmotorized Trail Network Plan must include all of the following:

(a) A needs assessment, including, but not limited to, a comprehensive inventory and analysis of existing trails that may be considered for inclusion in the Shared-Use Nonmotorized Trail Network.

(b) A project prioritization process that includes assigning funding priority to projects that:

1. Are identified by the Florida Greenways and Trails Council as a priority within the Florida Greenways and Trails System under chapter 260;

2. Facilitate an interconnected network of trails by completing gaps between existing facilities; and

3. Maximize use of federal, local, and private funding and support mechanisms, including, but not limited to, donation of funds, real property, and maintenance responsibilities.

(c) A map illustrating existing and planned facilities and identifying critical gaps between facilities.

(d) A finance plan based on reasonable projections of anticipated revenues, including both 5-year and 10-year cost-feasible components.

(e) Performance measures that include quantifiable increases in trail network access and connectivity.

(f) A timeline for the completion of the base network using new and existing data from the department, the Department of Environmental Protection, and other sources.

(g) A marketing plan prepared in consultation with the

Florida Tourism Industry Marketing Corporation.

Section 39. Section 339.83, Florida Statutes, is created to read:

339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

(1) The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship signs, pavement markings, and exhibits on nonmotorized trails and related facilities constructed as part of the Shared-Use Nonmotorized Trail Network. The concession agreement may also provide for recognition of trail sponsors in any brochure, map, or website providing trail information. Trail websites may provide links to sponsors. Revenue from such agreements may be used for the maintenance of the nonmotorized trails and related facilities.

(a) A concession agreement shall be administered by the department.

(b)1. Signage, pavement markings, or exhibits erected pursuant to this section must comply with s. 337.407 and chapter 479 and are limited as follows:

a. One large sign, pavement marking, or exhibit, not to exceed 16 square feet in area, may be located at each trailhead or parking area.

b. One small sign, pavement marking, or exhibit, not to exceed 4 square feet in area, may be located at each designated trail public access point where parking is not provided.

c. Pavement markings denoting specified distances must be located at least 1 mile apart.

2. Before installation, each sign, pavement marking, or exhibit must be approved by the department.

3. The department shall ensure that the size, color, materials, construction, and location of all signs, pavement markings, and exhibits are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain a logo selected by the sponsor and the following sponsorship wording:

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

4. Exhibits may provide additional information and materials including, but not limited to, maps and brochures for trail user services related or proximate to the trail. Pavement markings may display mile marker information.

5. The costs of a sign, pavement marking, or exhibit, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.

(c) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or this section.

(2) Pursuant to s. 287.057, the department may contract for the provision of services related to the trail sponsorship program, including recruitment and qualification of businesses,

review of applications, permit issuance, and fabrication, installation, and maintenance of signs, pavement markings, and exhibits. The department may reject all proposals and seek another request for proposals or otherwise perform the work. The contract may allow the contractor to retain a portion of the annual fees as compensation for its services.

(3) This section does not create a proprietary or compensable interest in any sponsorship site or location for any permittee, and the department may terminate permits or change locations of sponsorship sites as it determines necessary for construction or improvement of facilities.

(4) The department may adopt rules to establish requirements for qualification of businesses, qualification and location of sponsorship sites, and permit applications and processing. The department may adopt rules to establish other criteria necessary to implement this section and to provide for variances when necessary to serve the interest of the public or when required to ensure equitable treatment of program participants.

Section 40. (1) The Office of Economic and Demographic Research shall evaluate and determine the economic benefits, as defined in s. 288.005(1), Florida Statutes, of the state's investment in the Department of Transportation's adopted work program developed in accordance with s. 339.135(5), Florida Statutes, for fiscal year 2015-2016, including the following 4 fiscal years. At a minimum, a separate return on investment shall be projected for each of the following areas:

(a) Roads and highways;

(b) Rails;

(c) Public transit;

(d) Aviation; and

(e) Seaports.

The analysis is limited to the funding anticipated by the adopted work program, but may address the continuing economic impact for those transportation projects in the 5 years beyond the conclusion of the adopted work program. The analysis must also evaluate the number of jobs created, the increase or decrease in personal income, and the impact on gross domestic product from the direct, indirect, and induced effects on the state's investment in each area.

(2) The Department of Transportation and each of its district offices shall provide the Office of Economic and Demographic Research full access to all data necessary to complete the analysis, including any confidential data.

(3) The Office of Economic and Demographic Research shall submit the analysis to the President of the Senate and the Speaker of the House of Representatives by January 1, 2016.

Section 41. Section 341.0532, Florida Statutes, is repealed.

Section 42. The Division of Law Revision and Information is directed to create chapter 345, Florida Statutes, consisting of ss. 345.0001-345.0014, Florida Statutes, to be entitled the "Northwest Florida Regional Transportation Finance Authority."

Section 43. Section 345.0001, Florida Statutes, is created to read:

345.0001 Short title.—This act may be cited as the "Northwest Florida Regional Transportation Finance Authority

Act."

Section 44. Section 345.0002, Florida Statutes, is created to read:

345.0002 Definitions.—As used in this chapter, the term:

(1) "Agency of the state" means the state and any department of, or any corporation, agency, or instrumentality created, designated, or established by, the state.

(2) "Area served" means Escambia County. However, upon a contiguous county's consent to inclusion within the area served by the authority and with the agreement of the authority, the term shall also include the geographical area of such county contiguous to Escambia County.

(3) "Authority" means the Northwest Florida Regional Transportation Finance Authority, a body politic and corporate, and an agency of the state, established under this chapter.

(4) "Bonds" means the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in temporary or definitive form, which the authority may issue under this chapter.

(5) "Department" means the Department of Transportation.

(6) "Division" means the Division of Bond Finance of the State Board of Administration.

(7) "Federal agency" means the United States, the President of the United States, and any department of, or any bureau, corporation, agency, or instrumentality created, designated, or established by, the United States Government.

(8) "Members" means the governing body of the authority, and the term "member" means one of the individuals constituting such governing body.

(9) "Regional system" or "system" means, generally, a modern system of roads, bridges, causeways, tunnels, and mass transit services within the area of the authority, with access limited or unlimited as the authority may determine, and the buildings and structures and appurtenances and facilities related to the system, including all approaches, streets, roads, bridges, and avenues of access for the system.

(10) "Revenues" means the tolls, revenues, rates, fees, charges, receipts, rentals, contributions, and other income derived from or in connection with the operation or ownership of a regional system, including the proceeds of any use and occupancy insurance on any portion of the system, but excluding state funds available to the authority and any other municipal or county funds available to the authority under an agreement with a municipality or county.

Section 45. Section 18. Section 345.0003, Florida Statutes, is created to read:

345.0003 Regional transportation finance authority formation and membership.—

(1) Escambia County, alone or together with any consenting contiguous county, may form a regional finance authority for the purposes of constructing, maintaining, and operating transportation projects in the northwest region of this state. The authority shall be governed in accordance with this chapter. The area served by the authority may not be expanded beyond Escambia County without the approval of the county commission of each contiguous county that will be a part of the authority.

(2) The governing body of the authority shall consist of a board of voting members as follows:

(a) The county commission of each county in the area served by the authority shall appoint two members. Each member must be a resident of the county from which he or she is appointed and, if possible, must represent the business and civic interests of the community.

(b) The Governor shall appoint an equal number of members to the board as those appointed by the county commissions. The members appointed by the Governor must be residents of the area served by the authority.

(c) The district secretary of the department serving in the district that includes Escambia County.

(3) The term of office of each member shall be for 4 years or until his or her successor is appointed and qualified.

(4) A member may not hold an elected office during the term of his or her membership.

(5) A vacancy occurring in the governing body before the expiration of the member's term shall be filled for the remainder of the unexpired term by the respective appointing authority in the same manner as the original appointment.

(6) Before entering upon his or her official duties, each member must take and subscribe to an oath before an official authorized by law to administer oaths that he or she will honestly, faithfully, and impartially perform the duties of his or her office as a member of the governing body of the authority and that he or she will not neglect any duties imposed on him or her by this chapter.

(7) The Governor may remove from office a member of the authority for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(8) Members of the authority shall designate a chair from among the membership.

(9) Members of the authority shall serve without compensation, but are entitled to reimbursement for per diem and other expenses in accordance with s. 112.061 while in performance of their official duties.

(10) A majority of the members of the authority shall constitute a quorum, and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting are effective without publication, posting, or any further action of the authority.

Section 46. Section 345.0004, Florida Statutes, is created to read:

345.0004 Powers and duties.—

(1) The authority shall plan, develop, finance, construct, reconstruct, improve, own, operate, and maintain a regional system in the area served by the authority. The authority may not exercise these powers with respect to an existing system for transporting people and goods by any means that is owned by another entity without the consent of that entity. If the authority acquires, purchases, or inherits an existing entity, the authority shall inherit and assume all rights, assets, appropriations, privileges, and obligations of the existing entity.

(2) The authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the purposes of this section, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and

complain and defend in all courts in its own name.

(b) To adopt and use a corporate seal.

(c) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(d) To acquire, purchase, hold, lease as a lessee, and use any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority.

(e) To sell, convey, exchange, lease, or otherwise dispose of any real or personal property acquired by the authority, including air rights, which the authority and the department have determined is not needed for the construction, operation, and maintenance of the system.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the use of any system owned or operated by the authority, which rates, fees, rentals, and other charges must be sufficient to comply with any covenants made with the holders of any bonds issued under this act. This right and power may be assigned or delegated by the authority to the department.

(g) To borrow money; to make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, in temporary or definitive form, to finance all or part of the improvement of the authority's system and appurtenant facilities, including the approaches, streets, roads, bridges, and avenues of access for the system and for any other purpose authorized by this chapter, the bonds to mature no more than 30 years after the date of the issuance; to secure the payment of such bonds or any part thereof by a pledge of its

revenues, rates, fees, rentals, or other charges, including municipal or county funds received by the authority under an agreement between the authority and a municipality or county; and, in general, to provide for the security of the bonds and the rights and remedies of the holders of the bonds. However, municipal or county funds may not be pledged for the construction of a project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the governing board of the municipality or county, on the date of its resolution pledging the funds, to be sufficient to cover the principal and interest of such obligations during the period when the pledge of funds is in effect.

1. The authority shall reimburse a municipality or county for sums spent from municipal or county funds used for the payment of the bond obligations.

2. If the authority elects to fund or refund bonds issued by the authority before the maturity of the bonds, the proceeds of the funding or refunding bonds, pending the prior redemption of the bonds to be funded or refunded, shall be invested in direct obligations of the United States, and the outstanding bonds may be funded or refunded by the issuance of bonds under this chapter.

(h) To make contracts of every name and nature, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute each instrument necessary or convenient for the conduct of its business.

(i) Without limitation of the foregoing, to cooperate with, to accept grants from, and to enter into contracts or other transactions with any federal agency, the state, or any agency

or any other public body of the state.

(j) To employ an executive director, attorney, staff, and consultants. Upon the request of the authority, the department shall furnish the services of a department employee to act as the executive director of the authority.

(k) To accept funds or other property from private donations.

(l) To act and do things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it by this act or any other law.

(3) The authority may not pledge the credit or taxing power of the state or a political subdivision or agency of the state. Obligations of the authority may not be considered to be obligations of the state or of any other political subdivision or agency of the state. Except for the authority, the state or any political subdivision or agency of the state is not liable for the payment of the principal of or interest on such obligations.

(4) The authority may not, other than by consent of the affected county or an affected municipality, enter into an agreement that would legally prohibit the construction of a road by the county or the municipality.

(5) The authority shall comply with the statutory requirements of general application which relate to the filing of a report or documentation required by law, including the requirements of ss. 189.015, 189.016, 189.051, and 189.08.

Section 47. Section 345.0005, Florida Statutes, is created to read:

345.0005 Bonds.—

(1) Bonds may be issued on behalf of the authority pursuant to the State Bond Act in such principal amount as the authority determines is necessary to achieve its corporate purposes, including construction, reconstruction, improvement, extension, and repair of the regional system; the acquisition cost of real property; interest on bonds during construction and for a reasonable period thereafter; and establishment of reserves to secure bonds.

(2) Bonds issued on behalf of the authority under subsection (1) must:

(a) Be authorized by resolution of the members of the authority and bear such date or dates; mature at such time or times not exceeding 30 years after their respective dates; bear interest at a rate or rates not exceeding the maximum rate fixed by general law for authorities; be in such denominations; be in such form, either coupon or fully registered; carry such registration, exchangeability, and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption; and be entitled to such priorities of lien on the revenues and other available moneys as such resolution or any resolution after the bonds' issuance provides.

(b) Be sold at public sale in the manner provided in the State Bond Act. Temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds pending the preparation of definitive bonds and may contain such terms and conditions as determined by the authority.

(3) A resolution that authorizes bonds may specify

provisions that must be part of the contract with the holders of the bonds as to:

(a) The pledging of all or any part of the revenues, available municipal or county funds, or other charges or receipts of the authority derived from the regional system.

(b) The construction, reconstruction, improvement, extension, repair, maintenance, and operation of the system, or any part or parts of the system, and the duties and obligations of the authority with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter issued, or of any loan or grant by any federal agency or the state or any political subdivision of the state may be applied.

(d) The fixing, charging, establishing, revising, increasing, reducing, and collecting of tolls, rates, fees, rentals, or other charges for use of the services and facilities of the system or any part of the system.

(e) The setting aside of reserves or sinking funds and the regulation and disposition of such reserves or sinking funds.

(f) Limitations on the issuance of additional bonds.

(g) The terms of any deed of trust or indenture securing the bonds, or under which the bonds may be issued.

(h) Any other or additional matters, of like or different character, which in any way affect the security or protection of the bonds.

(4) The authority may enter into deeds of trust, indentures, or other agreements with banks or trust companies within or without the state, as security for such bonds, and may, under such agreements, assign and pledge any of the

revenues and other available moneys, including any available municipal or county funds, under the terms of this chapter. The deed of trust, indenture, or other agreement may contain provisions that are customary in such instruments or that the authority may authorize, including, but without limitation, provisions that:

(a) Pledge any part of the revenues or other moneys lawfully available.

(b) Apply funds and safeguard funds on hand or on deposit.

(c) Provide for the rights and remedies of the trustee and the holders of the bonds.

(d) Provide for the terms of the bonds or for resolutions authorizing the issuance of the bonds.

(e) Provide for any additional matters, of like or different character, which affect the security or protection of the bonds.

(5) Bonds issued under this act are negotiable instruments and have the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(6) A resolution that authorizes the issuance of authority bonds and pledges the revenues of the system must require that revenues of the system be periodically deposited into appropriate accounts in sufficient sums to pay the costs of operation and maintenance of the system for the current fiscal year as set forth in the annual budget of the authority and to reimburse the department for any unreimbursed costs of operation and maintenance of the system from prior fiscal years before revenues of the system are deposited into accounts for the

payment of interest or principal owing or that may become owing on such bonds.

(7) State funds may not be used or pledged to pay the principal of or interest on any authority bonds, and all such bonds must contain a statement on their face to this effect.

Section 48. Section 345.0006, Florida Statutes, is created to read:

345.0006 Remedies of bondholders.—

(1) The rights and the remedies granted to authority bondholders under this chapter are in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or indenture providing for the issuance of bonds, or by any deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If the authority defaults in the payment of the principal or interest on the bonds issued under this chapter after such principal or interest becomes due, whether at maturity or upon call for redemption, as provided in the resolution or indenture, and such default continues for 30 days, or if the authority fails or refuses to comply with this chapter or any agreement made with, or for the benefit of, the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding are entitled as of right to the appointment of a trustee to represent such bondholders for the purposes of the default if the holders of 25 percent in aggregate principal amount of the bonds then outstanding first give written notice to the authority and to the department of their intention to appoint a trustee.

(2) The trustee and a trustee under a deed of trust,

indenture, or other agreement may, or upon the written request of the holders of 25 percent or such other percentages specified in any deed of trust, indenture, or other agreement, in principal amount of the bonds then outstanding, shall, in any court of competent jurisdiction, in its own name:

(a) By mandamus or other suit, action, or proceeding at law, or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges, adequate to carry out any agreement as to, or pledge of, the revenues, and to require the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter.

(b) Bring suit upon the bonds.

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders.

(d) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

(3) A trustee, if appointed under this section or acting under a deed of trust, indenture, or other agreement, and regardless of whether all bonds have been declared due and payable, is entitled to the appointment of a receiver. The receiver may enter upon and take possession of the system or the facilities or any part or parts of the system, the revenues, and other pledged moneys, for and on behalf of and in the name of, the authority and the bondholders. The receiver may collect and

receive revenues and other pledged moneys in the same manner as the authority. The receiver shall deposit such revenues and moneys in a separate account and apply all such revenues and moneys remaining after allowance for payment of all costs of operation and maintenance of the system in such manner as the court directs. In a suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee, and the receiver, if any, and all costs and disbursements allowed by the court must be a first charge on any revenues after payment of the costs of operation and maintenance of the system. The trustee also has all other powers necessary or appropriate for the exercise of any functions specifically described in this section or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) A receiver appointed pursuant to this section to operate and maintain the system or a facility or a part of a facility may not sell, assign, mortgage, or otherwise dispose of any of the assets belonging to the authority. The powers of the receiver are limited to the operation and maintenance of the system or any facility or part of a facility and to the collection and application of revenues and other moneys due the authority, in the name and for and on behalf of the authority and the bondholders. A holder of bonds or a trustee does not have the right in any suit, action, or proceeding, at law or in equity, to compel a receiver, or a receiver may not be authorized or a court may not direct a receiver, to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

Section 49. Section 345.0007, Florida Statutes, is created

to read:

345.0007 Department to construct, operate, and maintain facilities.—

(1) The department is the agent of the authority for the purpose of performing all phases of a project, including, but not limited to, constructing improvements and extensions to the system, with the exception of the transit facilities. The division and the authority shall provide to the department complete copies of the documents, agreements, resolutions, contracts, and instruments that relate to the project and shall request that the department perform the construction work, including the planning, surveying, design, and actual construction of the completion of, extensions of, and improvements to the system. After the issuance of bonds to finance construction of an improvement or addition to the system, the division and the authority shall transfer to the credit of an account of the department in the State Treasury the necessary funds for construction. The department shall proceed with construction and use the funds for the purpose authorized by law for construction of roads and bridges. The authority may alternatively, with the consent and approval of the department, elect to appoint a local agency certified by the department to administer federal aid projects in accordance with federal law as the authority's agent for the purpose of performing each phase of a project.

(2) Notwithstanding subsection (1), the department is the agent of the authority for the purpose of operating and maintaining the system, with the exception of transit facilities. The costs incurred by the department for operation

and maintenance shall be reimbursed from revenues of the system. The appointment of the department as agent for the authority does not create an independent obligation on the part of the department to operate and maintain a system. The authority shall remain obligated as principal to operate and maintain its system, and the authority's bondholders do not have an independent right to compel the department to operate or maintain the authority's system.

(3) The authority shall fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the authority's facilities, as otherwise provided in this chapter.

Section 50. Section 345.0008, Florida Statutes, is created to read:

345.0008 Department contributions to authority projects.—

(1) Subject to appropriation by the Legislature, the department may, at the request of the authority, pay all or part of the cost of financial, engineering, or traffic feasibility studies or of the design, financing, acquisition, or construction of an authority project or portion of the system that is included in the 10-year Strategic Intermodal Plan.

(a) Pursuant to chapter 216, the department shall include funding for such payments in its legislative budget request. The request for funding may be included in the 5-year Tentative Work Program developed under s. 339.135; however, it must appear as a distinct funding item in the legislative budget request and must be supported by a financial feasibility test provided by the department.

(b) Funding provided for authority projects shall appear in the General Appropriations Act as a distinct fixed capital

outlay item and must clearly identify the related authority project.

(c) The department may not make a budget request to fund the acquisition or construction of a proposed authority project unless the estimated net revenues of the proposed project will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of 12 years of operation and at least 100 percent of the debt service on the bonds by the end of 30 years of operation.

(2) The department may use its engineers and other personnel, including consulting engineers and traffic engineers, to conduct the feasibility studies authorized under subsection (1).

(3) The department may participate in authority-funded projects that, at a minimum:

(a) Serve national, statewide, or regional functions and function as part of an integrated regional transportation system.

(b) Are identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.

(c) Are consistent with the Strategic Intermodal System Plan developed under s. 339.64.

(d) Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

(4) Before approval, the department must determine that the

proposed project:

(a) Is in the public's best interest;

(b) Does not require state funding, unless the project is on the State Highway System;

(c) Has adequate safeguards in place to ensure that no additional costs will be imposed on or service disruptions will affect the traveling public and residents of this state if the department cancels or defaults on the agreement; and

(d) Has adequate safeguards in place to ensure that the department and the authority have the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations.

(5) An obligation or expense incurred by the department under this section is a part of the cost of the authority project for which the obligation or expense was incurred. The department may require that money contributed by the department under this section be repaid from tolls of the project on which the money was spent, other revenue of the authority, or other sources of funds.

(6) The department shall receive from the authority a share of the authority's net revenues equal to the ratio of the department's total contributions to the authority under this section to the sum of: the department's total contributions under this section; contributions by any local government to the cost of revenue-producing authority projects; and the sale proceeds of authority bonds after payment of costs of issuance. For the purpose of this subsection, the net revenues of the authority are determined by deducting from gross revenues the payment of debt service, administrative expenses, operations and

maintenance expenses, and all reserves required to be established under any resolution under which authority bonds are issued.

Section 51. Section 345.0009, Florida Statutes, is created to read:

345.0009 Acquisition of lands and property.—

(1) For the purposes of this chapter, the authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, condemnation by eminent domain proceedings, or transfer from another political subdivision of the state, as the authority may find necessary for any of the purposes of this chapter, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the system or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. Each authority shall also have the power to condemn any material and property necessary for such purposes.

(2) The authority shall exercise the right of eminent domain conferred under this section in the manner provided by law.

(3) An authority that acquires property for a

transportation facility or in a transportation corridor is not liable under chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property or the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Section 52. Section 345.001, Florida Statutes, is created to read:

345.001 Cooperation with other units, boards, agencies, and individuals.—A county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in, or of, the state may make and enter into a contract, lease, conveyance, partnership, or other agreement with the authority which complies with this chapter. The authority may make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any federal agency, corporation, or individual to carry out the purposes of this chapter.

Section 53. Section 345.0011, Florida Statutes, is created to read:

345.0011 Covenant of the state.—The state pledges to, and agrees with, any person, firm, or corporation, or federal or

state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this chapter that the state will not limit or alter the rights vested by this chapter in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the rights vested in the authority and the department affect the rights of the holders of bonds issued under this chapter. The state further pledges to, and agrees with, the United States that if a federal agency constructs or contributes any funds for the completion, extension, or improvement of the system, or any parts of the system, the state will not alter or limit the rights and powers of the authority and the department in any manner that is inconsistent with the continued maintenance and operation of the system or the completion, extension, or improvement of the system, or that would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers granted in this section, so long as the powers are necessary or desirable to carry out the purposes of this chapter and the purposes of the United States in the completion, extension, or improvement of the system, or any part of the system.

Section 54. Section 345.0012, Florida Statutes, is created to read:

345.0012 Exemption from taxation.—The authority created under this chapter is for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. The

authority performs essential governmental functions under this chapter, therefore, the authority is not required to pay any taxes or assessments of any kind or nature upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it. Also, the bonds issued by the authority, their transfer and the income from their issuance, including any profits made on the sale of the bonds, shall be free from taxation by the state or by any political subdivision, taxing agency, or instrumentality of the state. The exemption granted by this section does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

Section 55. Section 345.0013, Florida Statutes, is created to read:

345.0013 Eligibility for investments and security.—Bonds or other obligations issued under this chapter are legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, and other public funds, and are also securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding any other law to the contrary.

Section 56. Section 345.0014, Florida Statutes, is created to read:

345.0014 Applicability.—

(1) The powers conferred by this chapter are in addition to the powers conferred by other laws and do not repeal any other general or special law or local ordinance, but supplement them, and provide a complete method for the exercise of the powers

granted in this chapter. The extension and improvement of a system, and the issuance of bonds under this chapter to finance all or part of the cost of such extension or improvement, may be accomplished through compliance with this chapter without regard to or necessity for compliance with the limitations or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. Approval of any bonds issued under this act by the qualified electors or qualified electors who are freeholders in the state or in any political subdivision of the state is not required for the issuance of such bonds under this chapter.

(2) This act does not repeal, rescind, or modify any other law relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration; however, this chapter supersedes any other law that is inconsistent with its provisions, including, but not limited to, s. 215.821.

Section 57. (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature recognizes that the existing fuel tax structure used to derive revenues for the funding of transportation projects in this state will soon be inadequate to meet the state's needs. To address this emerging need, the Legislature directs the Center for Urban Transportation Research to establish an extensive study on the impact of implementing a system that charges drivers based on the vehicle miles traveled as an alternative, sustainable source of transportation funding and to establish the framework for implementation of a pilot demonstration project. The Legislature recognizes that, over time, the current fuel tax structure has become less viable as the primary funding

source for transportation projects. While the fuel tax has functioned as a true user fee for decades, significant increases in mandated vehicle fuel efficiency and the introduction of electric and hybrid vehicles have significantly eroded the revenues derived from this tax. The Legislature also recognizes that there are legitimate privacy concerns related to a tax mechanism that would charge users of the highway system on the basis of miles traveled. Other concerns include the cost of implementing such a system and institutional issues associated with revenue sharing. Therefore, it is the intent of the Legislature that this study and demonstration design will, at a minimum, address these issues. To accomplish this task, the Center for Urban Transportation Research in consultation with the Florida Transportation Commission shall establish a project advisory board to assist the center in analyzing this alternative funding concept and in developing specific elements of the pilot project that will demonstrate the feasibility of transitioning Florida to a transportation funding system based on vehicle miles traveled.

(2) VEHICLE-MILES-TRAVELED STUDY.—The Center for Urban Transportation Research shall conduct a study on the viability of implementing a system in this state which charges drivers based on their vehicle miles traveled as an alternative to the present fuel tax structure to fund transportation projects. The study will inventory previous research and findings from pilot projects being conducted in other states. The study will address at a minimum previous work conducted in these broad areas: assessment of technologies; behavioral and privacy concerns; equity impacts; and policy implications of a vehicle miles

traveled road charging system. The effort will also quantify the current costs to collect traditional highway user fees. This study will synthesize findings of completed research and demonstrations in the area of vehicle-miles-traveled charges and analyze their applicability to Florida. The Center for Urban Transportation Research shall present the findings of this study phase to the Legislature no later than January 30, 2016.

(3) VEHICLE-MILES-TRAVELED PILOT PROJECT DESIGN.—

(a) In the course of the study, the Center for Urban Transportation Research in consultation with the Florida Transportation Commission shall establish the framework for a pilot project that will evaluate the feasibility of implementing a system that charges drivers based on their vehicle miles traveled.

(b) In the design of the pilot project framework, the Center for Urban Transportation Research shall address at a minimum these elements: the geographic location for the pilot; special fleets or classes of vehicles; evaluation criteria for the demonstration; consumer choice in the method of reporting miles traveled; privacy options for participants in the pilot project; the recording of miles traveled with and without locational information; records retention and destruction; and cyber security.

(c) Contingent upon legislative appropriation, the Center for Urban Transportation Research may expend up to $400,000 for the study and pilot project design.

(d) The pilot project design shall be completed no later than December 31, 2016, and submitted in a report to the Legislature so that implementation of a pilot project can occur

in 2017.

Section 58. For the purpose of incorporating the amendment made by this act to section 333.01, Florida Statutes, in a reference thereto, subsection (6) of section 350.81, Florida Statutes, is reenacted to read:

350.81 Communications services offered by governmental entities.—

(6) To ensure the safe and secure transportation of passengers and freight through an airport facility, as defined in s. 159.27(17), an airport authority or other governmental entity that provides or is proposing to provide communications services only within the boundaries of its airport layout plan, as defined in s. 333.01(6), to subscribers which are integral and essential to the safe and secure transportation of passengers and freight through the airport facility, is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide shared-tenant service under s. 364.339, but not dial tone enabling subscribers to complete calls outside the airport layout plan, to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide communications services to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility, or to one or more subscribers outside its airport layout plan, is not exempt from this section. By way of example

and not limitation, the integral, essential subscribers may include airlines and emergency service entities, and the nonintegral, nonessential subscribers may include retail shops, restaurants, hotels, or rental car companies.

Section 59. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 14, 2015

I respectfully request that **Senate Bill #1554**, relating to **Transportation**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-15
Meeting Date

1554
Bill Number (if applicable)

317554
Amendment Barcode (if applicable)

Topic Transportation B.I.I

Name Suzanne Sewell

Job Title President & CEO

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Street

Phone 850-942-3500

Tallahassee FL 32308
City *State* *Zip*

Email SSewell@floridacarf.org

Speaking: ☑ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL. Association of Rehabilitation Facilities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1554
Bill Number (if applicable)

317554
Amendment Barcode (if applicable)

Topic Department of Transportation/Bonds

Name Kelly Mallette

Job Title

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City *State* *Zip*

Phone (850)224-3427

Email kelly@rhbookpa.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Rehabilitation Facilities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1554
Bill Number (if applicable)

487104
Amendment Barcode (if applicable)

GARCIA AMEND

Topic MIAMI-DADE MPO

Name JESS MCCARTY

Job Title ASS'T COUNTY ATTORNEY

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MIAMI 33128
City *State* *Zip*

Phone 305-979-7110

Email JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1554
Bill Number (if applicable)

487104
Amendment Barcode (if applicable)

Topic HPO reform

Name Michael Cantens

Job Title

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Email mcantens@corcoranfirm.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Miami Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1554
Bill Number (if applicable)

Topic TRANSPORTATION

Amendment Barcode (if applicable)

Name MICHAEL RUSH

Job Title VP GOVT AFFAIRS

Address 502 E JEFFERSON ST.
Street

TALL FL 32301
City *State* *Zip*

Phone 850-222-8088

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA PORTS COUNCIL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2015
Meeting Date

1554
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1554
Bill Number (if applicable)

Topic Transportation

Amendment Barcode (if applicable)

Name Justin Day

Job Title Director

Address 701 S Howard Ave, Suite 106-325
Street

Phone 850 222 8900

Tampa FL 33606
City *State* *Zip*

Email jd@cardenespartners.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Port Tampa Bay

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Committee on Appropriations

BILL:	SB 1582
INTRODUCER:	Senator Richter
SUBJECT:	Public Records/High-pressure Well Stimulation Chemical Disclosure Registry
DATE:	April 20, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Favorable**
2.	Peacock	McVaney	GO	**Favorable**
3.	Howard	Kynoch	AP	**Favorable**

I. Summary:

SB 1582 creates a new public records exemption for proprietary business information as defined in sections 377.24075(1)(a) through (e), Florida Statutes, and related to chemical disclosure registry or chemical disclosure information submitted to the Department of Environmental Protection (DEP) as part of a permit for high pressure well stimulation. This information is confidential and exempt from section 119.071(1), Florida Statutes, and Article I, section 24(a) of the Florida Constitution.

Under current law, if someone requests information that is "labelled" trade secret, the requestor must sue in circuit court based on the denial of the public records. Under this bill, if someone requests the otherwise presumed proprietary business information, including trade secrets, the owner of such information must sue in circuit court to ensure the information is not released. The bill provides certain exemptions and noticing requirements for a person who files an action in a circuit court.

The bill provides for repeal of the public records exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Since the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

There is no fiscal impact to state funds.

The bill shall take effect on the same date that SB 1468, or similar legislation, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Hydraulic Fracturing

Hydraulic fracturing is a technique that involves stimulating the well to extract oil and gas. Large amounts of fluid under pressure are injected into a wellbore to create and extend fractures in the rock formation. The fractures are held open by a slurry mixture which allows natural gas to flow from the fractures into the production well.[1]

The injected fluid is composed of water, proppants, and chemical additives. The composition of the injected fluid varies between rock formations but the majority of the fluid, 98 to 99.5 percent, is water. The proppants are made of sand, ceramic pellets, or other small incompressible particles that hold the fractures open. The chemical additives include bactericides, buffers, stabilizers, fluid-loss additives, and surfactants that improve the effectiveness of the fracturing process and prevent damage to the rock formation.[2]

The injection of the fracturing fluid is sequenced and the blend and proportions of the additives used vary depending on the characteristics of the rock formation. The acid stage consists of several thousand gallons of water mixed with hydrochloric acid or muriatic acid that work to clear cement debris and create an open path for the fracturing fluids. The pad stage consists of approximately 100,000 gallons of "slick-water," which is a friction reducing agent that reduces the pressure needed to pump fluid into the wellbore and facilitate the flow and placement of the proppant material. The prop sequence stage, which may include several sub-stages, uses several hundred thousand gallons of water mixed with varying sized particulates that keep the fractures open. Finally, there is a flushing stage that consists of enough water to adequately flush the excess proppant from the wellbore.[3]

Oil and Gas Regulation in Florida

The Oil and Gas Program in the Department of Environmental Protection (DEP) is the permitting authority for oil and gas wells under Part I of ch. 377.01, F.S. Section 377.22, F.S., directs the DEP to establish rules for the Oil and Gas Program that ensure human health, public safety, and the environment are protected from the exploration phase to well completion and abandonment phase. The DEP is also responsible for monitoring and reporting the well drilling and production activities from exploration to well abandonment.[4]

The DEP adopted Rules 62C-25 through 30, Florida Administrative Code (F.A.C.), to implement Part I of ch. 377, F.S. The rules include permitting procedures, bonding requirements, well spacing, well construction, production, injection, workovers, and well abandonment. The rule also requires each operator to submit a spill prevention and cleanup plan pursuant to Rule 62C-28.004(2), F.A.C. The plan must include the potential spill source, the protective measures to prevent a spill, and the location of emergency equipment in the event of a spill.

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[1] FracFocus Chemical Disclosure Registry, *Hydraulic Fracturing: The Process*, http://fracfocus.org/hydraulic-fracturing-how-it-works/hydraulic-fracturing-process. (Last visited Mar. 29, 2015).
[2] *Id*.
[3] *Id*.
[4] Section 377.21, F.S.

The requirements and procedures for well stimulation technology is not provided for in rule or statute; however, hydraulic fracturing, acidizing, or other chemical treatments of a well are activities that may be approved in a workover. A workover includes a variety of remedial operations that are conducted in order to increase well production. Rule 62C-25.002(61), F.A.C., defines a "work over" as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates." An operator is required to notify the DEP prior to commencing a workover procedure, unless it is for an emergency operation in which case the operator must notify the DEP during the operation or immediately thereafter.[5] The operator must submit a revised well record to the DEP within 30 days of the workover.[6]

Emergency Planning and Community Right to Know Act

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA), which requires federal, local and state governments to report hazardous and toxic chemicals in order to increase the public's knowledge and access to information on chemicals at individual facilities. The EPCRA includes the Toxic Release Inventory (TRI), which is a publicly available database that contains information on chemical releases and waste management reported by certain industries. The U.S. Environmental Protection Agency (EPA) has not included oil and gas extraction as an industry that must report under the TRI because the EPA determined the oil and gas extraction industry is not a high priority for reporting. The decision is based on the fact that most of the information that the TRI requires is already reported by oil and gas providers to the individual state agencies and reporting for the hundreds and thousands of oil and gas sites would overwhelm the system.[7]

In March 2015, the Bureau of Land Management (BLM) published the final rule that would require companies that conduct hydraulic fracturing on lands managed by the BLM to disclose the composition of the fracturing fluid. Congress has also proposed legislation requiring the disclosure of chemicals under the Fracturing Responsibility and Awareness of Chemicals Act.[8]

To date, federal legislation has not been implemented to require the disclosure of chemicals used in hydraulic fracturing; therefore, many states have taken steps to develop their own chemical disclosure laws. The disclosure requirements that have been established in certain states include the information about the chemical additives and whether the disclosures are made to state agencies or available to the public, the composition of the chemicals, the protections provided in trade secrets, and when the disclosure of the chemicals is to take place in relation to the fracturing process.[9]

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[5] Fla. Admin. Code R. 62C-29.006 (1996).
[6] The Well Record is the DEP Oil and Gas Form 8.
[7] Pub. Law No. 99-499, H.R. 2005, 99th Cong. (Oct. 17, 1986).
[8] Fracturing Responsibility and Awareness of Chemicals Act, Final Rule, 80 Fed. Reg. 16128-16222 (Mar. 26, 2015)(to be codified at 43 C.F.R. pt. 3).
[9] Congressional Research Service, *Hydraulic Fracturing: Chemical Disclosure Requirements*, 2 (June 19, 2012), *available at* http://www.fas.org/sgp/crs/misc/R42461.pdf (last visited Mar. 29, 2015).

FracFocus Chemical Disclosure Registry

FracFocus is a national hydraulic fracturing chemical registry operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. The registry provides public access to reported chemicals used for hydraulic fracturing. FracFocus does not replace state governmental information systems but is used by ten states as the primary means of state chemical disclosure. Currently there are approximately 95,000 well sites registered with the database.[10]

Public Records Law

Article I, s. 24(a) of the Florida Constitution sets the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[11] The records of the legislative, executive, and judicial branches are specifically included.[12]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[13] guarantees every person's right to inspect and copy any state or local government public record[14] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[15]

Only the Legislature may create an exemption to public records requirements.[16] This exemption must be created by general law and must specifically state the public necessity justifying the exemption.[17] Relevant to the bill, there is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.[18] If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other

[10] *Supra* note 1.
[11] FLA. CONST., art. I, s. 24(a).
[12] *Id.*
[13] Chapter 119, F.S.
[14] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.
[15] Section 119.07(1)(a), F.S.
[16] FLA. CONST., art. I, s. 24(c).
[17] *Id.*
[18] *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994), *review denied* 651 So.2d 1192 (Fla. 1995); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). *See also* Attorney General Opinion 85-62 (August 1, 1985).

than the persons or entities specifically designated in the statutory exemption.[19] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[20] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[21]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[22] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[23]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.[24] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[25]
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals;[26] or
- Protects trade or business secrets.[27]

The OGSR also requires specified questions to be considered during the review process. In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The specified questions are:[28]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

[19] *See WFTV, Inc. v. The School Board of Seminole, supra*, and *Wait v. Florida Power and Light Co*., 372 So.2d 420 (Fla. 1979).
[20] FLA. CONST. art. I, s. 24. However, the bill may contain multiple exemptions that relate to one subject.
[21] FLA. CONST., art. I, s. 24(c).
[22] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[23] Section 119.15(3), F.S.
[24] Section 119.15(6)(b), F.S.
[25] Section 119.15(6)(b)1., F.S.
[26] Section 119.15(6)(b)2., F.S. If this public purpose is cited as the basis of an exemption, only personal identifying information is exempt. *Id.*
[27] Section 119.15(6)(b)3., F.S.
[28] Section 119.15(6)(a)1.-6., F.S.

- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[29] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[30]

Trade Secrets

A "trade secret" in accordance with s. 812.081(1)(c), F.S., is "any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains."

Section 812.081, F.S., further defines a "trade secret" as information used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it. [31]

Courts similarly use this factor test to determine whether a document is trade secret subject to protection from public records laws. In *Sepro Corp. v. Department of Environmental Protection*,[32] the court held that a document was subject to disclosure because the business failed the first prong of the test (that the document be secret) because it had not actively protected or held out the document as a trade secret.

The term "trade secret" is also defined in s. 688.002(4), F.S., of the Uniform Trade Secrets Act as:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

[29] FLA. CONST., art. I, s. 24(c).
[30] Section 119.15(7), F.S.
[31] Section 812.081(1)(c), F.S.
[32] 839 So. 2d 781 (Fla. 1st DCA 2003). The court noted that "[i]t is of no consequence that [a party furnishing information] wishes to maintain the privacy of particular materials filed with the department, unless such materials fall within a legislatively created exemption to Ch. 119, F.S." *Id*. at 784.

(a) Derives independent economic value, actual or potential, from not being generally known , and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 815.045, F.S., provides that trade secret information as defined in s. 812.081, F.S., and as provided for in s. 815.04(3), F.S., is confidential and exempt from the public records.

Currently, a trade secret owner who provides trade secret information to a state agency must take measures to maintain the secrecy, i.e., designate/label in writing that such documents/ information are a trade secret and should not be disclosed. If this information is requested through a public records request, the agency must not release the information; however, the person or entity requesting such information may file a lawsuit upon denial of the request for a court to determine whether or not the information is a trade secret and should be released.

Proprietary Business Information

Section 377.24075, F.S., provides that proprietary business information held by the DEP pursuant to its duties with respect to an application for a natural gas storage facility permit is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution. The term "proprietary business information," means information that:[33]

- Is owned or controlled by the applicant or person affiliated with the applicant;
- Is intended to be private and is treated by the applicant as private;
- Has not been disclosed except as required by law or private agreement;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by the DEP;
- Includes trade secrets as defined in s. 688.002, F.S.;
- Includes leasing plans, real property acquisition plans, exploration budgets, or marketing studies; and
- Includes well design, completion plans, geologic and engineering studies, utilization strategies or operating plans.

III. Effect of Proposed Changes:

Section 1 amends s. 377.45, F.S., as created by SB 1468 (2015 Regular Session). The bill specifies that proprietary business information as defined in ss. 377.24075(1)(a) through (e), F.S., relating to the high pressure well stimulation chemical disclosure registry, or submitted to the Department of Environmental Protection (DEP) as part of a permit for high pressure well stimulation is confidential and exempt from s. 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution. A person submitting the information to the DEP must request the proprietary business information be kept confidential and exempt, inform the DEP of the basis for the claim of proprietary business information, and clearly mark each page of the document as "proprietary business information" to maintain the exemption.

[33] Sections 377.24075(1)(a)-(e), F.S.

The bill requires the DEP to notify the person who submitted a document marked "proprietary business information" if a public records request is made for the document. It provides the person 30 days after receipt of the notice to file an action in circuit court seeking a determination as to whether the document contains proprietary business information and an order barring public disclosure of the document. The DEP may not release the information if the action was timely filed until the pending legal action is concluded. The failure to timely file an action constitutes a waiver of any claim of confidentiality, and the DEP must release the information as requested.

The bill specifies proprietary business information may be disclosed:

- To another governmental entity that agrees in writing to maintain the confidential and exempt status of the information and verifies in writing that it has legal authority to do so; and
- When relevant in any proceeding under this section, a person involved in any proceeding under this section, including, but not limited to, an administrative law judge, a hearing officer, or a judge or justice, must maintain the confidentiality of information revealed at the proceeding.

The bill specifies the public records exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and expires on October 2, 2020, unless reenacted by the Legislature.

Section 2 creates an undesignated section of law to provide legislative findings. The bill finds it is a public necessity that proprietary business information related to high pressure well stimulations provided to the DEP by the applicant or held by the DEP in connection with the online high pressure well stimulation chemical disclosure registry be made confidential and exempt from s 119.15, F.S, and Article I, section 24(a) of the Florida Constitution. The bill further specifies the information must remain confidential to avoid providing an unfair advantage to competitors and to prevent other entities from using the information without compensating or reimbursing the entity whose information was not made confidential and exempt.

Section 3 provides the act will take effect on the same date that SB 1468, or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption. The bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt from public disclosure proprietary business information relating to high pressure well stimulations, submitted to the DEP as part of a permit application or held by the DEP in connection with the online high pressure well stimulation chemical disclosure registry.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1582 protects proprietary business information, which may provide a financial benefit to private companies engaged in high pressure well stimulation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 377.24075, F.S., makes confidential and exempt "proprietary business information" relating to the application for a natural gas storage facility. The definition of "proprietary business information" in s. 377.24075(1)(a)-(e), F.S., is for proprietary business information with respect to an application for a natural gas storage facility permit. Certain parts of the definition may not apply to proprietary business information with respect to high pressure well stimulation.

VIII. Statutes Affected:

This bill substantially amends section 377.45 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

859002

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause.

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

And the title is amended as follows:

Delete everything before the enacting clause.

By Senator Richter

23-01893A-15 20151582__

A bill to be entitled

An act relating to public records; amending s. 377.45, F.S.; providing an exemption from public records requirements for proprietary business information relating to high pressure well stimulations obtained by the Department of Environmental Protection in connection with the department's online high pressure well stimulation chemical disclosure registry; providing procedures and requirements with respect to the granting of confidential and exempt status; providing for disclosure under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (4) is added to section 377.45, Florida Statutes, as created by SB 1468, 2015 Regular Session, to read:

377.45 High pressure well stimulation chemical disclosure registry.—

(4)(a) Proprietary business information, as defined in s. 377.24075(1)(a)-(e) and relating to high pressure well stimulations, submitted to the department as part of a permit application or held by the department in connection with the online high pressure well stimulation chemical disclosure registry, is confidential and exempt from s. 119.07(1) and s.

23-01893A-15 20151582__

24(a), Art. I of the State Constitution if the person submitting such proprietary business information to the department:

1. Requests that the proprietary business information be kept confidential and exempt;

2. Informs the department of the basis for the claim of proprietary business information; and

3. Clearly marks each page of a document or specific portion of a document containing information claimed to be proprietary business information as "proprietary business information."

(b) If the department receives a public records request for a document that is marked proprietary business information under this section, the department must promptly notify the person who submitted the information as proprietary business information. The notice must inform the person that he or she has 30 days after receipt of the notice to file an action in circuit court seeking a determination as to whether the document in question contains proprietary business information and an order barring public disclosure of the document. If the person files an action within 30 days after receipt of notice of the public records request, the department may not release the document pending the outcome of the legal action. The failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the department shall release the document as requested.

(c) Confidential and exempt proprietary business information may be disclosed:

1. To another governmental entity if the receiving entity agrees in writing to maintain the confidential and exempt status

of the information and has verified in writing its legal authority to maintain such confidentiality; or

2. When relevant in any proceeding under this part. A person involved in any proceeding under this section, including, but not limited to, an administrative law judge, a hearing officer, or a judge or justice, must maintain the confidentiality of any proprietary business information revealed at such proceeding.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information, as defined in s. 377.24075(1)(a)-(e), Florida Statutes, and relating to high pressure well stimulations, submitted to the Department of Environmental Protection as part of a permit application or held by the department in connection with the online high pressure well stimulation chemical disclosure registry, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Proprietary business information must be held confidential and exempt from public records requirements because the disclosure of such information would create an unfair competitive advantage for persons receiving such information and would adversely impact the service company, chemical supplier, or well owner or operator that provides chemical ingredients for a well on which high pressure well stimulations are performed. If such confidential and exempt information regarding proprietary

business information were released pursuant to a public records request, others would be allowed to take the benefit of the proprietary business information without compensation or reimbursement to the service company, chemical supplier, or well owner or operator.

Section 3. This act shall take effect on the same date that SB 1468 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 23, 2015
Meeting Date

1582
Bill Number (if applicable)

Topic Public Records/High-pressure Well Stimulation Chemical Disclosure Registry

Amendment Barcode (if applicable)

Name Gale Dickert

Job Title Children's' Advocate, Retired

Address 193 NW Hamilton Ave.
Street

Madison FL 32340
City *State* *Zip*

Phone 850-973-3699

Email johnw512@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Madison County Residents for a Ban on Fracking

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

1582
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Mary-Lynn Culley

Job Title Legislative Liaison

Address 1674 University PKwy.
Street

Sarasota Fl. 34243
City *State* *Zip*

Phone 941-928-0278

Email aiclildren@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Advocacy Institute For Children

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

APRIL 23, 2015
Meeting Date

1582
Bill Number (if applicable)

Topic Oil & Gas Records

Amendment Barcode (if applicable)

Name David Mica

Job Title Director

Address 215 S. Monroe St
Street

Phone 561-6300

Tallahassee FL 32312
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Petroleum Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1582
Bill Number (if applicable)

Topic PUB. RECORDS - FRACKING

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title

Address 1674 UNIVERSITY PKWY #296
Street

SARASOTA FL 34243
City *State* *Zip*

Phone 941-323-2404

Email cullenasea@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-15
Meeting Date

1582
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kim Ross

Job Title President, Rethink Energy Florida

Address 565 E Tennessee St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-222-2565

Email _____

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1582
Bill Number (if applicable)

Topic Proprietary Business Information

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Leon Soil and Water Conservation District Supervisor

Address 1603 Sauls ST
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850-766-7309

Email

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Leon Soil & Water Conservation District

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

SB 1582

4-23-15
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Bill Number (if applicable)

Topic Fracking - Trade Secrets.

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired State Environmental Planner

Address 1130 Crestview Ave
Street

Tallahassee FL. 32303
City *State* *Zip*

Phone 850 322-7599

Email amaliedatz@mac.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Environmental Caucus of FL.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2015
Meeting Date

1582
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St. Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1582
Bill Number (if applicable)

Topic Oil & Gas Regulation

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Legislative Affairs Director

Address 3900 Commonwealth Blvd
Street

Phone

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-15
Meeting Date

1582
Bill Number (if applicable)

~~875~~
Amendment Barcode (if applicable)

Topic Fracking - Trade Secrets

Name Amy Datz

859002

Job Title Retired State Environmental Planner

Address _____ Phone 850-322-7595
Street

Tallahassee FL _____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Environmental Caucus of FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 23, 2015
Meeting Date

1582
Bill Number (if applicable)

Topic Public Records/High-pressure Well Stimulation Chemical Disclosure Registry

Amendment Barcode (if applicable)

Name John Dickert

Job Title Retired Engineer

Address 193 NW Hamilton Ave.
Street

Phone 850-973-3699

Madison FL 32340
City *State* *Zip*

Email johnw512@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Madison County Citizens Who Want Clean Water

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/15
Meeting Date

1582
Bill Number (if applicable)

Topic Oil & Gas Regulation

Amendment Barcode (if applicable)

Name Paula Cobb

Job Title Deputy Secretary of Regulatory Program

Address 3900 Commonwealth Blvd
Street

Phone

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

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 Committee on Appropriations

BILL:	PCS/SB 7056 (755960)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Governmental Oversight and Accountability Committee
SUBJECT:	Administrative Procedures
DATE:	April 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Peacock	McVaney		**GO Submitted as Committee Bill**
1.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
2.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7056 amends sections 120.54 and 120.74, Florida Statutes, and replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The agency head and his or her principal legal advisor must certify that they have reviewed the plan and that the agency conducts a review of its rulemaking authority. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill repeals section 120.7455, Florida Statutes, pertaining to the online survey of regulatory impacts. Additionally, the bill rescinds the suspension of rulemaking authority made under section 120.745, Florida Statutes.

The bill may have an indeterminate, but minimal fiscal impact on state agencies.

The bill provides an effective date of July 1, 2015, except as otherwise provided.

II. Present Situation:

Background

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[1] The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.[2] If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.[3]

Rulemaking authority is delegated by the Legislature[4] authorizing an agency to "adopt, develop, establish, or otherwise create"[5] a rule. Agencies do not have discretion whether to engage in rulemaking.[6] To adopt a rule, an agency must have an express grant of authority to implement a specific law by rulemaking.[7] The grant of rulemaking authority itself need not be detailed.[8] The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[9] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.[10] Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies, but not the authority to determine what should be the law.[11]

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[1] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).
[3] *McDonald v. Dep't of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).
[4] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[5] Section 120.52(17), F.S.
[6] Section 120.54(1)(a), F.S.
[7] Sections 120.52(8) & 120.536(1), F.S.
[8] *Save the Manatee Club, Inc.*, supra at 599.
[9] *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[10] *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).
[11] *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

In 1996, the Legislature extensively revised[12] agency rulemaking under the Administrative Procedure Act (APA)[13] to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

Section 120.54(1)(b), F.S., the "180 Day" Requirement

An agency may not delay implementation of a statute pending adoption of specific rules, unless there is an express provision prohibiting application of the statute before implementing rules are adopted.[14] If a law is enacted that requires agency rules for its proper implementation, "such rules shall be drafted and formally proposed as provided in s. 120.54, F.S., within 180 days after the effective date of the act, unless the act provides otherwise."[15] This "180 day requirement" predates the 1996 revisions.[16]

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.[17] Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

Joint Administrative Procedures Committee Monitoring and Agency Compliance

The Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.[18] The JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as "shall adopt rules," or provides that the agency "shall establish" some standard or "must" make some policy), or restates an existing "mandate" for rulemaking, the JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, the JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

The JAPC has no power to compel the 180 day compliance; however, agencies generally comply with the requirement. In recent years, the JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, the JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a "suggestion" instead of a mandatory rulemaking requirement. Again, on

[12] Ch. 96-159, L.O.F.
[13] Chapter 120, F.S.
[14] Section 120.54(1)(c), F.S.
[15] Section 120.54(1)(b), F.S.
[16] The 180 requirement was enacted as Ch. 85-104, s. 7, L.O.F.
[17] Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.
[18] Joint Rule 4.6.

February 2, 2015, the JAPC received a report from its staff reflecting continuing related problems.

"Directive" vs. "Mandate"

Courts generally interpret words in statute such as "shall" or "must" as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.[19] A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,[20] including where the agency does not act within the 180 day requirement. The APA provides no other process to enforce the 180 day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

Section 120.74, F.S., Biennial Reporting

1996 Reporting Requirement

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to the JAPC. The JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House of Representatives for legislative consideration.[21]

Another 1996 law added a requirement for ongoing rulemaking review, revision, and reporting.[22] Under that law as presently amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.[23] The agency head must report the results and other required information to the President of the Senate, the Speaker of the House of Representatives, the JAPC, and "each appropriate standing committee of the Legislature" biennially on October 1.[24]

Limited Utility of s. 120.74 Reports

Agencies as defined in the APA,[25] including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one

[19] *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).
[20] Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.
[21] Ch. 96-159, s. 9(2), L.O.F.
[22] Ch. 96-399, s. 46, L.O.F., codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Chapter's 2006-82, s. 9, and 2008-179, s. 8, L.O.F.
[23] Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).
[24] Section 120.74(2), F.S.
[25] Section 120.52(1), F.S.

2009 report from a school district identified the following changes to the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.[26]

The 2013 report for the same school district states the following as "what & why the policy changed" for the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.[27]

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.[28]

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to (the agency's) rules as a result of the review…"[29] One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.[30] A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced.)[31] Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.[32]

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[26] School Board of Manatee County, "Section 120.74 Report" (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.
[27] School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.
[28] School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.
[29] Section 120.74(2), F.S.
[30] Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.
[31] Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by the JAPC on Oct. 1, 2009.
[32] Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

Educational units are exempt from the biennial reporting requirements.[33]

Regulatory Plans

During the 2011 Session, the reporting requirements were amended to require each agency to file an annual regulatory plan in addition to the biennial reports.[34] The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

Section 120.745, F.S., Retrospective Economic Review of Rules

In November 2010, the Legislature enacted a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.[35] The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the first year after the rule is implemented.[36] Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of $1 million in the aggregate within five years of going into effect.[37]

The requirements applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011, the Legislature enacted s. 120.745, F.S., to require a retrospective economic analysis of those existing rules. All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)[38] were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to the JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.[39] At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.[40]

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[33] Section 2, ch. 2014-39, L.O.F., codified as s. 120.745(5), F.S.
[34] Ch. 2011-225, s. 4, L.O.F. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2), F.S., to avoid duplication with the economic reviews and reports under s. 120.745, F.S.
[35] Section 120.541(3), F.S.
[36] Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.
[37] Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.
[38] A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.
[39] Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.
[40] Section 120.745(5), F.S.

The Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).[41] Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the law exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011[42] and all final reviews by December 31, 2013.[43]

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five[44] identified rules requiring Compliance Economic Reviews.[45] Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding $1 million over the five year period from July 1, 2011 to July 1, 2016.

Section 120.7455, F.S., Your Voice Survey

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,[46] respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011, to July 1, 2014, section 120.7455, F.S.,[47] was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455, F.S., was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.[48] If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.[49]

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[41] Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.
[42] As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html (accessed Oct. 22, 2013).
[43] Section 120.745(9), F.S.
[44] Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.
[45] As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).
[46] At http://www.surveymonkey.com/s/FloridaRegReformSurvey (accessed Oct. 22, 2013).
[47] Ch. 2011-225, s. 6, L.O.F.
[48] Section 120.7455(3), F.S.
[49] Section 120.7455(4), F.S.

The survey was initiated in October 2011, and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

III. Effect of Proposed Changes:

Section 1 amends s. 120.54, F.S., to eliminate the current 180 day time period granted to agencies to draft and formally propose rules necessary to implement legislation. The new time frames for agencies to begin rulemaking will be no later than November 1 for the notice of rule development and April 1 for the notice of proposed rule.

Section 2 amends s. 120.74, F.S., to replace the current biennial reports with an annual regulatory plan, establish deadlines for specific actions in the rulemaking process, and suspend agency rulemaking if an agency fails to comply with certain requirements.

Regulatory Plan

The bill requires each agency to submit a regulatory plan by October 1 of each year. The regulatory plan must include:

- A listing of each law enacted or amended during the previous 12 months that modifies the duties and authority of the agency. For each law listed, the agency must determine whether:
  - The agency must adopt rules to implement the law;
  - If rulemaking is necessary to implement the law;
    - Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register (FAR).
    - The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).and
  - If rulemaking is not necessary, the reasons that the law may be implemented without rulemaking.
- A listing of any other laws the agency expects to implement by rulemaking before the following July 1. For each law listed, the agency must state the purpose of the rulemaking.

If the Governor or Attorney General provides a letter to the Joint Administrative Procedures Committee (JAPC) stating that a law affects all or most agencies, the agency may exclude the law from its regulatory plan.

The regulatory plan must also include information relating to any law identified in a previous year's regulatory plan as requiring rulemaking for implementation for which no notice of proposed rule has been published. The plan must include a certification by the agency head and the individual acting as a principal legal advisor to the agency head that those individuals have reviewed the plan and that the agency regularly reviews all of its agency rules to determine whether the rules remain consistent with the agency's rulemaking authority and legal authority.

If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency must identify such law, reference the citation to the applicable notice of rule development in the FAR, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

Publication and Delivery to JAPC

The bill requires the agency to publish by October 1 of each year the annual regulatory plan on the agency website or other state website established for such publication. The agency must electronically provide a copy of the certification signed by the agency head and the agency's primary legal advisor to the JAPC. The agency must publish a notice in the Florida Administrative Register identifying the date of publication of the regulatory plan, including a hyperlink or website address for the regulatory plan.

A board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the Department of Business and Professional Regulation (DBPR), may coordinate with the DBPR, and a board established under s. 20.43(3)(g), F.S., may coordinate with the Department of Health (DOH), for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required regulatory plan to the JAPC.

The bill also requires that regulatory plans published in accordance with the provisions of this bill and regulatory plans published before July 1, 2014, must be made available to the public online for ten years. This will assist elected officials and the general public in reviewing agency implementation of laws through rulemaking.

DBPR AND DOH Review of Board Plans

By October 15 of each year, the DBPR shall file with the JAPC a certification that the DBPR has reviewed each board's and commission's regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the DBPR. A certification may relate to more than one board or commission.

By October 15 of each year, the DOH shall file with the JAPC a certification that the DOH has reviewed each board's regulatory plan for each board established under s. 20.43(3)(g), F.S. A certification may relate to more than one board.

New Deadline for Rule Development

The bill establishes a new deadline for rule development. Rather than 180 days after the effective date of the legislation, the agency must publish a notice of rule development by November 1 after enactment or by the date the agency identified in the regulatory plan. The agency must then publish a notice of proposed rule by the following April 1. The agency may extend this deadline until the following October 1 if the agency publishes a notice of extension in the FAR. In addition, the agency must include a concise statement in the notice of extension identifying any issues causing the delay in rulemaking. The deadline for the notice of proposed rule can be further extended by the agency in the subsequent regulatory plan.

The bill permits an agency to correct a published regulatory plan at any time for the purpose of extending or concluding the affecting rulemaking proceeding, and such plan is deemed corrected as of the October 1 due date. The agency is required to publish a notice of the date of correction for the affected rulemaking proceeding in the FAR.

Certification

Each time an agency files a notice of rule development, a notice for a deadline extension, or a regulatory plan correction, the agency must file a certification with the JAPC noting the action taken. The certification may apply to more than one notice or contemporaneous act. The date or dates of compliance must be noted in each certificate.

Supplementing the Regulatory Plan

After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the JAPC from the Governor or the Attorney General.

The supplement must include the information required for agency's annual regulatory plan and shall be published on its website or the FAR's website, but no certification or delivery to the JAPC is required. The agency shall publish in the FAR notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of November 1 or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of April 1 or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by filing a notice of proposed rule. If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the agency's next annual regulatory plan.

Failure to Comply

If an agency fails to publish and provide its completed regulatory plan by October 1, or publish a notice of proposed rule by April 1, the agency, within 15 days after written demand from the JAPC or the chair of any other legislative committee, must deliver a written explanation of the reasons for noncompliance. The explanation must be delivered to the JAPC, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee that requested the explanation.

Educational Units

This section does not apply to educational units, including school districts.

Section 3 repeals s. 120.7455, F.S., relating to an Internet-based public survey of regulatory impacts.

Section 4 rescinds suspension of rulemaking authority under s. 120.745, F.S., effective upon this bill becoming law. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

Section 5 provides an effective date of July 1, 2015, except as otherwise provided in the bill and except for this section which shall take effect upon this act becoming law.

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:

PCS/SB 7056 requires agencies to publish additional information in the Florida Administrative Register (FAR), which has an associated cost. Such additional publication requirements will have an indeterminate, but minimal fiscal impact on agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.54 and 120.74.

This bill repeals section 120.7455 of the Florida Statutes.

The bill rescinds the suspension of rulemaking authority under section 120.745 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute:

- Requires the agency to provide a concise written statement with the notice of extension of rule development identifying any issues that are causing the delayed implementation of the rule.
- Deletes the requirement that the agency regulatory plans be included in the agency legislative budget requests.
- Deletes the suspension or rulemaking authority included in the bill as the penalty for noncompliance.

B. Amendments:

None.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; revising the deadline to propose rules implementing new laws; amending s. 120.74, F.S.; revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; prescribing procedures in the event of noncompliance by an agency; providing for applicability; repealing s. 120.7455, F.S., relating to the legislative survey of regulatory impacts; rescinding the suspension of rulemaking authority made under s. 120.745, F.S.; providing effective dates.

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

Section 1. Paragraph (b) of subsection (1) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be

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drafted and formally proposed as provided in this section within the times provided in s. 120.74(4) and (5) ~~180 days after the effective date of the act, unless the act provides otherwise~~.

Section 2. Section 120.74, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 120.74, F.S., for present text.)

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare an implementation and rulemaking plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must:

1. Verify that the persons executing the certification have reviewed the plan.

2. Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(d).

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(4) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(5) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph

(1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. The agency shall include a concise statement in the notice of extension identifying any issues that are causing the delay in rulemaking. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(6) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (4) and upon filing a notice under subsection (5) of either a deadline extension or a regulatory plan correction. A certification may relate to more than one notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(7) SUPPLEMENTING THE REGULATORY PLAN.—After publication of

the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (4) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (5) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (5). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(8) FAILURE TO COMPLY.—If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (5), within 15 days after written demand from the committee or from the chair of any other legislative committee, the agency shall deliver a written explanation of the reasons for noncompliance to the committee, the President of the Senate, the Speaker of the House

of Representatives, and the chair of any legislative committee requesting the explanation of the reasons for noncompliance.

(9) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 3. Section 120.7455, Florida Statutes, is repealed.

Section 4. Effective upon this act becoming a law, any suspension of rulemaking authority under s. 120.745, Florida Statutes is rescinded. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

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 Committee on Appropriations

BILL:	CS/SB 7056
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Governmental Oversight and Accountability Committee
SUBJECT:	Administrative Procedures
DATE:	April 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Peacock	McVaney		**GO Submitted as Committee Bill**
1.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
2.	Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7056 amends sections 120.54 and 120.74, Florida Statutes, and replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The agency head and his or her principal legal advisor must certify that they have reviewed the plan and that the agency conducts a review of its rulemaking authority. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill repeals section 120.7455, Florida Statutes, pertaining to the online survey of regulatory impacts. Additionally, the bill rescinds the suspension of rulemaking authority made under section 120.745, Florida Statutes.

The bill may have an indeterminate, but minimal fiscal impact on state agencies.

The bill provides an effective date of July 1, 2015, except as otherwise provided.

II. Present Situation:

Background

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[1] The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.[2] If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.[3]

Rulemaking authority is delegated by the Legislature[4] authorizing an agency to "adopt, develop, establish, or otherwise create"[5] a rule. Agencies do not have discretion whether to engage in rulemaking.[6] To adopt a rule, an agency must have an express grant of authority to implement a specific law by rulemaking.[7] The grant of rulemaking authority itself need not be detailed.[8] The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[9] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.[10] Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies, but not the authority to determine what should be the law.[11]

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[1] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).
[3] *McDonald v. Dep't of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).
[4] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[5] Section 120.52(17), F.S.
[6] Section 120.54(1)(a), F.S.
[7] Sections 120.52(8) & 120.536(1), F.S.
[8] *Save the Manatee Club, Inc.*, supra at 599.
[9] *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[10] *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).
[11] *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

In 1996, the Legislature extensively revised[12] agency rulemaking under the Administrative Procedure Act (APA)[13] to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

Section 120.54(1)(b), F.S., the "180 Day" Requirement

An agency may not delay implementation of a statute pending adoption of specific rules, unless there is an express provision prohibiting application of the statute before implementing rules are adopted.[14] If a law is enacted that requires agency rules for its proper implementation, "such rules shall be drafted and formally proposed as provided in s. 120.54, F.S., within 180 days after the effective date of the act, unless the act provides otherwise."[15] This "180 day requirement" predates the 1996 revisions.[16]

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.[17] Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

Joint Administrative Procedures Committee Monitoring and Agency Compliance

The Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.[18] The JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as "shall adopt rules," or provides that the agency "shall establish" some standard or "must" make some policy), or restates an existing "mandate" for rulemaking, the JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, the JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

The JAPC has no power to compel the 180 day compliance; however, agencies generally comply with the requirement. In recent years, the JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, the JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a "suggestion" instead of a mandatory rulemaking requirement. Again, on

[12] Ch. 96-159, L.O.F.
[13] Chapter 120, F.S.
[14] Section 120.54(1)(c), F.S.
[15] Section 120.54(1)(b), F.S.
[16] The 180 requirement was enacted as Ch. 85-104, s. 7, L.O.F.
[17] Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.
[18] Joint Rule 4.6.

February 2, 2015, the JAPC received a report from its staff reflecting continuing related problems.

"Directive" vs. "Mandate"

Courts generally interpret words in statute such as "shall" or "must" as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.[19] A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,[20] including where the agency does not act within the 180 day requirement. The APA provides no other process to enforce the 180 day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

Section 120.74, F.S., Biennial Reporting

1996 Reporting Requirement

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to the JAPC. The JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House of Representatives for legislative consideration.[21]

Another 1996 law added a requirement for ongoing rulemaking review, revision, and reporting.[22] Under that law as presently amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.[23] The agency head must report the results and other required information to the President of the Senate, the Speaker of the House of Representatives, the JAPC, and "each appropriate standing committee of the Legislature" biennially on October 1.[24]

Limited Utility of s. 120.74 Reports

Agencies as defined in the APA,[25] including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one

[19] *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).
[20] Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.
[21] Ch. 96-159, s. 9(2), L.O.F.
[22] Ch. 96-399, s. 46, L.O.F., codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Chapter's 2006-82, s. 9, and 2008-179, s. 8, L.O.F.
[23] Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).
[24] Section 120.74(2), F.S.
[25] Section 120.52(1), F.S.

2009 report from a school district identified the following changes to the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.[26]

The 2013 report for the same school district states the following as "what & why the policy changed" for the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.[27]

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.[28]

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to (the agency's) rules as a result of the review…"[29] One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.[30] A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced.)[31] Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.[32]

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[26] School Board of Manatee County, "Section 120.74 Report" (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.
[27] School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.
[28] School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.
[29] Section 120.74(2), F.S.
[30] Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.
[31] Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by the JAPC on Oct. 1, 2009.
[32] Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

Educational units are exempt from the biennial reporting requirements.[33]

Regulatory Plans

During the 2011 Session, the reporting requirements were amended to require each agency to file an annual regulatory plan in addition to the biennial reports.[34] The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

Section 120.745, F.S., Retrospective Economic Review of Rules

In November 2010, the Legislature enacted a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.[35] The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the first year after the rule is implemented.[36] Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of $1 million in the aggregate within five years of going into effect.[37]

The requirements applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011, the Legislature enacted s. 120.745, F.S., to require a retrospective economic analysis of those existing rules. All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)[38] were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to the JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.[39] At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.[40]

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[33] Section 2, ch. 2014-39, L.O.F., codified as s. 120.745(5), F.S.
[34] Ch. 2011-225, s. 4, L.O.F. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2), F.S., to avoid duplication with the economic reviews and reports under s. 120.745, F.S.
[35] Section 120.541(3), F.S.
[36] Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.
[37] Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.
[38] A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.
[39] Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.
[40] Section 120.745(5), F.S.

The Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).[41] Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the law exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011[42] and all final reviews by December 31, 2013.[43]

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five[44] identified rules requiring Compliance Economic Reviews.[45] Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding $1 million over the five year period from July 1, 2011 to July 1, 2016.

Section 120.7455, F.S., Your Voice Survey

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,[46] respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011, to July 1, 2014, section 120.7455, F.S.,[47] was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455, F.S., was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.[48] If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.[49]

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[41] Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.
[42] As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html (accessed Oct. 22, 2013).
[43] Section 120.745(9), F.S.
[44] Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.
[45] As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).
[46] At http://www.surveymonkey.com/s/FloridaRegReformSurvey (accessed Oct. 22, 2013).
[47] Ch. 2011-225, s. 6, L.O.F.
[48] Section 120.7455(3), F.S.
[49] Section 120.7455(4), F.S.

The survey was initiated in October 2011, and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

III. Effect of Proposed Changes:

Section 1 amends s. 120.54, F.S., to eliminate the current 180 day time period granted to agencies to draft and formally propose rules necessary to implement legislation. The new time frames for agencies to begin rulemaking will be no later than November 1 for the notice of rule development and April 1 for the notice of proposed rule.

Section 2 amends s. 120.74, F.S., to replace the current biennial reports with an annual regulatory plan, establish deadlines for specific actions in the rulemaking process, and suspend agency rulemaking if an agency fails to comply with certain requirements.

Regulatory Plan

The bill requires each agency to submit a regulatory plan by October 1 of each year. The regulatory plan must include:

- A listing of each law enacted or amended during the previous 12 months that modifies the duties and authority of the agency. For each law listed, the agency must determine whether:
  - The agency must adopt rules to implement the law;
  - If rulemaking is necessary to implement the law;
    - Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register (FAR).
    - The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a), and
  - If rulemaking is not necessary, the reasons that the law may be implemented without rulemaking.
- A listing of any other laws the agency expects to implement by rulemaking before the following July 1. For each law listed, the agency must state the purpose of the rulemaking.

If the Governor or Attorney General provides a letter to the Joint Administrative Procedures Committee (JAPC) stating that a law affects all or most agencies, the agency may exclude the law from its regulatory plan.

The regulatory plan must also include information relating to any law identified in a previous year's regulatory plan as requiring rulemaking for implementation for which no notice of proposed rule has been published. The plan must include a certification by the agency head and the individual acting as a principal legal advisor to the agency head that those individuals have reviewed the plan and that the agency regularly reviews all of its agency rules to determine whether the rules remain consistent with the agency's rulemaking authority and legal authority.

If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency must identify such law, reference the citation to the applicable notice of rule development in the FAR, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

Publication and Delivery to JAPC

The bill requires the agency to publish by October 1 of each year the annual regulatory plan on the agency website or other state website established for such publication. The agency must electronically provide a copy of the certification signed by the agency head and the agency's primary legal advisor to the JAPC. The agency must publish a notice in the Florida Administrative Register identifying the date of publication of the regulatory plan, including a hyperlink or website address for the regulatory plan.

A board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the Department of Business and Professional Regulation (DBPR), may coordinate with the DBPR, and a board established under s. 20.43(3)(g), F.S., may coordinate with the Department of Health (DOH), for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required regulatory plan to the JAPC.

The bill also requires that regulatory plans published in accordance with the provisions of this bill and regulatory plans published before July 1, 2014, must be made available to the public online for ten years. This will assist elected officials and the general public in reviewing agency implementation of laws through rulemaking.

DBPR AND DOH Review of Board Plans

By October 15 of each year, the DBPR shall file with the JAPC a certification that the DBPR has reviewed each board's and commission's regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the DBPR. A certification may relate to more than one board or commission.

By October 15 of each year, the DOH shall file with the JAPC a certification that the DOH has reviewed each board's regulatory plan for each board established under s. 20.43(3)(g), F.S. A certification may relate to more than one board.

New Deadline for Rule Development

The bill establishes a new deadline for rule development. Rather than 180 days after the effective date of the legislation, the agency must publish a notice of rule development by November 1 after enactment or by the date the agency identified in the regulatory plan. The agency must then publish a notice of proposed rule by the following April 1. The agency may extend this deadline until the following October 1 if the agency publishes a notice of extension in the FAR. In addition, the agency must include a concise statement in the notice of extension identifying any issues causing the delay in rulemaking. The deadline for the notice of proposed rule can be further extended by the agency in the subsequent regulatory plan.

The bill permits an agency to correct a published regulatory plan at any time for the purpose of extending or concluding the affecting rulemaking proceeding, and such plan is deemed corrected as of the October 1 due date. The agency is required to publish a notice of the date of correction for the affected rulemaking proceeding in the FAR.

Certification

Each time an agency files a notice of rule development, a notice for a deadline extension, or a regulatory plan correction, the agency must file a certification with the JAPC noting the action taken. The certification may apply to more than one notice or contemporaneous act. The date or dates of compliance must be noted in each certificate.

Supplementing the Regulatory Plan

After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the JAPC from the Governor or the Attorney General.

The supplement must include the information required for agency's annual regulatory plan and shall be published on its website or the FAR's website, but no certification or delivery to the JAPC is required. The agency shall publish in the FAR notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of November 1 or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of April 1 or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by filing a notice of proposed rule. If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the agency's next annual regulatory plan.

Failure to Comply

If an agency fails to publish and provide its completed regulatory plan by October 1, or publish a notice of proposed rule by April 1, the agency, within 15 days after written demand from the JAPC or the chair of any other legislative committee, must deliver a written explanation of the reasons for noncompliance. The explanation must be delivered to the JAPC, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee that requested the explanation.

Educational Units

This section does not apply to educational units, including school districts.

Section 3 repeals s. 120.7455, F.S., relating to an Internet-based public survey of regulatory impacts.

Section 4 rescinds suspension of rulemaking authority under s. 120.745, F.S., effective upon this bill becoming law. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

Section 5 provides an effective date of July 1, 2015, except as otherwise provided in the bill and except for this section which shall take effect upon this act becoming law.

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:

CS/SB 7056 requires agencies to publish additional information in the Florida Administrative Register (FAR), which has an associated cost. Such additional publication requirements will have an indeterminate, but minimal fiscal impact on agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.54 and 120.74.

This bill repeals section 120.7455 of the Florida Statutes.

The bill rescinds the suspension of rulemaking authority under section 120.745 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 23, 2015:
The committee substitute:

- Requires the agency to provide a concise written statement with the notice of extension of rule development identifying any issues that are causing the delayed implementation of the rule.
- Deletes the requirement that the agency regulatory plans be included in the agency legislative budget requests.
- Deletes the suspension or rulemaking authority included in the bill as the penalty for noncompliance.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability

585-02716-15 20157056__

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; revising the deadline to propose rules implementing new laws; amending s. 120.74, F.S.; revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; providing for suspension of an agency's rulemaking authority under certain circumstances; providing for applicability; repealing s. 120.7455, F.S., relating to legislative survey of regulatory impacts; providing for rescission of the suspension of rulemaking authority made under s. 120.745, F.S.; providing effective dates.

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

Section 1. Paragraph (b) of subsection (1) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the times provided in s. 120.74(5) and (6) ~~180 days after the~~

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~~effective date of the act, unless the act provides otherwise~~.

Section 2. Section 120.74, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 120.74, F.S., for present text.)

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare an implementation and rulemaking plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency

expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (8). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency may identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency may identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the chair or equivalent presiding officer; and the agency general counsel, or, if the agency does not have a general counsel, the individual acting as principal legal advisor to the agency head. The certification must:

1. Verify that the persons executing the certification have reviewed the plan.

2. Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(d).

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1,

2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to the requirements of s. 216.023 and pursuant to s. 216.351, a copy of the most recent certification executed under paragraph (1)(d), clearly designated as such, shall be included as part of the agency's legislative budget request.

(4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(7) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (5), upon filing a notice under subsection (6) of either a deadline extension or a regulatory plan correction, and upon the completion of an act that terminates a suspension under subsection (9). A certification may relate to more than one

notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (5) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (6) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (6). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(9) FAILURE TO COMPLY.—If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (6), the entire rulemaking authority delegated to the agency by the Legislature

under any statute or law shall be suspended automatically as of the due date of the required action and shall remain suspended until the date the agency completes the required act or until the end of the next regular session of the Legislature, whichever occurs first.

(a) During a period of suspension under this subsection, the agency has no authority to file rules for adoption under s. 120.54, but may complete any action required by this section and may conduct public hearings that were noticed before the period of suspension.

(b) A suspension under this subsection does not authorize an agency to adopt or apply a statement defined as a rule under s. 120.52(16) unless the statement was filed for adoption under s. 120.54(3) before the suspension.

(c) A suspension under this subsection tolls the time requirements under s. 120.54 for filing a rule for adoption in a rulemaking proceeding initiated by the agency before the date of the suspension. The time requirements shall resume on the date the suspension ends.

(d) This subsection does not suspend the adoption of emergency rules under s. 120.54(4) or rulemaking necessary to ensure the state's compliance with federal law.

(10) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 3. Section 120.7455, Florida Statutes, is repealed.

Section 4. Effective upon this act becoming a law, any suspension of rulemaking authority under s. 120.745, Florida Statutes is rescinded. This section does not affect any restriction, suspension, or prohibition of rulemaking authority

under any other provision of law.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/23/2015 8:05:37 AM
Ends: 4/23/2015 9:55:41 AM **Length: 01:50:05**

8:05:38 AM Sen. Lee (Chair)
8:06:32 AM S 532
8:06:40 AM Sen. Grimsley
8:06:51 AM Sen. Lee
8:06:57 AM Am. 213236
8:07:06 AM Sen. Grimsley
8:07:52 AM Sen. Lee
8:08:01 AM Tim Numgesser, Legislative Director, National Federation of Independent Business (waives in support)
8:08:08 AM Brian Pitts, Trustee, Justice 2 Jesus
8:09:26 AM Sen. Lee
8:09:43 AM Sen. Joyner
8:09:57 AM Sen. Grimsley
8:10:01 AM Sen. Joyner
8:10:08 AM Sen. Grimsley
8:10:11 AM Sen. Lee
8:10:27 AM S 532 (cont.)
8:10:33 AM Chris Floyd, Consultant, Florida Association of Nurse Practitioners (waives in support)
8:10:35 AM Stan Whittaker, Chairman, Florida Association of Nurse Practitioners (waives in support)
8:10:40 AM Brittany Burch, Policy Director, Florida Chamber of Commerce (waives in support)
8:10:45 AM Martha DeCastro, Vice President of Nursing, Florida Hospital Association (waives in support)
8:10:51 AM Alisa LaPolt, Lobbyist, Florida Nurses Association (waives in support)
8:10:58 AM
8:11:13 AM Sen. Lee
8:11:55 AM S 914
8:12:01 AM Sen. Richter
8:13:00 AM Sen. Lee
8:13:17 AM PCS 706156
8:13:32 AM Sen. Joyner
8:13:50 AM Sen. Richter
8:14:10 AM Sen. Joyner
8:14:11 AM Sen. Lee
8:14:24 AM Brian Pitts, Trustee, Justice 2 Jesus
8:16:21 AM Sen. Lee
8:17:12 AM S 7056
8:17:20 AM Sen. Ring
8:17:23 AM Sen. Lee
8:17:25 AM PCS 755960
8:17:41 AM Sen. Ring
8:18:11 AM Sen. Lee
8:19:08 AM Sen. Benacquisto
8:19:14 AM S 718
8:19:18 AM Sen. Lee
8:20:41 AM Am. 187540
8:23:19 AM Sen. Benacquisto
8:23:20 AM Sen. Ring
8:23:44 AM Sen. Benacquisto
8:23:51 AM S 718 (cont.)
8:24:42 AM Sen. Lee
8:24:56 AM S 1582
8:25:05 AM Sen. Richter
8:26:17 AM Sen. Lee
8:26:21 AM Sen. Ring

8:26:37 AM Sen. Richter
8:26:50 AM Sen. Joyner
8:27:05 AM Sen. Richter
8:27:52 AM Sen. Joyner
8:28:10 AM Sen. Richter
8:28:33 AM Sen. Lee
8:28:40 AM Sen. Margolis
8:29:14 AM Sen. Richter
8:29:35 AM Sen. Margolis
8:30:00 AM Sen. Richter
8:30:05 AM Sen. Lee
8:30:07 AM Sen. Latvala
8:30:34 AM Sen. Richter
8:30:54 AM Sen. Latvala
8:31:33 AM Sen. Richter
8:31:34 AM Sen. Latvala
8:31:46 AM Sen. Richter
8:32:54 AM Sen. Latvala
8:33:13 AM Sen. Richter
8:33:16 AM Sen. Latvala
8:33:52 AM Sen. Richter
8:34:16 AM Sen. Latvala
8:34:39 AM Sen. Richter
8:35:06 AM Sen. Lee
8:35:18 AM Mary-Lynn Cullen, Legislative Liaison, Advocacy Institute for Children
8:38:19 AM David Mica, Director, Florida Petroleum Council (waives in support)
8:38:28 AM David Cullen, Sierra Club Florida
8:43:25 AM Kim Ross, President, Rethink Energy Florida
8:46:52 AM Sen. Lee
8:46:56 AM K. Ross
8:47:16 AM Brian Lee, Supervisor, Leon Soil and Water Conservation District
8:48:47 AM Amy Datz, Retired State Environmental Planner, Environmental Caucus of Florida
8:51:36 AM Sen. Lee
8:51:48 AM A. Datz
8:52:09 AM Sen. Lee
8:52:11 AM Brian Pitts, Trustee, Justice 2 Jesus
8:55:02 AM Gale Dickert, Retired, Resident of Madison County-Children of Florida
8:57:10 AM Sen. Ring
8:57:45 AM Sen. Lee
8:57:59 AM G. Dickert
8:58:12 AM Sen. Lee
8:59:54 AM Andrew Ketchel, Legislative Affairs Director, Department of Environmental Protection
9:00:12 AM Sen. Hays
9:00:22 AM Sen. Lee
9:00:43 AM A. Ketchel
9:01:05 AM Paula Cobb, Deputy Secretary of Regulatory Program, Department of Environmental Protection
9:03:31 AM Sen. Lee
9:03:34 AM Sen. Montford
9:03:55 AM P. Cobb
9:04:26 AM Sen. Gaetz
9:04:58 AM P. Cobb
9:06:10 AM Sen. Altman
9:06:27 AM P. Cobb
9:07:16 AM Sen. Altman
9:07:17 AM P. Cobb
9:07:25 AM Sen. Altman
9:07:47 AM P. Cobb
9:08:05 AM Sen. Altman
9:08:06 AM Sen. Lee
9:08:08 AM Sen. Latvala
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9:22:15 AM Sen. Lee
9:22:27 AM P. Cobb
9:22:30 AM Sen. Lee
9:23:30 AM P. Cobb
9:24:31 AM Sen. Lee
9:24:38 AM P. Cobb
9:25:03 AM Sen. Lee
9:25:16 AM John Dickert, Retired Engineer, Madison County Citizens who want clean water
9:28:06 AM Sen. Lee
9:28:22 AM P. Cobb
9:28:59 AM
9:29:01 AM
9:29:12 AM Sen. Lee
9:29:23 AM Sen. Latvala
9:33:26 AM Sen. Lee
9:33:29 AM Sen. Ring
9:35:43 AM Sen. Lee
9:35:46 AM Sen. Montford
9:36:34 AM Sen. Gaetz
9:39:19 AM Sen. Lee
9:41:11 AM Sen. Simmons
9:46:26 AM Sen. Lee
9:46:29 AM Sen. Richter
9:53:55 AM Sen. Lee

9:55:08 AM Sen. Brandes
9:55:32 AM Sen. Lee