

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

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 23, 2015, 8:00 —10:00 a.m.

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	Fav/CS Yeas 17 Nays 0
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With subcommittee recommendation - General Government

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

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 23, 2015, 8:00 —10:00 a.m.

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

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 23, 2015, 8:00 —10:00 a.m.

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.	<u>Harper/Stovall</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Gross</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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 direct³ and indirect⁴ 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 nurse¹³ 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 statement²⁵ 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 practitioner²⁸ 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 clinic⁴⁸ 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	.	
	.	
	.	
	.	

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

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

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

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

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

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

26 1. The number of general hospitals.

27 2. The number of emergency room holding beds per hospital.

28 The term "emergency room holding bed" means a bed located in the
29 emergency room of a hospital licensed under ch. 395 which is
30 used for a patient admitted to the hospital through the
31 emergency room, but is waiting for an available bed in an
32 inpatient unit of the hospital.

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

35 (e) The number of existing community nursing home beds per
36 1,000 males age 65 years or older residing in the county.

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

39 (g) The county poverty rate.



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

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

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

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

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

63 624.27 Application of code as to direct primary care
64 agreements.-

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

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



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

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

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

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

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

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

89 (a) Be in writing.

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

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

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



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

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

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

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

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

109 766.1115 Health care providers; creation of agency
110 relationship with governmental contractors.—

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

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



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

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

141 1. A birth center licensed under chapter 383.

142 2. An ambulatory surgical center licensed under chapter
143 395.

144 3. A hospital licensed under chapter 395.

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

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

149 6. A chiropractic physician licensed under chapter 460.

150 7. A podiatric physician licensed under chapter 461.

151 8. A registered nurse, nurse midwife, licensed practical
152 nurse, or advanced registered nurse practitioner licensed or
153 registered under part I of chapter 464 or any facility which
154 employs nurses licensed or registered under part I of chapter
155 464 to supply all or part of the care delivered under this



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156 section.
157 9. A midwife licensed under chapter 467.
158 10. A health maintenance organization certificated under
159 part I of chapter 641.
160 11. A health care professional association ~~and its~~
161 ~~employees~~ or a corporate medical group ~~and its employees~~.
162 12. Any other medical facility the primary purpose of which
163 is to deliver human medical diagnostic services or which
164 delivers nonsurgical human medical treatment, and which includes
165 an office maintained by a provider.
166 13. A dentist or dental hygienist licensed under chapter
167 466.
168 14. A free clinic that delivers only medical diagnostic
169 services or nonsurgical medical treatment free of charge to all
170 low-income recipients.
171 15. Any other health care professional, practitioner,
172 provider, or facility under contract with a governmental
173 contractor, including a student enrolled in an accredited
174 program that prepares the student for licensure as any one of
175 the professionals listed in subparagraphs 4.-9.
176
177 The term includes any nonprofit corporation qualified as exempt
178 from federal income taxation under s. 501(a) of the Internal
179 Revenue Code, and described in s. 501(c) of the Internal Revenue
180 Code, which delivers health care services provided by licensed
181 professionals listed in this paragraph, any federally funded
182 community health center, and any volunteer corporation or
183 volunteer health care provider that delivers health care
184 services.



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

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

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

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



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

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

231 (e) If emergency care is required, the patient need not be
232 referred before receiving treatment, but must be referred within
233 48 hours after treatment is commenced or within 48 hours after
234 the patient has the mental capacity to consent to treatment,
235 whichever occurs later.

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

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



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

248
249 A governmental contractor that is also a health care provider is
250 not required to enter into a contract under this section with
251 respect to the health care services delivered by its employees.

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

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



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272 768.28, Florida Statutes, is amended to read:

273 768.28 Waiver of sovereign immunity in tort actions;
274 recovery limits; limitation on attorney fees; statute of
275 limitations; exclusions; indemnification; risk management
276 programs.—

277 (9)

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

279 1. "Employee" includes any volunteer firefighter.

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

289
290 ===== T I T L E A M E N D M E N T =====

291 And the title is amended as follows:

292 Delete lines 2 - 24

293 and insert:

294 An act relating to the access to health care services;
295 amending ss. 458.347 and 459.022, F.S.; revising the
296 authority of a licensed physician assistant to order
297 medication under the direction of a supervisory
298 physician for a specified patient; amending s.
299 464.012, F.S.; authorizing an advanced registered
300 nurse practitioner to order medication for



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301 administration to a specified patient; amending s.
302 465.003, F.S.; revising the term "prescription" to
303 exclude an order for drugs or medicinal supplies by a
304 licensed practitioner that is dispensed for certain
305 administration; amending s. 893.02, F.S.; revising the
306 term "administer" to include the term
307 "administration"; revising the term "prescription" to
308 exclude an order for drugs or medicinal supplies by a
309 licensed practitioner that is dispensed for certain
310 administration; amending s. 893.04, F.S.; conforming
311 provisions to changes made by act; amending s. 893.05,
312 F.S.; authorizing a licensed practitioner to authorize
313 a licensed physician assistant or advanced registered
314 nurse practitioner to order controlled substances for
315 a specified patient under certain circumstances;
316 creating s. 296.42, F.S.; directing the Department of
317 Veterans' Affairs to contract for a study to determine
318 the need and location for additional state veterans'
319 nursing homes; directing the department to submit the
320 study to the Governor and Legislature; providing study
321 criteria for ranking each county according to need;
322 providing site selection criteria; requiring approval
323 of the Governor and Cabinet for site selection;
324 requiring the department to use specified studies to
325 select new nursing home sites; directing the
326 department to contract for subsequent studies and
327 submit the studies to the Governor and Legislature;
328 creating s. 624.27, F.S.; providing definitions;
329 specifying that a direct primary care agreement does



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

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

593-04002-15

2015532c2

1 A bill to be entitled
2 An act relating to the ordering of medication;
3 amending ss. 458.347 and 459.022, F.S.; revising the
4 authority of a licensed physician assistant to order
5 medication under the direction of a supervisory
6 physician for a specified patient; amending s.
7 464.012, F.S.; authorizing an advanced registered
8 nurse practitioner to order medication for
9 administration to a specified patient; amending s.
10 465.003, F.S.; revising the term "prescription" to
11 exclude an order for drugs or medicinal supplies by a
12 licensed practitioner that is dispensed for certain
13 administration; amending s. 893.02, F.S.; revising the
14 term "administer" to include the term
15 "administration"; revising the term "prescription" to
16 exclude an order for drugs or medicinal supplies by a
17 licensed practitioner that is dispensed for certain
18 administration; amending s. 893.04, F.S.; conforming
19 provisions to changes made by act; amending s. 893.05,
20 F.S.; authorizing a licensed practitioner to authorize
21 a licensed physician assistant or advanced registered
22 nurse practitioner to order controlled substances for
23 a specified patient under certain circumstances;
24 reenacting ss. 400.462(26), 401.445(1), 409.906(18),
25 and 766.103(3), F.S., to incorporate the amendments
26 made to ss. 458.347 and 459.022, F.S., in references
27 thereto; reenacting ss. 401.445(1) and 766.103(3),
28 F.S., to incorporate the amendment made to s. 464.012,
29 F.S., in references thereto; reenacting ss.

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

593-04002-15

2015532c2

30 409.9201(1)(a), 458.331(1)(pp), 459.015(1)(rr),
31 465.014(1), 465.015(2)(c), 465.016(1)(s),
32 465.022(5)(j), 465.023(1)(h), 465.1901, 499.003(43),
33 and 831.30(1), F.S., to incorporate the amendment made
34 to s. 465.003, F.S., in references thereto; reenacting
35 ss. 112.0455(5)(i), 381.986(7)(b), 440.102(1)(l),
36 458.331(1)(pp), 459.015(1)(rr), 465.015(3),
37 465.016(1)(s), 465.022(5)(j), 465.023(1)(h),
38 499.0121(14), 768.36(1)(b), 810.02(3)(f),
39 812.014(2)(c), 856.015(1)(c), 944.47(1)(a), 951.22(1),
40 985.711(1)(a), 1003.57(1)(i), and 1006.09(8), F.S., to
41 incorporate the amendment made to s. 893.02, F.S., in
42 references thereto; reenacting s. 893.0551(3)(e),
43 F.S., to incorporate the amendment made to s. 893.04,
44 F.S., in a reference thereto; reenacting s.
45 893.0551(3)(d), F.S., to incorporate the amendment
46 made to s. 893.05, F.S., in a reference thereto;
47 providing an effective date.

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

50
51
52 Section 1. Paragraph (g) of subsection (4) of section
53 458.347, Florida Statutes, is amended to read:
54 458.347 Physician assistants.—
55 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—
56 (g) A supervisory physician may delegate to a licensed
57 physician assistant the authority to, and the licensed physician
58 assistant acting under the direction of the supervisory

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

593-04002-15

2015532c2

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

68 Section 2. Paragraph (f) of subsection (4) of section
 69 459.022, Florida Statutes, is amended to read:

70 459.022 Physician assistants.—

71 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

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

84 Section 3. Paragraph (a) of subsection (3) of section
 85 464.012, Florida Statutes, is amended to read:

86 464.012 Certification of advanced registered nurse
 87 practitioners; fees.—

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88 (3) An advanced registered nurse practitioner shall perform
 89 those functions authorized in this section within the framework
 90 of an established protocol that is filed with the board upon
 91 biennial license renewal and within 30 days after entering into
 92 a supervisory relationship with a physician or changes to the
 93 protocol. The board shall review the protocol to ensure
 94 compliance with applicable regulatory standards for protocols.
 95 The board shall refer to the department licensees submitting
 96 protocols that are not compliant with the regulatory standards
 97 for protocols. A practitioner currently licensed under chapter
 98 458, chapter 459, or chapter 466 shall maintain supervision for
 99 directing the specific course of medical treatment. Within the
 100 established framework, an advanced registered nurse practitioner
 101 may:

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

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

107 465.003 Definitions.—As used in this chapter, the term:

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

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117 a jurisdiction other than this state, but only if the pharmacist
 118 called upon to dispense such order determines, in the exercise
 119 of her or his professional judgment, that the order is valid and
 120 necessary for the treatment of a chronic or recurrent illness;
 121 ~~and. The term "prescription" also includes~~ a pharmacist's order
 122 for a product selected from the formulary created pursuant to s.
 123 465.186. Prescriptions may be retained in written form or the
 124 pharmacist may cause them to be recorded in a data processing
 125 system, provided that such order can be produced in printed form
 126 upon lawful request.

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

129 893.02 Definitions.—The following words and phrases as used
 130 in this chapter shall have the following meanings, unless the
 131 context otherwise requires:

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

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

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

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

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

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

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

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

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175 893.04 Pharmacist and practitioner.-
 176 (2) (a) A pharmacist may not dispense a controlled substance
 177 listed in Schedule II, Schedule III, or Schedule IV to any
 178 patient or patient's agent without first determining, in the
 179 exercise of her or his professional judgment, that the
 180 prescription order is valid. The pharmacist may dispense the
 181 controlled substance, in the exercise of her or his professional
 182 judgment, when the pharmacist or pharmacist's agent has obtained
 183 satisfactory patient information from the patient or the
 184 patient's agent.

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

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204 (f) A pharmacist may not knowingly dispense ~~fill~~ a
 205 prescription that has been forged for a controlled substance
 206 listed in Schedule II, Schedule III, or Schedule IV.
 207 Section 7. Subsection (1) of section 893.05, Florida
 208 Statutes, is amended to read:
 209 893.05 Practitioners and persons administering controlled
 210 substances in their absence.-
 211 (1) (a) A practitioner, in good faith and in the course of
 212 his or her professional practice only, may prescribe,
 213 administer, dispense, mix, or otherwise prepare a controlled
 214 substance, or the practitioner may cause the controlled
 215 substance ~~same~~ to be administered by a licensed nurse or an
 216 intern practitioner under his or her direction and supervision
 217 only.

218 (b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s.
 219 464.012(3), as applicable, a practitioner who supervises a
 220 licensed physician assistant or advanced registered nurse
 221 practitioner may authorize the licensed physician assistant or
 222 advanced registered nurse practitioner to order controlled
 223 substances for administration to a patient in a facility
 224 licensed under chapter 395.

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

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

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233 Section 8. Subsection (26) of s. 400.462, subsection (1) of
 234 s. 401.445, subsection (18) of s. 409.906, and subsection (3) of
 235 s. 766.103, Florida Statutes, are reenacted for the purpose of
 236 incorporating the amendments made by this act to ss. 458.347 and
 237 459.022, Florida Statutes, in references thereto.

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

242 Section 10. Paragraph (a) of subsection (1) of s. 409.9201,
 243 paragraph (pp) of subsection (1) of s. 458.331, paragraph (rr)
 244 of subsection (1) of s. 459.015, subsection (1) of s. 465.014,
 245 paragraph (c) of subsection (2) of s. 465.015, paragraph (s) of
 246 subsection (1) of s. 465.016, paragraph (j) of subsection (5) of
 247 s. 465.022, paragraph (h) of subsection (1) of s. 465.023, s.
 248 465.1901, subsection (43) of s. 499.003, and subsection (1) of
 249 s. 831.30, Florida Statutes, are reenacted for the purpose of
 250 incorporating the amendments made by this act to s. 465.003,
 251 Florida Statutes, in references thereto.

252 Section 11. Paragraph (i) of subsection (5) of s. 112.0455,
 253 paragraph (b) of subsection (7) of s. 381.986, paragraph (l) of
 254 subsection (1) of s. 440.102, paragraph (pp) of subsection (1)
 255 of s. 458.331, paragraph (rr) of subsection (1) of s. 459.015,
 256 subsection (3) of s. 465.015, paragraph (s) of subsection (1) of
 257 s. 465.016, paragraph (j) of subsection (5) of s. 465.022,
 258 paragraph (h) of subsection (1) of s. 465.023, subsection (14)
 259 of s. 499.0121, paragraph (b) of subsection (1) of s. 768.36,
 260 paragraph (f) of subsection (3) of s. 810.02, paragraph (c) of
 261 subsection (2) of s. 812.014, paragraph (c) of subsection (1) of

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

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

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

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

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The Florida Senate

Committee Agenda Request

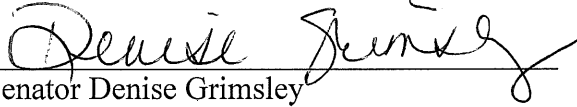
To: Senator Tom Lee, Chair
Committee on Appropriations

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

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)

Both

213236

Amendment Barcode (if applicable)

Topic Health Care

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5367

Street

Tallahassee

City

FL

State

32301

Zip

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.

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

City

FL

State

33705

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)

4/23/2015
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@CLFconsulting.com

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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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 of Association of Nurse Practitioners

Address 6294 NW Torrey A pk Rd Phone 888-545-8301
Street

Gainesville FL 32321 Email StanWhitt@Aol.com
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 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.

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

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

Address 136 S. Bronough St.

Phone (850) 521-1279

Street

Tallahassee, FL 32301

Email bburch@flchamber.com

City

State

Zip

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.

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

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 Collier
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.

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 LaPol

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 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.

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 Latolt

Job Title Lobbyist

Address _____

Phone 443-1319

Street

City

Tallahassee

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.

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 Legislature² 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-1), 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	.	
	.	
	.	
	.	

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

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

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



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41 read:

42 120.55 Publication.—

43 (1) The Department of State shall:

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

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

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



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

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

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



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

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

107 1. All notices required by s. 120.54(2) and (3)(a)
108 ~~120.54(3)(a)~~, showing the text of all rules proposed for
109 consideration.

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

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

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

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

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

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

126 ~~8.6.~~ Any other material required or authorized by law or
127 deemed useful by the department.



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128
129 The department may contract with a publishing firm for a printed
130 publication of the Florida Administrative Register and make
131 copies available on an annual subscription basis.

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

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

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

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

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

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

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

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

153 (e) Comment on proposed rules.

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



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157 by other means.

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

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

168 (6)~~(5)~~ Any publication of a proposed rule promulgated by an
169 agency, whether published in the Florida Administrative Register
170 or elsewhere, shall include, along with the rule, the name of
171 the person or persons originating such rule, the name of the
172 agency head who approved the rule, and the date upon which the
173 rule was approved.

174 (7)~~(6)~~ Access to the Florida Administrative Register
175 Internet website and its contents, including the e-mail
176 notification service, shall be free for the public.

177 (8)~~(7)~~(a) All fees and moneys collected by the Department
178 of State under this chapter shall be deposited in the Records
179 Management Trust Fund for the purpose of paying for costs
180 incurred by the department in carrying out this chapter.

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

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



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

188 120.56 Challenges to rules.—

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

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

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

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

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

205 (c) The petition shall be filed by electronic means with
206 the division which shall, immediately upon filing, forward by
207 electronic means copies to the agency whose rule is challenged,
208 the Department of State, and the committee. Within 10 days after
209 receiving the petition, the division director shall, if the
210 petition complies with the requirements of paragraph (b), assign
211 an administrative law judge who shall conduct a hearing within
212 30 days thereafter, unless the petition is withdrawn or a
213 continuance is granted by agreement of the parties or for good
214 cause shown. Evidence of good cause includes, but is not limited



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

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

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

240 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

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



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244 division within 21 days after the date of publication of the
245 notice required by s. 120.54(3)(a); within 10 days after the
246 final public hearing is held on the proposed rule as provided by
247 s. 120.54(3)(e)2.; within 20 days after the statement of
248 estimated regulatory costs or revised statement of estimated
249 regulatory costs, if applicable, has been prepared and made
250 available as provided in s. 120.541(1)(d); or within 20 days
251 after the date of publication of the notice required by s.
252 120.54(3)(d). The petition must state with particularity the
253 objections to the proposed rule and the reasons that the
254 proposed rule is an invalid exercise of delegated legislative
255 authority. The petitioner has the burden of going forward with
256 evidence sufficient to support the petition. The agency then has
257 the burden to prove by a preponderance of the evidence that the
258 proposed rule is not an invalid exercise of delegated
259 legislative authority as to the objections raised. ~~A person who~~
260 ~~is substantially affected by a change in the proposed rule may~~
261 ~~seek a determination of the validity of such change.~~ A person
262 who is not substantially affected by the proposed rule as
263 initially noticed, but who is substantially affected by the rule
264 as a result of a change, may challenge any provision of the
265 resulting proposed rule and is not limited to challenging the
266 change to the proposed rule.

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

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



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273 description of the statement and shall state ~~with particularity~~
274 facts sufficient to show that the statement constitutes an
275 unadopted a rule under ~~s. 120.52~~ and that the agency has not
276 ~~adopted the statement by the rulemaking procedure provided by s.~~
277 ~~120.54.~~

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

289 (c) The petitioner has the burden of going forward with
290 evidence sufficient to support the petition. The agency then has
291 the burden to prove by a preponderance of the evidence that the
292 statement does not meet the definition of an unadopted rule, the
293 statement was adopted as a rule in compliance with s. 120.54, or
294 ~~If a hearing is held and the petitioner proves the allegations~~
295 ~~of the petition, the agency shall have the burden of proving~~
296 that rulemaking is not feasible or not practicable under s.
297 120.54(1) (a).

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



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

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

311 (f)~~(e)~~ If proposed rules addressing the challenged
312 unadopted rule ~~statement~~ are determined to be an invalid
313 exercise of delegated legislative authority as defined in s.
314 120.52(8) (b)-(f), the agency must immediately discontinue
315 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any
316 substantially similar statement until rules addressing the
317 subject are properly adopted, and the administrative law judge
318 shall enter a final order to that effect.

319 (g)~~(f)~~ All proceedings to determine a violation of s.
320 120.54(1) (a) shall be brought pursuant to this subsection. A
321 proceeding pursuant to this subsection may be consolidated with
322 a proceeding under subsection (3) or under any other section of
323 this chapter. This paragraph does not prevent a party whose
324 substantial interests have been determined by an agency action
325 from bringing a proceeding pursuant to s. 120.57(1) (e).

326 Section 4. Paragraph (1) of subsection (2) of section
327 120.569, Florida Statutes, is amended to read:

328 120.569 Decisions which affect substantial interests.—

329 (2)

330 (1) Unless the time period is waived or extended with the



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

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

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

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

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

349 120.57 Additional procedures for particular cases.—

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

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



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

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

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

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

373 d. The agency has 15 days after the date of receipt of a
374 challenge under this subparagraph to serve the challenging party
375 with a notice stating whether the agency will continue to rely
376 upon the rule or the alleged unadopted rule as a basis for the
377 action determining the party's substantive interests. Failure to
378 timely serve the notice constitutes a binding stipulation that
379 the agency shall not rely upon the rule or unadopted rule
380 further in the proceeding. The agency shall include a copy of
381 this notice upon referral of the matter to the division under s.
382 120.569(2) (a).

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

386 3.2- Notwithstanding subparagraph 1., if an agency
387 demonstrates that the statute being implemented directs it to
388 adopt rules, that the agency has not had time to adopt those



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389 rules because the requirement was so recently enacted, and that
390 the agency has initiated rulemaking and is proceeding
391 expeditiously and in good faith to adopt the required rules,
392 then the agency's action may be based upon those unadopted rules
393 ~~if, subject to de novo review by~~ the administrative law judge
394 determines that rulemaking is neither feasible nor practicable
395 and the unadopted rules would not constitute an invalid exercise
396 of delegated legislative authority if adopted as rules. An
397 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
398 ~~invalid~~. The agency must demonstrate that the unadopted rule:
399 a. Is within the powers, functions, and duties delegated by
400 the Legislature or, if the agency is operating pursuant to
401 authority vested in the agency by ~~derived from~~ the State
402 Constitution, is within that authority;
403 b. Does not enlarge, modify, or contravene the specific
404 provisions of law implemented;
405 c. Is not vague, establishes adequate standards for agency
406 decisions, or does not vest unbridled discretion in the agency;
407 d. Is not arbitrary or capricious. A rule is arbitrary if
408 it is not supported by logic or the necessary facts; a rule is
409 capricious if it is adopted without thought or reason or is
410 irrational;
411 e. Is not being applied to the substantially affected party
412 without due notice; and
413 f. Does not impose excessive regulatory costs on the
414 regulated person, county, or city.
415 4. If the agency timely serves notice of continued reliance
416 upon a challenged rule or an alleged unadopted rule under sub-
417 subparagraph 2.d., the administrative law judge shall determine



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

424 ~~5.3.~~ The recommended and final orders in any proceeding
425 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
426 except that the administrative law judge's determination
427 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
428 ~~subparagraph 2.~~ shall be included as a conclusion of law that
429 the agency may not reject ~~not be rejected by the agency unless~~
430 ~~the agency first determines from a review of the complete~~
431 ~~record, and states with particularity in the order, that such~~
432 ~~determination is clearly erroneous or does not comply with~~
433 ~~essential requirements of law. In any proceeding for review~~
434 ~~under s. 120.68, if the court finds that the agency's rejection~~
435 ~~of the determination regarding the unadopted rule does not~~
436 ~~comport with the provisions of this subparagraph, the agency~~
437 ~~action shall be set aside and the court shall award to the~~
438 ~~prevailing party the reasonable costs and a reasonable~~
439 ~~attorney's fee for the initial proceeding and the proceeding for~~
440 ~~review.~~

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

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



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

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

462 (a) The agency shall:

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

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

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

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



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476 the substantial interests of a party on an unadopted rule or a
477 rule that is an invalid exercise of delegated legislative
478 authority. No later than the date provided by the agency under
479 subparagraph (a)2. for presenting material in opposition to the
480 agency's proposed action or refusal to act, the party may file a
481 petition under s. 120.56 challenging the rule, portion of rule,
482 or unadopted rule upon which the agency bases its proposed
483 action or refusal to act. The filing of a challenge under s.
484 120.56 pursuant to this paragraph shall stay all proceedings on
485 the agency's proposed action or refusal to act until entry of
486 the final order by the administrative law judge. The final order
487 shall provide additional notice that the stay of the pending
488 agency action is terminated and that any further stay pending
489 appeal of the final order must be sought from the appellate
490 court.

- 491 (c) ~~(b)~~ The record shall only consist of:
- 492 1. The notice and summary of grounds.
 - 493 2. Evidence received.
 - 494 3. All written statements submitted.
 - 495 4. Any decision overruling objections.
 - 496 5. All matters placed on the record after an ex parte
497 communication.
 - 498 6. The official transcript.
 - 499 7. Any decision, opinion, order, or report by the presiding
500 officer.

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

503 120.68 Judicial review.—

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



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505 action is entitled to judicial review.

506 (b) A preliminary, procedural, or intermediate order of the
507 agency or of an administrative law judge of the Division of
508 Administrative Hearings, or a final order under s.
509 120.57(1)(e)4., is immediately reviewable if review of the final
510 agency decision would not provide an adequate remedy.

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

514 (b) All proceedings shall be instituted by filing a notice
515 of appeal or petition for review in accordance with the Florida
516 Rules of Appellate Procedure within 30 days after the date that
517 rendition of the order being appealed is filed with the agency
518 clerk. If a party receives notice of the filing of the order
519 later than the 25th day after the filing of the order with the
520 agency clerk, the time by which the party must file a notice of
521 appeal or petition for review is extended for 10 days after the
522 date that the party received the notice of the filing of the
523 order. If the appeal is of an order rendered in a proceeding
524 initiated under s. 120.56 or a final order under s.
525 120.57(1)(e)4., the agency whose rule is being challenged shall
526 transmit a copy of the notice of appeal to the committee.

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



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

541 (9) A ~~Ne~~ petition challenging an agency rule as an invalid
542 exercise of delegated legislative authority shall not be
543 instituted pursuant to this section, except to review an order
544 entered pursuant to a proceeding under s. 120.56, s.
545 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
546 immediate danger, necessity, and procedural fairness
547 prerequisite to the adoption of an emergency rule pursuant to s.
548 120.54(4), unless the sole issue presented by the petition is
549 the constitutionality of a rule and there are no disputed issues
550 of fact.

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

553 120.695 Notice of noncompliance; designation of minor
554 violation of rules.—

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



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

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

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



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

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

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

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

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

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



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

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

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

- 630 1. The Department of Corrections;
631 2. Educational units;
632 3. The regulation of law enforcement personnel; or
633 4. The regulation of teachers.

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

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

637
638 ===== T I T L E A M E N D M E N T =====

639 And the title is amended as follows:

640 Delete everything before the enacting clause
641 and insert:

642 A bill to be entitled
643 An act relating to administrative procedures; amending
644 s. 120.54, F.S.; providing procedures for agencies to
645 follow when initiating rulemaking after certain public
646 hearings; limiting reliance upon an unadopted rule in
647 certain circumstances; amending s. 120.55, F.S.;;
648 providing for publication of notices of rule
649 development and of rules filed for adoption; providing



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650 for additional notice of rule development, proposals,
651 and adoptions in the Florida Administrative Register;
652 requiring certain agencies to provide additional e-
653 mail notifications concerning specified rulemaking and
654 rule development activities; amending s. 120.56, F.S.;
655 specifying the burden of proof necessary for a
656 petitioner to challenge a proposed rule or unadopted
657 agency statement; amending s. 120.569, F.S.; granting
658 agencies additional time to render final orders in
659 certain circumstances; amending s. 120.57, F.S.;
660 conforming proceedings that oppose agency action based
661 on an invalid or unadopted rule to proceedings used
662 for challenging rules; requiring the agency to issue a
663 notice stating whether the agency will rely on the
664 challenged rule or alleged unadopted rule; authorizing
665 the administrative law judge to make certain findings
666 on the validity of certain alleged unadopted rules;
667 authorizing the administrative law judge to issue a
668 separate final order on certain rules and alleged
669 unadopted rules; prohibiting agencies from rejecting
670 specific conclusions of law in certain final orders
671 rendered by an administrative law judge; authorizing a
672 petitioner to file certain collateral challenges
673 regarding the validity of a rule; authorizing the
674 administrative law judge to consolidate proceedings in
675 such rule challenges; providing for the stay of
676 proceedings not involving disputed issues of fact upon
677 timely filing of a rule challenge; providing that the
678 final order terminates the stay; amending s. 120.68,



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

By Senator Lee

24-00407-15

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1 A bill to be entitled
 2 An act relating to administrative procedures; amending
 3 s. 57.111, F.S.; providing conditions under which a
 4 proceeding is not substantially justified for purposes
 5 of attorney fees and costs; amending s. 120.54, F.S.;
 6 requiring agencies to set a time for workshops for
 7 certain unadopted rules; amending s. 120.55, F.S.;
 8 providing additional items that must be noticed by an
 9 agency in the Florida Administrative Register;
 10 requiring agencies to provide such notice to
 11 registered recipients under certain circumstances;
 12 amending s. 120.56, F.S.; clarifying that petitions
 13 for administrative determinations apply to rules and
 14 proposed rules; identifying which entities have the
 15 burden in hearings in which a rule, proposed rule, or
 16 agency statement is at issue; prohibiting an
 17 administrative law judge from bifurcating certain
 18 petitions; amending s. 120.565, F.S.; authorizing
 19 certain parties to state to an agency their
 20 understanding of how certain rules apply to specific
 21 facts; specifying the timeframe for an agency to
 22 provide a declaratory statement; authorizing the award
 23 of attorney fees under certain circumstances; amending
 24 s. 120.569, F.S.; granting agencies additional time to
 25 render final orders under certain circumstances;
 26 amending s. 120.57, F.S.; conforming proceedings based
 27 on invalid or unadopted rules to proceedings used for
 28 challenging existing rules; requiring an agency to
 29 issue a notice regarding its reliance on the

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30 challenged rule or alleged unadopted rule; authorizing
 31 the administrative law judge to make certain findings
 32 on the validity of certain alleged unadopted rules;
 33 requiring the administrative law judge to issue a
 34 separate final order on certain rules and alleged
 35 unadopted rules; prohibiting agencies from rejecting
 36 specific conclusions of law; limiting situations under
 37 which an agency may reject or modify conclusions of
 38 law; providing for stay of proceedings not involving
 39 disputed issues of fact upon timely filing of a rule
 40 challenge; providing that the final order terminates
 41 the stay; amending s. 120.573, F.S.; providing
 42 additional situations in which a party may request
 43 mediation; amending s. 120.595, F.S.; providing
 44 criteria for establishing whether a nonprevailing
 45 party participated in a proceeding for an improper
 46 purpose; revising provisions providing for the award
 47 of attorney fees and costs by the appellate court or
 48 administrative law judge; providing exceptions;
 49 removing a provision authorizing an agency to
 50 demonstrate its actions were substantially justified;
 51 requiring notice of a proposed challenge by the
 52 petitioner as a condition precedent to filing a
 53 challenge and being eligible for the reimbursement of
 54 attorney fees and costs; authorizing the recovery of
 55 attorney fees and costs incurred in litigating rights
 56 to attorney fees and costs in certain actions;
 57 providing such attorney fees and costs are not limited
 58 in amount; amending s. 120.68, F.S.; requiring

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

70
 71 Be It Enacted by the Legislature of the State of Florida:

72
 73 Section 1. Paragraph (e) of subsection (3) of section
 74 57.111, Florida Statutes, is amended to read:

75 57.111 Civil actions and administrative proceedings
 76 initiated by state agencies; attorney ~~attorneys'~~ fees and
 77 costs.-

78 (3) As used in this section:

79 (e) A proceeding is "substantially justified" if it had a
 80 reasonable basis in law and fact at the time it was initiated by
 81 a state agency. A proceeding is not "substantially justified" if
 82 the law, rule, or order at issue in the current agency action is
 83 the subject upon which the prevailing party previously
 84 petitioned the agency for a declaratory statement under s.
 85 120.565; the current agency action involves identical or
 86 substantially similar facts and circumstances as those raised in
 87 the previous petition; and:

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88 1. The agency action contradicts the declaratory statement
 89 issued by the agency upon the previous petition; or
 90 2. The agency denied the previous petition under s. 120.565
 91 before initiating the current agency action against the
 92 substantially affected party.

93 Section 2. Paragraph (c) of subsection (7) of section
 94 120.54, Florida Statutes, is amended to read:

95 120.54 Rulemaking.-

96 (7) PETITION TO INITIATE RULEMAKING.-

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

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117 modifying the authority of the agency.

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

120 120.55 Publication.—

121 (1) The Department of State shall:

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

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

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146 effectiveness of such rules.

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

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

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

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

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

185 1. All notices required by s. 120.54(2) and (3)(a)
 186 ~~120.54(3)(a)~~, showing the text of all rules proposed for
 187 consideration.

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

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

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

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

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

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

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204 ~~8.6-~~ Any other material required or authorized by law or
 205 deemed useful by the department.

206
 207 The department may contract with a publishing firm for a printed
 208 publication of the Florida Administrative Register and make
 209 copies available on an annual subscription basis.

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

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

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

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

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

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

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

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

231 (e) Comment on proposed rules.

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

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

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

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

246 ~~(6)(5)~~ Any publication of a proposed rule promulgated by an
 247 agency, whether published in the Florida Administrative Register
 248 or elsewhere, shall include, along with the rule, the name of
 249 the person or persons originating such rule, the name of the
 250 agency head who approved the rule, and the date upon which the
 251 rule was approved.

252 ~~(7)(6)~~ Access to the Florida Administrative Register
 253 Internet website and its contents, including the e-mail
 254 notification service, shall be free for the public.

255 ~~(8)(7)~~(a) All fees and moneys collected by the Department
 256 of State under this chapter shall be deposited in the Records
 257 Management Trust Fund for the purpose of paying for costs
 258 incurred by the department in carrying out this chapter.

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

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262 excess shall be transferred to the General Revenue Fund.

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

265 120.56 Challenges to rules.—

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

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

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

280 (c) The petition shall be filed by electronic means with
 281 the division which shall, immediately upon filing, forward by
 282 electronic means copies to the agency whose rule is challenged,
 283 the Department of State, and the committee. Within 10 days after
 284 receiving the petition, the division director shall, if the
 285 petition complies with ~~the requirements of~~ paragraph (b), assign
 286 an administrative law judge who shall conduct a hearing within
 287 30 days thereafter, unless the petition is withdrawn or a
 288 continuance is granted by agreement of the parties or for good
 289 cause shown. Evidence of good cause includes, but is not limited
 290 to, written notice of an agency's decision to modify or withdraw

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

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

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

319 (3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

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

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

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

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

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

348 (b) The administrative law judge may extend the hearing

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

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

369 (d) If an administrative law judge enters a final order
 370 that all or part of an agency statement violates s.
 371 120.54(1)(a), the agency must immediately discontinue all
 372 reliance upon the statement or any substantially similar
 373 statement as a basis for agency action.

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

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

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

389 (g)~~(f)~~ All proceedings to determine a violation of s.
 390 120.54(1)(a) shall be brought pursuant to this subsection. A
 391 proceeding pursuant to this subsection may be consolidated with
 392 a proceeding under subsection (3) or under any other section of
 393 this chapter. This paragraph does not prevent a party whose
 394 substantial interests have been determined by an agency action
 395 from bringing a proceeding pursuant to s. 120.57(1)(e).

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

399 120.565 Declaratory statement by agencies.—

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

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

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

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

418 Section 6. Paragraph (1) of subsection (2) of section
 419 120.569, Florida Statutes, is amended to read:

420 120.569 Decisions which affect substantial interests.—

421 (2)

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

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

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

435 3. After the agency has received the written and oral

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

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

441 120.57 Additional procedures for particular cases.—

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

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

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

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

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

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

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

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

478 3.2- Notwithstanding subparagraph 1., if an agency
 479 demonstrates that the statute being implemented directs it to
 480 adopt rules, that the agency has not had time to adopt those
 481 rules because the requirement was so recently enacted, and that
 482 the agency has initiated rulemaking and is proceeding
 483 expeditiously and in good faith to adopt the required rules,
 484 then the agency's action may be based upon those unadopted rules
 485 if, subject to de novo review by the administrative law judge
 486 determines that the unadopted rules would not constitute an
 487 invalid exercise of delegated legislative authority if adopted
 488 as rules. An unadopted rule is ~~The agency action shall not be~~
 489 presumed to be valid ~~or invalid~~. The agency must demonstrate
 490 that the unadopted rule:

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

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494 Constitution, is within that authority;

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

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

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

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

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

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

516 ~~5.3-~~ The recommended and final orders in any proceeding
 517 shall be governed by the provisions of paragraphs (k) and (l),
 518 except that the administrative law judge's determination
 519 regarding an unadopted rule under subparagraph 4. ~~1. or~~
 520 subparagraph 2- shall be included as a conclusion of law that
 521 the agency may not reject ~~not be rejected by the agency unless~~
 522 the agency first determines from a review of the complete

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

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

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

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

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

575 (a) The agency shall:

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

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

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

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

589 (b) An agency may not base agency action that determines
 590 the substantial interests of a party on an unadopted rule or a
 591 rule that is an invalid exercise of delegated legislative
 592 authority. No later than the date provided by the agency under
 593 subparagraph (a)2., the party may file a petition under s.
 594 120.56 challenging the rule, portion of rule, or unadopted rule
 595 upon which the agency bases its proposed action or refusal to
 596 act. The filing of a challenge under s. 120.56 pursuant to this
 597 paragraph shall stay all proceedings on the agency's proposed
 598 action or refusal to act until entry of the final order by the
 599 administrative law judge. The final order shall provide notice
 600 that the stay of the pending agency action is terminated and any
 601 further stay pending appeal of the final order must be sought
 602 from the appellate court.

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

- 604 1. The notice and summary of grounds.
- 605 2. Evidence received.
- 606 3. All written statements submitted.
- 607 4. Any decision overruling objections.
- 608 5. All matters placed on the record after an ex parte
 609 communication.

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610 6. The official transcript.

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

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

615 120.573 Mediation of disputes.—

616 (1) Each announcement of an agency action that affects
 617 substantial interests shall advise whether mediation of the
 618 administrative dispute for the type of agency action announced
 619 is available and that choosing mediation does not affect the
 620 right to an administrative hearing. If the agency and all
 621 parties to the administrative action agree to mediation, in
 622 writing, within 10 days after the time period stated in the
 623 announcement for election of an administrative remedy under ss.
 624 120.569 and 120.57, the time limitations imposed by ss. 120.569
 625 and 120.57 shall be tolled to allow the agency and parties to
 626 mediate the administrative dispute. The mediation shall be
 627 concluded within 60 days after ~~of~~ such agreement unless
 628 otherwise agreed by the parties. The mediation agreement shall
 629 include provisions for mediator selection, the allocation of
 630 costs and fees associated with mediation, and the mediating
 631 parties' understanding regarding the confidentiality of
 632 discussions and documents introduced during mediation. If
 633 mediation results in settlement of the administrative dispute,
 634 the agency shall enter a final order incorporating the agreement
 635 of the parties. If mediation terminates without settlement of
 636 the dispute, the agency shall notify the parties in writing that
 637 the administrative hearing processes under ss. 120.569 and
 638 120.57 are resumed.

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

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

647 120.595 Attorney ~~Attorney's~~ fees.—

648 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 649 120.57(1).—

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

653 (b) The final order in a proceeding pursuant to s.
 654 120.57(1) shall award reasonable costs and a reasonable attorney
 655 fees ~~attorney's fee~~ to the prevailing party if the
 656 administrative law judge determines only where the nonprevailing
 657 adverse party has been determined by the administrative law
 658 judge to have participated in the proceeding for an improper
 659 purpose.

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

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668 if:

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

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

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

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

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

689 (c)(e) For the purpose of this subsection:

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

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

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

709 (d) For challenges brought under s. 120.57(1)(e), when the
 710 agency relies on a challenged rule or an alleged unadopted rule
 711 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the
 712 administrative law judge declares the rule or portion of the
 713 rule to be invalid or that the agency statement is an unadopted
 714 rule that does not meet the requirements of s. 120.57(1)(e)4., a
 715 judgment or order shall be rendered against the agency for
 716 reasonable costs and reasonable attorney fees. An award of
 717 attorney fees as provided by this paragraph may not exceed
 718 \$50,000.

719 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
 720 120.56(2).-If the appellate court or administrative law judge
 721 declares a proposed rule or portion of a proposed rule invalid
 722 pursuant to s. 120.56(2), a judgment or order shall be rendered
 723 against the agency for reasonable costs and reasonable attorney
 724 attorney's fees, unless the agency demonstrates that ~~its actions~~
 725 ~~were substantially justified or~~ special circumstances exist

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726 which would make the award unjust. ~~An agency's actions are~~
 727 ~~"substantially justified" if there was a reasonable basis in law~~
 728 ~~and fact at the time the actions were taken by the agency.~~ If
 729 the agency prevails in the proceedings, the appellate court or
 730 administrative law judge shall award reasonable costs and
 731 reasonable attorney attorney's fees against a party if the
 732 appellate court or administrative law judge determines that a
 733 party participated in the proceedings for an improper purpose as
 734 defined by paragraph (1)(c) (1)(e). ~~An~~ ~~Ne~~ award of attorney
 735 attorney's fees as provided by this subsection may not shall
 736 exceed \$50,000.

737 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
 738 120.56(3) AND (5).-If the appellate court or administrative law
 739 judge declares a rule or portion of a rule invalid pursuant to
 740 s. 120.56(3) or (5), a judgment or order shall be rendered
 741 against the agency for reasonable costs and reasonable attorney
 742 attorney's fees, unless the agency demonstrates that ~~its actions~~
 743 ~~were substantially justified or~~ special circumstances exist
 744 which would make the award unjust. ~~An agency's actions are~~
 745 ~~"substantially justified" if there was a reasonable basis in law~~
 746 ~~and fact at the time the actions were taken by the agency.~~ If
 747 the agency prevails in the proceedings, the appellate court or
 748 administrative law judge shall award reasonable costs and
 749 reasonable attorney attorney's fees against a party if the
 750 appellate court or administrative law judge determines that a
 751 party participated in the proceedings for an improper purpose as
 752 defined by paragraph (1)(c) (1)(e). ~~An~~ ~~Ne~~ award of attorney
 753 attorney's fees as provided by this subsection may not shall
 754 exceed \$50,000.

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755 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION PURSUANT TO~~
756 SECTION 120.56(4).-

757 (a) If the appellate court or administrative law judge
758 determines that all or part of an unadopted rule ~~agency~~
759 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
760 immediately discontinue reliance upon ~~on~~ the unadopted rule
761 ~~statement~~ and any substantially similar statement pursuant to s.
762 120.56(4)(e), a judgment or order shall be entered against the
763 agency for reasonable costs and reasonable attorney ~~attorney's~~
764 fees, unless the agency demonstrates that the statement is
765 required by the Federal Government to implement or retain a
766 delegated or approved program or to meet a condition to receipt
767 of federal funds.

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

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784 ~~unadopted rule at least 30 days before a petition under s.~~
785 ~~120.56(4) was filed and that the agency failed to publish the~~
786 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
787 ~~addresses the statement within that 30-day period. Notice to the~~
788 ~~agency may be satisfied by its receipt of a copy of the s.~~
789 ~~120.56(4) petition, a notice or other paper containing~~
790 ~~substantially the same information, or a petition filed pursuant~~
791 ~~to s. 120.54(7). An award of attorney ~~attorney's~~ fees as~~
792 ~~provided by this paragraph may not exceed \$50,000.~~

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

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

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

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

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

825 (a) Before filing a petition challenging the validity of a
 826 proposed rule under s. 120.56(2), an adopted rule under s.
 827 120.56(3), or an agency statement defined as an unadopted rule
 828 under s. 120.56(4), a substantially affected person shall serve
 829 the agency head with notice of the proposed challenge. The
 830 notice shall identify the proposed or adopted rule or the
 831 unadopted rule that the person proposes to challenge and a brief
 832 explanation of the basis for that challenge. The notice must be
 833 received by the agency head at least 5 days before the filing of
 834 a petition under s. 120.56(2) and at least 30 days before the
 835 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

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

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

850 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
 851 including ss. 57.105 and 57.111, authorize the award of attorney
 852 attorney's fees and costs in administrative proceedings. ~~Nothing~~
 853 in This section ~~does not shall~~ affect the availability of
 854 attorney attorney's fees and costs as provided in those
 855 sections.

856 Section 10. Paragraph (a) of subsection (2) and subsection
 857 (9) of section 120.68, Florida Statutes, are amended to read:
 858 120.68 Judicial review.—

859 (2) (a) Judicial review shall be sought in the appellate
 860 district where the agency maintains its headquarters or where a
 861 party resides or as otherwise provided by law. All proceedings
 862 shall be instituted by filing a notice of appeal or petition for
 863 review in accordance with the Florida Rules of Appellate
 864 Procedure within 30 days after the rendition of the order being
 865 appealed. If the appeal is of an order rendered in a proceeding
 866 initiated under s. 120.56 or a final order under s.
 867 120.57(1) (e)4., the agency whose rule is being challenged shall
 868 transmit a copy of the notice of appeal to the committee.

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

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871 instituted pursuant to this section, except to review an order
 872 entered pursuant to a proceeding under s. 120.56, s.
 873 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
 874 immediate danger, necessity, and procedural fairness
 875 prerequisite to the adoption of an emergency rule pursuant to s.
 876 120.54(4), unless the sole issue presented by the petition is
 877 the constitutionality of a rule and there are no disputed issues
 878 of fact.

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

881 120.695 Notice of noncompliance; designation of minor
 882 violation of rules.-

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

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

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

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

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

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

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

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

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

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

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

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

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958 apply to:

959 1. The Department of Corrections;

960 2. Educational units;

961 3. The regulation of law enforcement personnel; or

962 4. The regulation of teachers.

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

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

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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.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	Fav/CS
3.	<u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	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 entities³ 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 authority⁹ 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 utility²⁰ 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 concern²² 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 services³¹ 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 utility³² 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

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House

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

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

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

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

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

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



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

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

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

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

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

57 337.401 Use of right-of-way for utilities subject to
58 regulation; permit; fees.-

59 (1) (a) The department and local governmental entities,
60 referred to in this section and ss. 337.402-337.404 ~~ss. 337.401-~~
61 ~~337.404~~ as the "authority," that have jurisdiction and control
62 of public roads or publicly owned rail corridors are authorized
63 to prescribe and enforce reasonable rules or regulations with
64 reference to the placing and maintaining ~~along,~~ across, ~~or on,~~
65 or within the right-of-way limits of any road or publicly owned
66 rail corridors under their respective jurisdictions any electric
67 transmission, telephone, telegraph, or other communications
68 services lines; pole lines; poles; railways; ditches; sewers;



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69 water, heat, or gas mains; pipelines; fences; gasoline tanks and
70 pumps; or other structures referred to in this section and ss.
71 337.402-337.404 ~~this section~~ as the "utility." The department
72 may enter into a permit-delegation agreement with a governmental
73 entity if issuance of a permit is based on requirements that the
74 department finds will ensure the safety and integrity of
75 facilities of the Department of Transportation; however, the
76 permit-delegation agreement does not apply to facilities of
77 electric utilities as defined in s. 366.02(2).

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

97 (3)



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

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

118 337.403 Interference caused by utility; expenses.—

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



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



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156 (a) If the relocation of utility facilities, as referred to
157 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
158 84-627, is necessitated by the construction of a project on the
159 federal-aid interstate system, including extensions thereof
160 within urban areas, and the cost of the project is eligible and
161 approved for reimbursement by the Federal Government to the
162 extent of 90 percent or more under the Federal Aid Highway Act,
163 or any amendment thereof, then in that event the utility owning
164 or operating such facilities shall perform any necessary work
165 upon notice from the department, and the state shall pay the
166 entire expense properly attributable to such work after
167 deducting therefrom any increase in the value of a new facility
168 and any salvage value derived from an old facility.

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

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



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185 necessary to perform such work.

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

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

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



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

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

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

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

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

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

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



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

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

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

270 Section 5. This act shall take effect upon becoming a law.
271



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

273 And the title is amended as follows:

274 Delete everything before the enacting clause

275 and insert:

276 A bill to be entitled

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



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

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

596-03453-15

2015896c2

1 A bill to be entitled
2 An act relating to the location of utilities; amending
3 s. 125.42, F.S.; authorizing the board of county
4 commissioners to grant a license to work on or operate
5 specified communications services within the right-of-
6 way limits of certain county or public highways or
7 roads; conforming a cross-reference; amending s.
8 337.401, F.S.; authorizing the Department of
9 Transportation and certain local governmental entities
10 to prescribe and enforce rules or regulations
11 regarding placing and maintaining specified structures
12 within the right-of-way limits of roads or publicly
13 owned rail corridors under their respective
14 jurisdictions; prohibiting a municipality or county
15 from requiring a utility to provide proprietary maps
16 of facilities under certain circumstances; prohibiting
17 a municipality or county from requiring a provider of
18 communications services to provide proprietary maps of
19 facilities under certain circumstances; amending s.
20 337.403, F.S.; requiring a utility owner, under
21 certain circumstances, to initiate at its own expense
22 the work necessary to alleviate an interference to a
23 public road, including directly associated drainage,
24 or publicly owned rail corridor which is caused by the
25 utility if the utility is placed within the right-of-
26 way limits of the public road or publicly owned rail
27 corridor; conforming a cross-reference; requiring an
28 authority or an entity other than the authority to
29 bear the costs of relocating a utility in certain

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

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30 circumstances; providing applicability; requiring the
31 authority to bear the cost of the utility work
32 necessary to eliminate an unreasonable interference if
33 the utility is lawfully located within a certain
34 utility easement; providing legislative findings;
35 providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

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

41 125.42 Water, sewage, gas, power, telephone, other utility,
42 and television lines within the right-of-way limits of ~~along~~
43 county roads and highways.—

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

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

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59 public;

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

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

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

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

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

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

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

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

91 337.401 Use of right-of-way for utilities subject to
92 regulation; permit; fees.-

93 (1) (a) The department and local governmental entities,
94 referred to in this section and in ss. 337.402, 337.403, and
95 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
96 jurisdiction and control of public roads or publicly owned rail
97 corridors are authorized to prescribe and enforce reasonable
98 rules or regulations with reference to the placing and
99 maintaining ~~along,~~ across, ~~or~~ on, or within the right-of-way
100 limits of any road or publicly owned rail corridors under their
101 respective jurisdictions any electric transmission, telephone,
102 telegraph, or other communications services lines; pole lines;
103 poles; railways; ditches; sewers; water, heat, or gas mains;
104 pipelines; fences; gasoline tanks and pumps; or other structures
105 referred to in this section and in ss. 337.402, 337.403, and
106 337.404 ~~this section~~ as the "utility." The department may enter
107 into a permit-delegation agreement with a governmental entity if
108 issuance of a permit is based on requirements that the
109 department finds will ensure the safety and integrity of
110 facilities of the Department of Transportation; however, the
111 permit-delegation agreement does not apply to facilities of
112 electric utilities as defined in s. 366.02(2).

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

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117 with such rules or regulations as the authority may adopt. No
 118 utility shall be installed, located, or relocated unless
 119 authorized by a written permit issued by the authority. However,
 120 for public roads or publicly owned rail corridors under the
 121 jurisdiction of the department, a utility relocation schedule
 122 and relocation agreement may be executed in lieu of a written
 123 permit. The permit shall require the permit holder to be
 124 responsible for any damage resulting from the issuance of such
 125 permit. In exercising its authority over a utility under this
 126 section, a municipality or county may not require a utility to
 127 provide proprietary maps of facilities where such facilities
 128 have been previously subject to a permit from the authority. The
 129 authority may initiate injunctive proceedings as provided in s.
 130 120.69 to enforce provisions of this subsection or any rule or
 131 order issued or entered into pursuant thereto.

(3)

132
 133 (b) Registration described in paragraph (a) does not
 134 establish a right to place or maintain, or priority for the
 135 placement or maintenance of, a communications facility in roads
 136 or rights-of-way of a municipality or county. Each municipality
 137 and county retains the authority to regulate and manage
 138 municipal and county roads or rights-of-way in exercising its
 139 police power. Any rules or regulations adopted by a municipality
 140 or county which govern the occupation of its roads or rights-of-
 141 way by providers of communications services must be related to
 142 the placement or maintenance of facilities in such roads or
 143 rights-of-way, must be reasonable and nondiscriminatory, and may
 144 include only those matters necessary to manage the roads or
 145 rights-of-way of the municipality or county. In exercising its

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596-03453-15

2015896c2

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

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

153 337.403 Interference caused by utility; expenses.—

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

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

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2015896c2

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

177 (a) If the relocation of utility facilities, as referred to
 178 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
 179 84-627, is necessitated by the construction of a project on the
 180 federal-aid interstate system, including extensions thereof
 181 within urban areas, and the cost of the project is eligible and
 182 approved for reimbursement by the Federal Government to the
 183 extent of 90 percent or more under the Federal Aid Highway Act,
 184 or any amendment thereof, ~~then in that event~~ the utility owning
 185 or operating such facilities shall perform any necessary work
 186 upon notice from the department, and the state shall pay the
 187 entire expense properly attributable to such work after
 188 deducting therefrom any increase in the value of a new facility
 189 and any salvage value derived from an old facility.

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

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

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

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

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

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

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

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

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

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

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

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

Page 9 of 11

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

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

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

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

Page 10 of 11

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291
292

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



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.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

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

Phone 950 577-7700

Street

Tallahassee

FL

32312

Email JCF323W@afl.com

City

State

Zip

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.

Phone 772-418-6068

Street

Port St. Lucie FL 34953

Email _____

City

State

Zip

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

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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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

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

Phone 850-425-6360

Street

TALLAHASSEE, FL 32301

City

State

Zip

E-mail th9462@att.com

Speaking: For Against Information

Representing ATT

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)

Topic Relocation of Utilities

Amendment Barcode (if applicable)

Name Bryan Lantz

Job Title Region Rights of Way & Municipal Affairs Mgr.

Address 7701 E Telecom Parkway, MC: FLTDSA3

Phone 813-740-1231

Street

Temple Terrace

Florida

33637

Email bryan.lantz@core.verizon.com

City

State

Zip

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

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

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

Phone 850-222-6304

Street

Tallahassee

Florida

32301

Email woodrow.simmons@verizon.com

City

State

Zip

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

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)

4/2

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

Phone 407-758-2491

Street

Orlando - FL 32806

Email

City

State

Zip

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

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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THE FLORIDA SENATE

APPEARANCE RECORD

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CSCS 58 096
Bill Number (if applicable)

Meeting Date

Topic utilities Relocation

Amendment Barcode (if applicable)

Name Jim BRAINERD

Job Title

Address 2814 Rabbit Hill Rd

Phone 850 508 6716

Street

Tallahassee, FL 32308

Email Braintedlaw@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

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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THE FLORIDA SENATE

APPEARANCE RECORD

4-23-15

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

896

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title

Address PO Box 11076

Phone 855 681 0496

Street

Tallahassee FL 32301

City

State

Zip

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

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/23/2015

896

Meeting Date

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

Phone 850-599-1779

Street

TLH

FL

32301

Email James.Smith@centurylink.com

City

State

Zip

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

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 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

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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APPEARANCE RECORD

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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 Phone 850 681 6810

Street Tallahassee City Fl State 32301 Zip dmannheimer@broadandcassel.com Email

Speaking: For Against Information

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

Representing Sprint

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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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.

Phone 681-0024

Street

Tallahassee FL 32301

Email cdudley@FlaPartners.com

City

State

Zip

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

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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THE FLORIDA SENATE

APPEARANCE RECORD

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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

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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APPEARANCE RECORD

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4/23/15

Meeting Date

SB 896

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 W 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

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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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 _____

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

4/23/15

Bill Number (if applicable)

896

Topic Utility Relocation

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title ASST. LEG. DIRECTOR

Address 100 MANASSAS

Phone 9224300

Street

T. 11 FL

Email

City

State

Zip

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

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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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

Phone 850-701-3655

Street

TALLAHASSEE

FL

32301

Email MSIRJANESAMPLES@

City

State

Zip

FLCITIES.COM

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

Lobbyist registered with Legislature: Yes [X] 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.

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.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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 Act¹ (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.

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 506(d), 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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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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57 in s. 517.0611 for a transaction listed in subsection (21), the
58 exemption for each transaction listed below is self-executing
59 and does not require any filing with the office ~~before~~ ~~prior to~~
60 claiming ~~the such~~ exemption. Any person who claims entitlement
61 to any of the exemptions bears the burden of proving such
62 entitlement in any proceeding brought under this chapter. The
63 registration provisions of s. 517.07 do not apply to any of the
64 following transactions; however, such transactions are subject
65 to the provisions of ss. 517.301, 517.311, and 517.312:

66 (1) At any judicial, executor's, administrator's,
67 guardian's, or conservator's sale, or at any sale by a receiver
68 or trustee in insolvency or bankruptcy, or any transaction
69 incident to a judicially approved reorganization in which a
70 security is issued in exchange for one or more outstanding
71 securities, claims, or property interests.

72 (2) By or for the account of a pledgeholder or mortgagee
73 selling or offering for sale or delivery in the ordinary course
74 of business and not for the purposes of avoiding the provisions
75 of this chapter, to liquidate a bona fide debt, a security
76 pledged in good faith as security for such debt.

77 (3) The isolated sale or offer for sale of securities when
78 made by or on behalf of a vendor not the issuer or underwriter
79 of the securities, who, being the bona fide owner of such
80 securities, disposes of her or his own property for her or his
81 own account, and such sale is not made directly or indirectly
82 for the benefit of the issuer or an underwriter of such
83 securities or for the direct or indirect promotion of any scheme
84 or enterprise with the intent of violating or evading any
85 provision of this chapter. For purposes of this subsection,



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86 isolated offers or sales include, but are not limited to, an
87 isolated offer or sale made by or on behalf of a vendor of
88 securities not the issuer or underwriter of the securities if:

89 (a) The offer or sale of securities is in a transaction
90 satisfying all of the requirements of subparagraphs (11)(a)1.,
91 2., 3., and 4. and paragraph (11)(b); or

92 (b) The offer or sale of securities is in a transaction
93 exempt under s. 4(1) of the Securities Act of 1933, as amended.

94
95 For purposes of this subsection, any person, including, without
96 limitation, a promoter or affiliate of an issuer, shall not be
97 deemed an underwriter, an issuer, or a person acting for the
98 direct or indirect benefit of the issuer or an underwriter with
99 respect to any securities of the issuer which she or he has
100 owned beneficially for at least 1 year.

101 (4) The distribution by a corporation, trust, or
102 partnership, actively engaged in the business authorized by its
103 charter or other organizational articles or agreement, of
104 securities to its stockholders or other equity security holders,
105 partners, or beneficiaries as a stock dividend or other
106 distribution out of earnings or surplus.

107 (5) The issuance of securities to such equity security
108 holders or other creditors of a corporation, trust, or
109 partnership in the process of a reorganization of such
110 corporation or entity, made in good faith and not for the
111 purpose of avoiding the provisions of this chapter, either in
112 exchange for the securities of such equity security holders or
113 claims of such creditors or partly for cash and partly in
114 exchange for the securities or claims of such equity security



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115 holders or creditors.

116 (6) Any transaction involving the distribution of the
117 securities of an issuer exclusively among its own security
118 holders, including any person who at the time of the transaction
119 is a holder of any convertible security, any nontransferable
120 warrant, or any transferable warrant which is exercisable within
121 not more than 90 days of issuance, when no commission or other
122 remuneration is paid or given directly or indirectly in
123 connection with the sale or distribution of such additional
124 securities.

125 (7) The offer or sale of securities to a bank, trust
126 company, savings institution, insurance company, dealer,
127 investment company as defined by the Investment Company Act of
128 1940, pension or profit-sharing trust, or qualified
129 institutional buyer as defined by rule of the commission in
130 accordance with Securities and Exchange Commission Rule 144A (17
131 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting
132 in its individual or fiduciary capacity; provided that such
133 offer or sale of securities is not for the direct or indirect
134 promotion of any scheme or enterprise with the intent of
135 violating or evading any provision of this chapter.

136 (8) The sale of securities from one corporation to another
137 corporation provided that:

138 (a) The sale price of the securities is \$50,000 or more;
139 and

140 (b) The buyer and seller corporations each have assets of
141 \$500,000 or more.

142 (9) The offer or sale of securities from one corporation to
143 another corporation, or to security holders thereof, pursuant to



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144 a vote or consent of such security holders as may be provided by
145 the articles of incorporation and the applicable corporate
146 statutes in connection with mergers, share exchanges,
147 consolidations, or sale of corporate assets.

148 (10) The issuance of notes or bonds in connection with the
149 acquisition of real property or renewals thereof, if such notes
150 or bonds are issued to the sellers of, and are secured by all or
151 part of, the real property so acquired.

152 (11)(a) The offer or sale, by or on behalf of an issuer, of
153 its own securities, which offer or sale is part of an offering
154 made in accordance with all of the following conditions:

155 1. There are no more than 35 purchasers, or the issuer
156 reasonably believes that there are no more than 35 purchasers,
157 of the securities of the issuer in this state during an offering
158 made in reliance upon this subsection or, if such offering
159 continues for a period in excess of 12 months, in any
160 consecutive 12-month period.

161 2. Neither the issuer nor any person acting on behalf of
162 the issuer offers or sells securities pursuant to this
163 subsection by means of any form of general solicitation or
164 general advertising in this state.

165 3. ~~Before~~ ~~Prior to~~ the sale, each purchaser or the
166 purchaser's representative, if any, is provided with, or given
167 reasonable access to, full and fair disclosure of all material
168 information.

169 4. No person defined as a "dealer" in this chapter is paid
170 a commission or compensation for the sale of the issuer's
171 securities unless such person is registered as a dealer under
172 this chapter.



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173 5. When sales are made to five or more persons in this
174 state, any sale in this state made pursuant to this subsection
175 is voidable by the purchaser in such sale either within 3 days
176 after the first tender of consideration is made by such
177 purchaser to the issuer, an agent of the issuer, or an escrow
178 agent or within 3 days after the availability of that privilege
179 is communicated to such purchaser, whichever occurs later.
180 (b) The following purchasers are excluded from the
181 calculation of the number of purchasers under subparagraph
182 (a)1.:
183 1. Any relative or spouse, or relative of such spouse, of a
184 purchaser who has the same principal residence as such
185 purchaser.
186 2. Any trust or estate in which a purchaser, any of the
187 persons related to such purchaser specified in subparagraph 1.,
188 and any corporation specified in subparagraph 3. collectively
189 have more than 50 percent of the beneficial interest (excluding
190 contingent interest).
191 3. Any corporation or other organization of which a
192 purchaser, any of the persons related to such purchaser
193 specified in subparagraph 1., and any trust or estate specified
194 in subparagraph 2. collectively are beneficial owners of more
195 than 50 percent of the equity securities or equity interest.
196 4. Any purchaser who makes a bona fide investment of
197 \$100,000 or more, provided such purchaser or the purchaser's
198 representative receives, or has access to, the information
199 required to be disclosed by subparagraph (a)3.
200 5. Any accredited investor, as defined by rule of the
201 commission in accordance with Securities and Exchange Commission



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202 Regulation 230.501 (17 C.F.R. s. 230.501).
203 (c)1. For purposes of determining which offers and sales of
204 securities constitute part of the same offering under this
205 subsection and are therefore deemed to be integrated with one
206 another:
207 a. Offers or sales of securities occurring more than 6
208 months ~~before~~ ~~prior to~~ an offer or sale of securities made
209 pursuant to this subsection shall not be considered part of the
210 same offering, provided there are no offers or sales by or for
211 the issuer of the same or a similar class of securities during
212 such 6-month period.
213 b. Offers or sales of securities occurring at any time
214 after 6 months from an offer or sale made pursuant to this
215 subsection shall not be considered part of the same offering,
216 provided there are no offers or sales by or for the issuer of
217 the same or a similar class of securities during such 6-month
218 period.
219 2. Offers or sales which do not satisfy the conditions of
220 any of the provisions of subparagraph 1. may or may not be part
221 of the same offering, depending on the particular facts and
222 circumstances in each case. The commission may adopt a rule or
223 rules indicating what factors should be considered in
224 determining whether offers and sales not qualifying for the
225 provisions of subparagraph 1. are part of the same offering for
226 purposes of this subsection.
227 (d) Offers or sales of securities made pursuant to, and in
228 compliance with, any other subsection of this section or any
229 subsection of s. 517.051 shall not be considered part of an
230 offering pursuant to this subsection, regardless of when such



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231 offers and sales are made.

232 (12) The sale of securities by a bank or trust company
233 organized or incorporated under the laws of the United States or
234 this state at a profit to such bank or trust company of not more
235 than 2 percent of the total sale price of such securities;
236 provided that there is no solicitation of this business by such
237 bank or trust company where such bank or trust company acts as
238 agent in the purchase or sale of such securities.

239 (13) An unsolicited purchase or sale of securities on order
240 of, and as the agent for, another by a dealer registered
241 pursuant to the provisions of s. 517.12; provided that this
242 exemption applies solely and exclusively to such registered
243 dealers and does not authorize or permit the purchase or sale of
244 securities on order of, and as agent for, another by any person
245 other than a dealer so registered; and provided, further, that
246 such purchase or sale is not directly or indirectly for the
247 benefit of the issuer or an underwriter of such securities or
248 for the direct or indirect promotion of any scheme or enterprise
249 with the intent of violation or evading any provision of this
250 chapter.

251 (14) The offer or sale of shares of a corporation which
252 represent ownership, or entitle the holders of the shares to
253 possession and occupancy, of specific apartment units in
254 property owned by such corporation and organized and operated on
255 a cooperative basis, solely for residential purposes.

256 (15) The offer or sale of securities under a bona fide
257 employer-sponsored stock option, stock purchase, pension,
258 profit-sharing, savings, or other benefit plan when offered only
259 to employees of the sponsoring organization or to employees of



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260 its controlled subsidiaries.

261 (16) The sale by or through a registered dealer of any
262 securities option if at the time of the sale of the option:

263 (a) The performance of the terms of the option is
264 guaranteed by any dealer registered under the federal Securities
265 Exchange Act of 1934, as amended, which guaranty and dealer are
266 in compliance with such requirements or rules as may be approved
267 or adopted by the commission; or

268 (b) Such options transactions are cleared by the Options
269 Clearing Corporation or any other clearinghouse recognized by
270 the office; and

271 (c) The option is not sold by or for the benefit of the
272 issuer of the underlying security; and

273 (d) The underlying security may be purchased or sold on a
274 recognized securities exchange or is quoted on the National
275 Association of Securities Dealers Automated Quotation System;
276 and

277 (e) Such sale is not directly or indirectly for the purpose
278 of providing or furthering any scheme to violate or evade any
279 provisions of this chapter.

280 (17) (a) The offer or sale of securities, as agent or
281 principal, by a dealer registered pursuant to s. 517.12, when
282 such securities are offered or sold at a price reasonably
283 related to the current market price of such securities, provided
284 such securities are:

285 1. Securities of an issuer for which reports are required
286 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
287 of 1934, as amended;

288 2. Securities of a company registered under the Investment



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289 Company Act of 1940, as amended;

290 3. Securities of an insurance company, as that term is
291 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
292 amended;

293 4. Securities, other than any security that is a federal
294 covered security pursuant to s. 18(b)(1) of the Securities Act
295 of 1933 and is not subject to any registration or filing
296 requirements under this act, which appear in any list of
297 securities dealt in on any stock exchange registered pursuant to
298 the Securities Exchange Act of 1934, as amended, and which
299 securities have been listed or approved for listing upon notice
300 of issuance by such exchange, and also all securities senior to
301 any securities so listed or approved for listing upon notice of
302 issuance, or represented by subscription rights which have been
303 so listed or approved for listing upon notice of issuance, or
304 evidences of indebtedness guaranteed by companies any stock of
305 which is so listed or approved for listing upon notice of
306 issuance, such securities to be exempt only so long as such
307 listings or approvals remain in effect. The exemption provided
308 for herein does not apply when the securities are suspended from
309 listing approval for listing or trading.

310 (b) The exemption provided in this subsection does not
311 apply if the sale is made for the direct or indirect benefit of
312 an issuer or controlling persons of such issuer or if such
313 securities constitute the whole or part of an unsold allotment
314 to, or subscription or participation by, a dealer as an
315 underwriter of such securities.

316 (c) This exemption shall not be available for any
317 securities which have been denied registration pursuant to s.



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318 517.111. Additionally, the office may deny this exemption with
319 reference to any particular security, other than a federal
320 covered security, by order published in such manner as the
321 office finds proper.

322 (18) The offer or sale of any security effected by or
323 through a person in compliance with s. 517.12(17).

324 (19) Other transactions defined by rules as transactions
325 exempted from the registration provisions of s. 517.07, which
326 rules the commission may adopt from time to time, but only after
327 a finding by the office that the application of the provisions
328 of s. 517.07 to a particular transaction is not necessary in the
329 public interest and for the protection of investors because of
330 the small dollar amount of securities involved or the limited
331 character of the offering. In conjunction with its adoption of
332 such rules, the commission may also provide in such rules that
333 persons selling or offering for sale the exempted securities are
334 exempt from the registration requirements of s. 517.12. No rule
335 so adopted may have the effect of narrowing or limiting any
336 exemption provided for by statute in the other subsections of
337 this section.

338 (20) Any nonissuer transaction by a registered associated
339 person of a registered dealer, and any resale transaction by a
340 sponsor of a unit investment trust registered under the
341 Investment Company Act of 1940, in a security of a class that
342 has been outstanding in the hands of the public for at least 90
343 days; provided, at the time of the transaction:

344 (a) The issuer of the security is actually engaged in
345 business and is not in the organization stage or in bankruptcy
346 or receivership and is not a blank check, blind pool, or shell



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347 company whose primary plan of business is to engage in a merger
348 or combination of the business with, or an acquisition of, any
349 unidentified person;

350 (b) The security is sold at a price reasonably related to
351 the current market price of the security;

352 (c) The security does not constitute the whole or part of
353 an unsold allotment to, or a subscription or participation by,
354 the broker-dealer as an underwriter of the security;

355 (d) A nationally recognized securities manual designated by
356 rule of the commission or order of the office or a document
357 filed with the Securities and Exchange Commission that is
358 publicly available through the commission's electronic data
359 gathering and retrieval system contains:

360 1. A description of the business and operations of the
361 issuer;

362 2. The names of the issuer's officers and directors, if
363 any, or, in the case of an issuer not domiciled in the United
364 States, the corporate equivalents of such persons in the
365 issuer's country of domicile;

366 3. An audited balance sheet of the issuer as of a date
367 within 18 months before such transaction or, in the case of a
368 reorganization or merger in which parties to the reorganization
369 or merger had such audited balance sheet, a pro forma balance
370 sheet; and

371 4. An audited income statement for each of the issuer's
372 immediately preceding 2 fiscal years, or for the period of
373 existence of the issuer, if in existence for less than 2 years
374 or, in the case of a reorganization or merger in which the
375 parties to the reorganization or merger had such audited income



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376 statement, a pro forma income statement; and

377 (e) The issuer of the security has a class of equity
378 securities listed on a national securities exchange registered
379 under the Securities Exchange Act of 1934 or designated for
380 trading on the National Association of Securities Dealers
381 Automated Quotation System, unless:

382 1. The issuer of the security is a unit investment trust
383 registered under the Investment Company Act of 1940;

384 2. The issuer of the security has been engaged in
385 continuous business, including predecessors, for at least 3
386 years; or

387 3. The issuer of the security has total assets of at least
388 \$2 million based on an audited balance sheet as of a date within
389 18 months before such transaction or, in the case of a
390 reorganization or merger in which parties to the reorganization
391 or merger had such audited balance sheet, a pro forma balance
392 sheet.

393 (21) The offer or sale of a security by an issuer conducted
394 in accordance with s. 517.0611.

395 Section 3. Section 517.0611, Florida Statutes, is created
396 to read:

397 517.0611 Intrastate crowdfunding.—

398 (1) This section may be cited as the "Florida Intrastate
399 Crowdfunding Exemption."

400 (2) Notwithstanding any other provision of this chapter, an
401 offer or sale of a security by an issuer is an exempt
402 transaction under s. 517.061 if the offer or sale is conducted
403 in accordance with this section. The exemption provided in this
404 section may not be used in conjunction with any other exemption



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405 under s. 517.051 or s.517.061.

406 (3) The offer or sale of securities under this section must
407 be conducted in accordance with the requirements of the federal
408 exemption for intrastate offerings in s. 3(a)(11) of the
409 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United
410 States Securities and Exchange Commission Rule 147, 17 C.F.R. s.
411 230.147, adopted pursuant to the Securities Act of 1933.

412 (4) An issuer must:

413 (a) Be a for-profit business entity formed under the laws
414 of this state, be registered with the Secretary of State,
415 maintain its principal place of business in this state, and
416 derive its revenues primarily from operations in this state.

417 (b) Conduct transactions for the offering through a dealer
418 registered with the office or an intermediary registered under
419 s. 517.12(20).

420 (c) Not be, either before or as a result of the offering,
421 an investment company as defined in s. 3 of the Investment
422 Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the
423 reporting requirements of s. 13 or s. 15(d) of the Securities
424 Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

425 (d) Not be a company with an undefined business operation,
426 a company that lacks a business plan, a company that lacks a
427 stated investment goal for the funds being raised, or a company
428 that plans to engage in a merger or acquisition with an
429 unspecified business entity.

430 (e) Not be subject to a disqualification established by the
431 commission or office or a disqualification described in s.
432 517.1611 or United States Securities and Exchange Commission
433 Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the



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434 Securities Act of 1933. Each director, officer, person occupying
435 a similar status or performing a similar function, or person
436 holding more than 20 percent of the shares of the issuer, is
437 subject to this requirement.

438 (f) Execute an escrow agreement with a federally insured
439 financial institution authorized to do business in this state
440 for the deposit of investor funds, and ensure that all offering
441 proceeds are provided to the issuer only when the aggregate
442 capital raised from all investors is equal to or greater than
443 the target offering amount.

444 (g) Allow investors to cancel a commitment to invest within
445 3 business days before the offering deadline, as stated in the
446 disclosure statement, and issue refunds to all investors if the
447 target offering amount is not reached by the offering deadline.

448 (5) The issuer must file a notice of the offering with the
449 office, in writing or in electronic form, in a format prescribed
450 by commission rule, together with a nonrefundable filing fee of
451 \$200. The commission may adopt rules establishing procedures for
452 the deposit of fees and the filing of documents by electronic
453 means if the procedures provide the office with the information
454 and data required by this section. A notice is effective upon
455 receipt of the completed form, filing fee, and an irrevocable
456 written consent to service of civil process, as provided for in
457 s. 517.101, by the office. The notice may be terminated by
458 filing with the office a notice of termination. The notice and
459 offering expire 12 months after filing the notice with the
460 office and are not eligible for renewal. The notice must:

461 (a) Be filed with the office at least 10 days before the
462 issuer commences an offering of securities or the offering is



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463 displayed on a website of an intermediary in reliance upon the
464 exemption provided by this section.

465 (b) Indicate that the issuer is conducting an offering in
466 reliance upon the exemption provided by this section.

467 (c) Contain the name and contact information of the issuer.

468 (d) Identify any predecessors, owners, officers, directors,
469 and control persons or any person occupying a similar status or
470 performing a similar function of the issuer, including that
471 person's title, his or her status as a partner, trustee, sole
472 proprietor or similar role, and his or her ownership percentage.

473 (e) Identify the federally insured financial institution,
474 authorized to do business in this state, in which investor funds
475 will be deposited, in accordance with the escrow agreement.

476 (f) Require an attestation under oath that the issuer, its
477 predecessors, affiliated issuers, directors, officers, and
478 control persons, or any other person occupying a similar status
479 or performing a similar function, are not currently and have not
480 been within the past 10 years the subject of regulatory or
481 criminal actions involving fraud or deceit.

482 (g) Include documentation verifying that the issuer is
483 organized under the laws of this state and authorized to do
484 business in this state.

485 (h) Include the intermediary's website address where the
486 issuer's securities will be offered.

487 (i) Include the target offering amount.

488 (6) The issuer must amend the notice form within 30 days
489 after any information contained in the notice becomes inaccurate
490 for any reason. The commission may require, by rule, an issuer
491 who has filed a notice under this section to file amendments



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492 with the office.

493 (7) The issuer must provide to investors and the dealer or
494 intermediary, along with a copy to the office at the time the
495 notice is filed, and make available to potential investors
496 through the dealer or intermediary, a disclosure statement
497 containing material information about the issuer and the
498 offering, including:

499 (a) The name, legal status, physical address, and website
500 address of the issuer.

501 (b) The names of the directors, officers, and any person
502 occupying a similar status or performing a similar function, and
503 the name of each person holding more than 20 percent of the
504 shares of the issuer.

505 (c) A description of the business of the issuer and the
506 anticipated business plan of the issuer.

507 (d) A description of the stated purpose and intended use of
508 the proceeds of the offering.

509 (e) The target offering amount, the deadline to reach the
510 target offering amount, and regular updates regarding the
511 progress of the issuer in meeting the target offering amount.

512 (f) The price to the public of the securities or the method
513 for determining the price, provided that before the sale each
514 investor receives in writing the final price and all required
515 disclosures, with an opportunity to rescind the commitment to
516 purchase the securities.

517 (g) A description of the ownership and capital structure of
518 the issuer, including:

519 1. Terms of the securities being offered and each class of
520 security of the issuer, including how those terms may be



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521 modified, and a summary of the differences between such
522 securities, including how the rights of the securities being
523 offered may be materially limited, diluted, or qualified by
524 rights of any other class of security of the issuer;

525 2. A description of how the exercise of the rights held by
526 the principal shareholders of the issuer could negatively impact
527 the purchasers of the securities being offered;

528 3. The name and ownership level of each existing
529 shareholder who owns more than 20 percent of any class of the
530 securities of the issuer;

531 4. How the securities being offered are being valued, and
532 examples of methods of how such securities may be valued by the
533 issuer in the future, including during subsequent corporate
534 actions; and

535 5. The risks to purchasers of the securities relating to
536 minority ownership in the issuer, the risks associated with
537 corporate action, including additional issuances of shares, a
538 sale of the issuer or of assets of the issuer, or transactions
539 with related parties.

540 (h) A description of the financial condition of the issuer.

541 1. For offerings that, in combination with all other
542 offerings of the issuer within the preceding 12-month period,
543 have target offering amounts of \$100,000 or less, the
544 description must include the most recent income tax return filed
545 by the issuer, if any, and a financial statement that must be
546 certified by the principal executive officer of the issuer as
547 true and complete in all material respects.

548 2. For offerings that, in combination with all other
549 offerings of the issuer within the preceding 12-month period,



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550 have target offering amounts of more than \$100,000, but not more
551 than \$500,000, the description must include financial statements
552 prepared in accordance with generally accepted accounting
553 principles and reviewed by a certified public accountant, as
554 defined in s. 473.302, who is independent of the issuer, using
555 professional standards and procedures for such review or
556 standards and procedures established by the office, by rule, for
557 such purpose.

558 3. For offerings that, in combination with all other
559 offerings of the issuer within the preceding 12-month period,
560 have target offering amounts of more than \$500,000, the
561 description must include audited financial statements prepared
562 in accordance with generally accepted accounting principles by a
563 certified public accountant, as defined in s. 473.302, who is
564 independent of the issuer, and other requirements as the
565 commission may establish by rule.

566 (i) The following statement in boldface, conspicuous type
567 on the front page of the disclosure statement:

568
569 These securities are offered under and will be sold in reliance
570 upon an exemption from the registration requirements of federal
571 and Florida securities laws. Consequently, neither the Federal
572 Government nor the State of Florida has reviewed the accuracy or
573 completeness of any offering materials. In making an investment
574 decision, investors must rely on their own examination of the
575 issuer and the terms of the offering, including the merits and
576 risks involved. These securities are subject to restrictions on
577 transferability and resale and may not be transferred or resold
578 except as specifically authorized by applicable federal and



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579 state securities laws. Investing in these securities involves a
580 speculative risk, and investors should be able to bear the loss
581 of their entire investment.

582 (8) The issuer shall provide to the office a copy of the
583 escrow agreement with a financial institution authorized to
584 conduct business in this state. All investor funds must be
585 deposited in the escrow account. The escrow agreement must
586 require that all offering proceeds be released to the issuer
587 only when the aggregate capital raised from all investors is
588 equal to or greater than the minimum target offering amount
589 specified in the disclosure statement as necessary to implement
590 the business plan, and that all investors will receive a full
591 return of their investment commitment if that target offering
592 amount is not raised by the date stated in the disclosure
593 statement.

594 (9) The sum of all cash and other consideration received
595 for sales of a security under this section may not exceed \$1
596 million, less the aggregate amount received for all sales of
597 securities by the issuer within the 12 months preceding the
598 first offer or sale made in reliance upon this exemption. Offers
599 or sales to a person owning 20 percent or more of the
600 outstanding shares of any class or classes of securities or to
601 an officer, director, partner, or trustee, or a person occupying
602 a similar status, do not count toward this limitation.

603 (10) Unless the investor is an accredited investor as
604 defined by Rule 501 of Regulation D, adopted pursuant to the
605 Securities Act of 1933, the aggregate amount sold by an issuer
606 to an investor in transactions exempt from registration
607 requirements under this subsection in a 12-month period may not



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608 exceed:

609 (a) The greater of \$2,000 or 5 percent of the annual income
610 or net worth of such investor, if the annual income or the net
611 worth of the investor is less than \$100,000.

612 (b) Ten percent of the annual income or net worth of such
613 investor, not to exceed a maximum aggregate amount sold of
614 \$100,000, if either the annual income or net worth of the
615 investor is equal to or exceeds \$100,000.

616 (11) The issuer shall file with the office and provide to
617 investors free of charge an annual report of the results of
618 operations and financial statements of the issuer within 45 days
619 of its fiscal year end, until no securities under this offering
620 are outstanding. The annual reports must meet the following
621 requirements:

622 (a) Include an analysis by management of the issuer of the
623 business operations and the financial condition of the issuer,
624 and disclose the compensation received by each director,
625 executive officer, and person having an ownership interest of 20
626 percent or more of the issuer, including cash compensation
627 earned since the previous report and on an annual basis, and any
628 bonuses, stock options, other rights to receive securities of
629 the issuer, or any affiliate of the issuer, or other
630 compensation received.

631 (b) Disclose any material change to information contained
632 in the disclosure statements which was not disclosed in a
633 previous report.

634 (12) (a) A notice-filing under this section shall be
635 summarily suspended by the office if the payment for the filing
636 is dishonored by the financial institution upon which the funds



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637 are drawn. For purposes of s. 120.60(6), failure to pay the
638 required notice filing fee constitutes an immediate and serious
639 danger to the public health, safety, and welfare. The office
640 shall enter a final order revoking a notice-filing in which the
641 payment for the filing is dishonored by the financial
642 institution upon which the funds are drawn.

643 (b) A notice-filing under this section shall be summarily
644 suspended by the office if the issuer made a material false
645 statement in the issuer's notice-filing. The summary suspension
646 shall remain in effect until a final order is entered by the
647 office. For purposes of s. 120.60(6), a material false statement
648 made in the issuer's notice-filing constitutes an immediate and
649 serious danger to the public health, safety, and welfare. If an
650 issuer made a material false statement in the issuer's notice-
651 filing, the office shall enter a final order revoking the
652 notice-filing, issue a fine as prescribed by s. 517.221(3), and
653 issue permanent bars under s. 517.221(4) to the issuer and all
654 owners, officers, directors, and control persons, or any person
655 occupying a similar status or performing a similar function of
656 the issuer, including titles; status as a partner, trustee, sole
657 proprietor, or similar roles; and ownership percentage.

658 (13) All fees collected under this section become the
659 revenue of the state, except for those assessments provided for
660 under s. 517.131(1) until such time as the Securities Guaranty
661 Fund satisfies the statutory limits, and are not returnable in
662 the event that a notice filing is withdrawn.

663 (14) An intermediary must:

664 (a) Take measures, as established by commission rule, to
665 reduce the risk of fraud with respect to transactions, including



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666 verifying that the issuer is in compliance with the requirements
667 of this section and, if necessary, denying an issuer access to
668 its platform if the intermediary believes it is unable to
669 adequately assess the risk of fraud of the issuer or its
670 potential offering.

671 (b) Provide basic information on its website regarding the
672 high risk of investment in and limitation on the resale of
673 exempt securities and the potential for loss of an entire
674 investment. The basic information must include:

675 1. A description of the escrow agreement that the issuer
676 has executed and the conditions for release of such funds to the
677 issuer in accordance with the agreement and subsection (4).

678 2. A description of whether financial information provided
679 by the issuer has been audited by an independent certified
680 public accountant, as defined in s. 473.302.

681 (c) Obtain a zip code or residence address from each
682 potential investor who seeks to view information regarding
683 specific investment opportunities, in order to confirm that the
684 potential investor is a resident of this state.

685 (d) Obtain and verify, pursuant to commission rule, a valid
686 Florida driver license number or official identification card
687 number from each investor before purchase of a security or other
688 information, as defined by commission rule, to confirm that the
689 investor is a resident of the state.

690 (e) Obtain an affidavit from each investor stating that the
691 investment being made by the investor is consistent with the
692 income requirements of subsection (10).

693 (f) Direct the release of investor funds in escrow in
694 accordance with subsection (4).



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695 (g) Direct investors to transmit funds directly to the
696 financial institution designated in the escrow agreement to hold
697 the funds for the benefit of the investor.

698 (h) Provide a monthly update for each offering, after the
699 first full month after the date of the offering. The update must
700 be accessible on the intermediary's website and must display the
701 date and amount of each sale of securities, and each
702 cancellation of commitment to invest in the previous calendar
703 month.

704 (i) Require each investor to certify in writing, including
705 as part of such certification his or her signature and his or
706 her initials next to each paragraph of the certification, as
707 follows:

708 I understand and acknowledge that:

709 I am investing in a high-risk, speculative business venture. I
710 may lose all of my investment, and I can afford the loss of my
711 investment.

712 This offering has not been reviewed or approved by any state or
713 federal securities commission or other regulatory authority and
714 no regulatory authority has confirmed the accuracy or determined
715 the adequacy of any disclosure made to me relating to this
716 offering.

717 The securities I am acquiring in this offering are illiquid and
718 are subject to possible dilution. There is no ready market for
719 the sale of the securities. It may be difficult or impossible
720



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724 for me to sell or otherwise dispose of the securities, and I may
725 be required to hold the securities indefinitely.

726
727 I may be subject to tax on my share of the taxable income and
728 losses of the issuer, whether or not I have sold or otherwise
729 disposed of my investment or received any dividends or other
730 distributions from the issuer.

731
732 By entering into this transaction with the issuer, I am
733 affirmatively representing myself as being a Florida resident at
734 the time this contract is formed, and if this representation is
735 subsequently shown to be false, the contract is void.

736
737 If I resell any of the securities I am acquiring in this
738 offering to a person that is not a Florida resident within 9
739 months after the closing of the offering, my contract with the
740 issuer for the purchase of these securities is void.

741
742 (j) Require each investor to answer questions demonstrating
743 an understanding of the level of risk generally applicable to
744 investments in startups, emerging businesses, and small issuers,
745 and an understanding of the risk of illiquidity.

746 (k) Take reasonable steps to protect personal information
747 collected from investors, as required by s. 501.171.

748 (l) Prohibit its directors and officers from having any
749 financial interest in the issuer using its services.

750 (m) Implement written policies and procedures that are
751 reasonably designed to achieve compliance with federal and state
752 securities laws; comply with anti-money laundering requirements



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753 of 31 C.F.R. ch. X applicable to registered brokers; and comply
754 with the privacy requirements of 17 C.F.R. part 248 as they
755 apply to brokers.

756 (15) An intermediary not registered as a dealer under s.
757 517.12(6) may not:

758 (a) Offer investment advice or recommendations. A refusal
759 by an intermediary to post an offering that it deems not
760 credible or that represents a potential for fraud may not be
761 construed as an offer of investment advice or recommendation.

762 (b) Solicit purchases, sales, or offers to buy securities
763 offered or displayed on its website.

764 (c) Compensate employees, agents, or other persons for the
765 solicitation or based on the sale of securities offered or
766 displayed on its website.

767 (d) Hold, manage, possess, or otherwise handle investor
768 funds or securities.

769 (e) Compensate promoters, finders, or lead generators for
770 providing the intermediary with the personal identifying
771 information of any potential investor.

772 (f) Engage in any other activities set forth by commission
773 rule.

774 (16) All funds received from investors must be directed to
775 the financial institution designated in the escrow agreement to
776 hold the funds and must be used in accordance with
777 representations made to investors by the intermediary. If an
778 investor cancels a commitment to invest, the intermediary must
779 direct the financial institution designated to hold the funds to
780 promptly refund the funds of the investor.

781 Section 4. Section 517.12, Florida Statutes, is amended to



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782 read:

783 517.12 Registration of dealers, associated persons,
784 intermediaries, and investment advisers.-

785 (1) No dealer, associated person, or issuer of securities
786 shall sell or offer for sale any securities in or from offices
787 in this state, or sell securities to persons in this state from
788 offices outside this state, by mail or otherwise, unless the
789 person has been registered with the office pursuant to the
790 provisions of this section. The office shall not register any
791 person as an associated person of a dealer unless the dealer
792 with which the applicant seeks registration is lawfully
793 registered with the office pursuant to this chapter.

794 (2) The registration requirements of this section do not
795 apply to the issuers of securities exempted by s. 517.051(1)-(8)
796 and (10).

797 (3) Except as otherwise provided in s. 517.061(11)(a)4.,
798 (13), (16), (17), or (19), the registration requirements of this
799 section do not apply in a transaction exempted by s. 517.061(1)-
800 (12), (14), and (15).

801 (4) No investment adviser or associated person of an
802 investment adviser or federal covered adviser shall engage in
803 business from offices in this state, or render investment advice
804 to persons of this state, by mail or otherwise, unless the
805 federal covered adviser has made a notice-filing with the office
806 pursuant to s. 517.1201 or the investment adviser is registered
807 pursuant to the provisions of this chapter and associated
808 persons of the federal covered adviser or investment adviser
809 have been registered with the office pursuant to this section.
810 The office shall not register any person or an associated person



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811 of a federal covered adviser or an investment adviser unless the
812 federal covered adviser or investment adviser with which the
813 applicant seeks registration is in compliance with the notice-
814 filing requirements of s. 517.1201 or is lawfully registered
815 with the office pursuant to this chapter. A dealer or associated
816 person who is registered pursuant to this section may render
817 investment advice upon notification to and approval from the
818 office.

819 (5) No dealer or investment adviser shall conduct business
820 from a branch office within this state unless the branch office
821 is notice-filed with the office pursuant to s. 517.1202.

822 (6) A dealer, associated person, or investment adviser, in
823 order to obtain registration, must file with the office a
824 written application, on a form which the commission may by rule
825 prescribe. The commission may establish, by rule, procedures for
826 depositing fees and filing documents by electronic means
827 provided such procedures provide the office with the information
828 and data required by this section. Each dealer or investment
829 adviser must also file an irrevocable written consent to service
830 of civil process similar to that provided for in s. 517.101. The
831 application shall contain such information as the commission or
832 office may require concerning such matters as:

833 (a) The name of the applicant and the address of its
834 principal office and each office in this state.

835 (b) The applicant's form and place of organization; and, if
836 the applicant is a corporation, a copy of its articles of
837 incorporation and amendments to the articles of incorporation
838 or, if a partnership, a copy of the partnership agreement.

839 (c) The applicant's proposed method of doing business and



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840 financial condition and history, including a certified financial
841 statement showing all assets and all liabilities, including
842 contingent liabilities of the applicant as of a date not more
843 than 90 days prior to the filing of the application.

844 (d) The names and addresses of all associated persons of
845 the applicant to be employed in this state and the offices to
846 which they will be assigned.

847 (7) The application must also contain such information as
848 the commission or office may require about the applicant; any
849 member, principal, or director of the applicant or any person
850 having a similar status or performing similar functions; any
851 person directly or indirectly controlling the applicant; or any
852 employee of a dealer or of an investment adviser rendering
853 investment advisory services. Each applicant and any direct
854 owners, principals, or indirect owners that are required to be
855 reported on Form BD or Form ADV pursuant to subsection (15)
856 shall submit fingerprints for live-scan processing in accordance
857 with rules adopted by the commission. The fingerprints may be
858 submitted through a third-party vendor authorized by the
859 Department of Law Enforcement to provide live-scan
860 fingerprinting. The costs of fingerprint processing shall be
861 borne by the person subject to the background check. The
862 Department of Law Enforcement shall conduct a state criminal
863 history background check, and a federal criminal history
864 background check must be conducted through the Federal Bureau of
865 Investigation. The office shall review the results of the state
866 and federal criminal history background checks and determine
867 whether the applicant meets licensure requirements. The
868 commission may waive, by rule, the requirement that applicants,



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869 including any direct owners, principals, or indirect owners that
870 are required to be reported on Form BD or Form ADV pursuant to
871 subsection (15), submit fingerprints or the requirement that
872 such fingerprints be processed by the Department of Law
873 Enforcement or the Federal Bureau of Investigation. The
874 commission or office may require information about any such
875 applicant or person concerning such matters as:

876 (a) His or her full name, and any other names by which he
877 or she may have been known, and his or her age, social security
878 number, photograph, qualifications, and educational and business
879 history.

880 (b) Any injunction or administrative order by a state or
881 federal agency, national securities exchange, or national
882 securities association involving a security or any aspect of the
883 securities business and any injunction or administrative order
884 by a state or federal agency regulating banking, insurance,
885 finance, or small loan companies, real estate, mortgage brokers,
886 or other related or similar industries, which injunctions or
887 administrative orders relate to such person.

888 (c) His or her conviction of, or plea of nolo contendere
889 to, a criminal offense or his or her commission of any acts
890 which would be grounds for refusal of an application under s.
891 517.161.

892 (d) The names and addresses of other persons of whom the
893 office may inquire as to his or her character, reputation, and
894 financial responsibility.

895 (8) The commission or office may require the applicant or
896 one or more principals or general partners, or natural persons
897 exercising similar functions, or any associated person applicant



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898 to successfully pass oral or written examinations. Because any
899 principal, manager, supervisor, or person exercising similar
900 functions shall be responsible for the acts of the associated
901 persons affiliated with a dealer, the examination standards may
902 be higher for a dealer, office manager, principal, or person
903 exercising similar functions than for a nonsupervisory
904 associated person. The commission may waive the examination
905 process when it determines that such examinations are not in the
906 public interest. The office shall waive the examination
907 requirements for any person who has passed any tests as
908 prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934
909 that relates to the position to be filled by the applicant.

910 (9) (a) All dealers, except securities dealers who are
911 designated by the Federal Reserve Bank of New York as primary
912 government securities dealers or securities dealers registered
913 as issuers of securities, shall comply with the net capital and
914 ratio requirements imposed pursuant to the Securities Exchange
915 Act of 1934. The commission may by rule require a dealer to file
916 with the office any financial or operational information that is
917 required to be filed by the Securities Exchange Act of 1934 or
918 any rules adopted under such act.

919 (b) The commission may by rule require the maintenance of a
920 minimum net capital for securities dealers who are designated by
921 the Federal Reserve Bank of New York as primary government
922 securities dealers and securities dealers registered as issuers
923 of securities and investment advisers, or prescribe a ratio
924 between net capital and aggregate indebtedness, to assure
925 adequate protection for the investing public. The provisions of
926 this section shall not apply to any investment adviser that



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927 maintains its principal place of business in a state other than
928 this state, provided such investment adviser is registered in
929 the state where it maintains its principal place of business and
930 is in compliance with such state's net capital requirements.

931 (10) An applicant for registration shall pay an assessment
932 fee of \$200, in the case of a dealer or investment adviser, or
933 \$50, in the case of an associated person. An associated person
934 may be assessed an additional fee to cover the cost for the
935 fingerprints to be processed by the office. Such fee shall be
936 determined by rule of the commission. Such fees become the
937 revenue of the state, except for those assessments provided for
938 under s. 517.131(1) until such time as the Securities Guaranty
939 Fund satisfies the statutory limits, and are not returnable in
940 the event that registration is withdrawn or not granted.

941 (11) If the office finds that the applicant is of good
942 repute and character and has complied with the provisions of
943 this chapter and the rules made pursuant hereto, it shall
944 register the applicant. The registration of each dealer,
945 investment adviser, and associated person expires on December 31
946 of the year the registration became effective unless the
947 registrant has renewed his or her registration on or before that
948 date. Registration may be renewed by furnishing such information
949 as the commission may require, together with payment of the fee
950 required in subsection (10) for dealers, investment advisers, or
951 associated persons and the payment of any amount lawfully due
952 and owing to the office pursuant to any order of the office or
953 pursuant to any agreement with the office. Any dealer,
954 investment adviser, or associated person who has not renewed a
955 registration by the time the current registration expires may



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956 request reinstatement of such registration by filing with the
957 office, on or before January 31 of the year following the year
958 of expiration, such information as may be required by the
959 commission, together with payment of the fee required in
960 subsection (10) for dealers, investment advisers, or associated
961 persons and a late fee equal to the amount of such fee. Any
962 reinstatement of registration granted by the office during the
963 month of January shall be deemed effective retroactive to
964 January 1 of that year.

965 (12) (a) The office may issue a license to a dealer,
966 investment adviser, or associated person to evidence
967 registration under this chapter. The office may require the
968 return to the office of any license it may issue prior to
969 issuing a new license.

970 (b) Every dealer, investment adviser, or federal covered
971 adviser shall promptly file with the office, as prescribed by
972 rules adopted by the commission, notice as to the termination of
973 employment of any associated person registered for such dealer
974 or investment adviser in this state and shall also furnish the
975 reason or reasons for such termination.

976 (c) Each dealer or investment adviser shall designate in
977 writing to, and register with, the office a manager for each
978 office the dealer or investment adviser has in this state.

979 (13) Changes in registration occasioned by changes in
980 personnel of a partnership or in the principals, copartners,
981 officers, or directors of any dealer or investment adviser or by
982 changes of any material fact or method of doing business shall
983 be reported by written amendment in such form and at such time
984 as the commission may specify. In any case in which a person or



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985 a group of persons, directly or indirectly or acting by or
986 through one or more persons, proposes to purchase or acquire a
987 controlling interest in a registered dealer or investment
988 adviser, such person or group shall submit an initial
989 application for registration as a dealer or investment adviser
990 prior to such purchase or acquisition. The commission shall
991 adopt rules providing for waiver of the application required by
992 this subsection where control of a registered dealer or
993 investment adviser is to be acquired by another dealer or
994 investment adviser registered under this chapter or where the
995 application is otherwise unnecessary in the public interest.
996 (14) Every dealer or investment adviser registered or
997 required to be registered or branch office notice-filed or
998 required to be notice-filed with the office shall keep records
999 of all currency transactions in excess of \$10,000 and shall file
1000 reports, as prescribed under the financial recordkeeping
1001 regulations in 31 C.F.R. part 103, with the office when
1002 transactions occur in or from this state. All reports required
1003 by this subsection to be filed with the office shall be
1004 confidential and exempt from s. 119.07(1) except that any law
1005 enforcement agency or the Department of Revenue shall have
1006 access to, and shall be authorized to inspect and copy, such
1007 reports.
1008 (15) (a) In order to facilitate uniformity and streamline
1009 procedures for persons who are subject to registration or
1010 notification in multiple jurisdictions, the commission may adopt
1011 by rule uniform forms that have been approved by the Securities
1012 and Exchange Commission, and any subsequent amendments to such
1013 forms, if the forms are substantially consistent with the



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1014 provisions of this chapter. Uniform forms that the commission
1015 may adopt to administer this section include, but are not
1016 limited to:
1017 1. Form BR, Uniform Branch Office Registration Form,
1018 adopted October 2005.
1019 2. Form U4, Uniform Application for Securities Industry
1020 Registration or Transfer, adopted October 2005.
1021 3. Form U5, Uniform Termination Notice for Securities
1022 Industry Registration, adopted October 2005.
1023 4. Form ADV, Uniform Application for Investment Adviser
1024 Registration, adopted October 2003.
1025 5. Form ADV-W, Notice of Withdrawal from Registration as an
1026 Investment Adviser, adopted October 2003.
1027 6. Form BD, Uniform Application for Broker-Dealer
1028 Registration, adopted July 1999.
1029 7. Form BDW, Uniform Request for Broker-Dealer Withdrawal,
1030 adopted August 1999.
1031 (b) In lieu of filing with the office the applications
1032 specified in subsection (6), the fees required by subsection
1033 (10), the renewals required by subsection (11), and the
1034 termination notices required by subsection (12), the commission
1035 may by rule establish procedures for the deposit of such fees
1036 and documents with the Central Registration Depository or the
1037 Investment Adviser Registration Depository of the Financial
1038 Industry Regulatory Authority, as developed under contract with
1039 the North American Securities Administrators Association, Inc.
1040 (16) Except for securities dealers who are designated by
1041 the Federal Reserve Bank of New York as primary government
1042 securities dealers or securities dealers registered as issuers



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1043 of securities, every applicant for initial or renewal
1044 registration as a securities dealer and every person registered
1045 as a securities dealer shall be registered as a broker or dealer
1046 with the Securities and Exchange Commission and shall be subject
1047 to insurance coverage by the Securities Investor Protection
1048 Corporation.

1049 (17) (a) A dealer that is located in Canada, does not have
1050 an office or other physical presence in this state, and has made
1051 a notice-filing in accordance with this subsection is exempt
1052 from the registration requirements of this section and may
1053 effect transactions in securities with or for, or induce or
1054 attempt to induce the purchase or sale of any security by:

1055 1. A person from Canada who is present in this state and
1056 with whom the Canadian dealer had a bona fide dealer-client
1057 relationship before the person entered the United States; or

1058 2. A person from Canada who is present in this state and
1059 whose transactions are in a self-directed, tax-advantaged
1060 retirement plan in Canada of which the person is the holder or
1061 contributor.

1062 (b) A notice-filing under this subsection must consist of
1063 documents the commission by rule requires to be filed, together
1064 with a consent to service of process and a nonrefundable filing
1065 fee of \$200. The commission may establish by rule procedures for
1066 the deposit of fees and the filing of documents to be made by
1067 electronic means, if such procedures provide the office with the
1068 information and data required by this section.

1069 (c) A Canadian dealer may make a notice-filing under this
1070 subsection if the dealer provides to the office:

1071 1. A notice-filing in the form the commission requires by



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1072 rule.

1073 2. A consent to service of process.

1074 3. Evidence that the Canadian dealer is registered as a
1075 dealer in the jurisdiction in which the dealer's main office is
1076 located.

1077 4. Evidence that the Canadian dealer is a member of a self-
1078 regulatory organization or stock exchange in Canada.

1079 (d) The office may issue a permit to evidence the
1080 effectiveness of a notice-filing for a Canadian dealer.

1081 (e) A notice-filing is effective upon receipt by the
1082 office. A notice-filing expires on December 31 of the year in
1083 which the filing becomes effective unless the Canadian dealer
1084 has renewed the filing on or before that date. A Canadian dealer
1085 may annually renew a notice-filing by furnishing to the office
1086 such information as the office requires together with a renewal
1087 fee of \$200 and the payment of any amount due and owing the
1088 office pursuant to any agreement with the office. Any Canadian
1089 dealer who has not renewed a notice-filing by the time a current
1090 notice-filing expires may request reinstatement of such notice-
1091 filing by filing with the office, on or before January 31 of the
1092 year following the year the notice-filing expires, such
1093 information as the commission requires by rule, together with
1094 the payment of \$200 and a late fee of \$200. A reinstatement of a
1095 notice-filing granted by the office during the month of January
1096 is effective retroactively to January 1 of that year.

1097 (f) An associated person who represents a Canadian dealer
1098 who has made a notice-filing under this subsection is exempt
1099 from the registration requirements of this section and may
1100 effect transactions in securities in this state as permitted for



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1101 a dealer under paragraph (a) if such person is registered in the
1102 jurisdiction from which he or she is effecting transactions into
1103 this state.

1104 (g) A Canadian dealer who has made a notice-filing under
1105 this subsection shall:

1106 1. Maintain its provincial or territorial registration and
1107 its membership in a self-regulatory organization or stock
1108 exchange in good standing.

1109 2. Provide the office upon request with its books and
1110 records relating to its business in this state as a dealer.

1111 3. Provide the office upon request notice of each civil,
1112 criminal, or administrative action initiated against the dealer.

1113 4. Disclose to its clients in this state that the dealer
1114 and its associated persons are not subject to the full
1115 regulatory requirements under this chapter.

1116 5. Correct any inaccurate information within 30 days after
1117 the information contained in the notice-filing becomes
1118 inaccurate for any reason.

1119 (h) An associated person representing a Canadian dealer who
1120 has made a notice-filing under this subsection shall:

1121 1. Maintain provincial or territorial registration in good
1122 standing.

1123 2. Provide the office upon request with notice of each
1124 civil, criminal, or administrative action initiated against such
1125 person.

1126 (i) A notice-filing may be terminated by filing notice of
1127 such termination with the office. Unless another date is
1128 specified by the Canadian dealer, such notice is effective upon
1129 receipt of the notice by the office.



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1130 (j) All fees collected under this subsection become the
1131 revenue of the state, except those assessments provided for
1132 under s. 517.131(1), until the Securities Guaranty Fund has
1133 satisfied the statutory limits. Such fees are not returnable if
1134 a notice-filing is withdrawn.

1135 (18) Every dealer or associated person registered or
1136 required to be registered with the office shall satisfy any
1137 continuing education requirements established by rule pursuant
1138 to law.

1139 (19) The registration requirements of this section which
1140 apply to investment advisers and associated persons do not apply
1141 to a commodity trading adviser who:

1142 (a) Is registered as such with the Commodity Futures
1143 Trading Commission pursuant to the Commodity Exchange Act.

1144 (b) Advises or exercises trading discretion, with respect
1145 to foreign currency options listed and traded exclusively on the
1146 Philadelphia Stock Exchange, on behalf of an "appropriate
1147 person" as defined by the Commodity Exchange Act.

1148
1149 The exemption provided in this subsection does not apply to a
1150 commodity trading adviser who engages in other activities that
1151 require registration under this chapter.

1152 (20) An intermediary may not engage in business in this
1153 state unless the intermediary is registered as a dealer or as an
1154 intermediary with the office pursuant to this section to
1155 facilitate the offer or sale of securities in accordance with s.
1156 517.0611. An intermediary, in order to obtain registration, must
1157 file with the office a written application on a form prescribed
1158 by commission rule and pay a registration fee of \$200. The



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1159 commission may establish by rule procedures for depositing fees
1160 and filing documents by electronic means if such procedures
1161 provide the office with the information and data required by
1162 this section. Each intermediary must also file an irrevocable
1163 written consent to service of civil process, as provided for in
1164 s. 517.101.

1165 (a) The application must contain such information as the
1166 commission or office may require concerning:

1167 1. The name of the applicant and address of its principal
1168 office and each office in this state.

1169 2. The applicant's form and place of organization; and if
1170 the applicant is a corporation, a copy of its articles of
1171 incorporation and amendments to the articles of incorporation
1172 or, if a partnership, a copy of the partnership agreement.

1173 3. The website address where securities of the issuer will
1174 be offered.

1175 4. Contact information.

1176 (b) The application must also contain such information as
1177 the commission may require by rule about the applicant; any
1178 member, principal, or director of the applicant or any person
1179 having a similar status or performing similar functions; or any
1180 persons directly or indirectly controlling the applicant. Each
1181 applicant and any direct owners, principals, or indirect owners
1182 that are required to be reported on a form adopted by commission
1183 rule shall submit fingerprints for live-scan processing in
1184 accordance with rules adopted by the commission. The
1185 fingerprints may be submitted through a third-party vendor
1186 authorized by the Department of Law Enforcement to provide live-
1187 scan fingerprinting. The costs of fingerprint processing shall



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1188 be borne by the person subject to the background check. The
1189 Department of Law Enforcement shall conduct a state criminal
1190 history background check, and a federal criminal history
1191 background check must be conducted through the Federal Bureau of
1192 Investigation. The office shall review the results of the state
1193 and federal criminal history background checks and determine
1194 whether the applicant meets licensure requirements. The
1195 commission may waive, by rule, the requirement that applicants,
1196 including any direct owners, principals, or indirect owners,
1197 that are required to be reported on a form adopted by commission
1198 rule submit fingerprints or the requirement that such
1199 fingerprints be processed by the Department of Law Enforcement
1200 or the Federal Bureau of Investigation. The commission, by rule,
1201 or the office may require information about any applicant or
1202 person concerning such matters as:

1203 1. His or her full name and any other names by which he or
1204 she may have been known and his or her age, social security
1205 number, photograph, qualifications, and educational and business
1206 history.

1207 2. Any injunction or administrative order by a state or
1208 federal agency, national securities exchange, or national
1209 securities association involving a security or any aspect of the
1210 securities business and any injunction or administrative order
1211 by a state or federal agency regulating banking, insurance,
1212 finance, or small loan companies, real estate, mortgage brokers,
1213 or other related or similar industries, which relate to such
1214 person.

1215 3. His or her conviction of, or plea of nolo contendere to,
1216 a criminal offense or his or her commission of any acts that



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1217 would be grounds for refusal of an application under s. 517.161.

1218 (c) The application must be amended within 30 days if any
1219 information contained in the form becomes inaccurate for any
1220 reason.

1221 (d) An intermediary or persons affiliated with the
1222 intermediary may not be subject to any disqualification
1223 described in s. 517.1611 or the United States Securities and
1224 Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted
1225 pursuant to the Securities Act of 1933. Each director, officer,
1226 control person of the issuer, any person occupying a similar
1227 status or performing a similar function, and each person holding
1228 more than 20 percent of the shares of the intermediary is
1229 subject to this requirement.

1230 (e) If the office finds that the applicant is of good
1231 repute and character and has complied with the provisions of
1232 this chapter and the rules made pursuant hereto, it shall
1233 register the applicant. The registration of each intermediary
1234 expires on December 31 of the year the registration became
1235 effective unless the registrant has renewed his or her
1236 registration on or before that date. Registration may be renewed
1237 by furnishing such information as the commission may require by
1238 rule, together with payment of the fee of \$200 and the payment
1239 of any amount due to the office pursuant to any order of the
1240 office or pursuant to any agreement with the office. An
1241 intermediary who has not renewed a registration by filing with
1242 the office on or before January 31 of the year following the
1243 year of expiration must submit the information that may be
1244 required by the commission, together with payment of the \$200
1245 fee and a late fee of \$200. Any reinstatement of registration



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1246 granted by the office during the month of January shall be
1247 deemed effective retroactive to January 1 of that year.

1248 (21)(20) The registration requirements of this section do
1249 not apply to any general lines insurance agent or life insurance
1250 agent licensed under chapter 626, for the sale of a security as
1251 defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the
1252 individual is directly authorized by the issuer to offer or sell
1253 the security on behalf of the issuer and the issuer is a
1254 federally chartered savings bank subject to regulation by the
1255 Federal Deposit Insurance Corporation. Actions under this
1256 subsection shall constitute activity under the insurance agent's
1257 license for purposes of ss. 626.611 and 626.621.

1258 Section 5. Subsections (1) and (2) of section 517.121,
1259 Florida Statutes, are amended to read:

1260 517.121 Books and records requirements; examinations.-

1261 (1) A dealer, investment adviser, branch office, or
1262 associated person, or intermediary shall maintain such books and
1263 records as the commission may prescribe by rule.

1264 (2) The office shall, at intermittent periods, examine the
1265 affairs and books and records of each registered dealer,
1266 investment adviser, associated person, intermediary, or branch
1267 office notice-filed with the office, or require such records and
1268 reports to be submitted to it as required by rule of the
1269 commission, to determine compliance with this act.

1270 Section 6. Section 517.161, Florida Statutes, is amended to
1271 read:

1272 517.161 Revocation, denial, or suspension of registration
1273 of dealer, investment adviser, intermediary, or associated
1274 person.-



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1275 (1) Registration under s. 517.12 may be denied or any
1276 registration granted may be revoked, restricted, or suspended by
1277 the office if the office determines that such applicant or
1278 registrant; any member, principal, or director of the applicant
1279 or registrant or any person having a similar status or
1280 performing similar functions; or any person directly or
1281 indirectly controlling the applicant or registrant:

1282 (a) Has violated any provision of this chapter or any rule
1283 or order made under this chapter;

1284 (b) Has made a material false statement in the application
1285 for registration;

1286 (c) Has been guilty of a fraudulent act in connection with
1287 rendering investment advice or in connection with any sale of
1288 securities, has been or is engaged or is about to engage in
1289 making fictitious or pretended sales or purchases of any such
1290 securities or in any practice involving the rendering of
1291 investment advice or the sale of securities which is fraudulent
1292 or in violation of the law;

1293 (d) Has made a misrepresentation or false statement to, or
1294 concealed any essential or material fact from, any person in the
1295 rendering of investment advice or the sale of a security to such
1296 person;

1297 (e) Has failed to account to persons interested for all
1298 money and property received;

1299 (f) Has not delivered, after a reasonable time, to persons
1300 entitled thereto securities held or agreed to be delivered by
1301 the dealer, broker, or investment adviser, as and when paid for,
1302 and due to be delivered;

1303 (g) Is rendering investment advice or selling or offering



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1304 for sale securities through any associated person not registered
1305 in compliance with the provisions of this chapter;

1306 (h) Has demonstrated unworthiness to transact the business
1307 of dealer, investment adviser, intermediary, or associated
1308 person;

1309 (i) Has exercised management or policy control over or
1310 owned 10 percent or more of the securities of any dealer,
1311 intermediary, or investment adviser that has been declared
1312 bankrupt, or had a trustee appointed under the Securities
1313 Investor Protection Act; or is, in the case of a dealer,
1314 intermediary, or investment adviser, insolvent;

1315 (j) Has been convicted of, or has entered a plea of guilty
1316 or nolo contendere to, regardless of whether adjudication was
1317 withheld, a crime against the laws of this state or any other
1318 state or of the United States or of any other country or
1319 government which relates to registration as a dealer, investment
1320 adviser, issuer of securities, intermediary, or associated
1321 person; which relates to the application for such registration;
1322 or which involves moral turpitude or fraudulent or dishonest
1323 dealing;

1324 (k) Has had a final judgment entered against her or him in
1325 a civil action upon grounds of fraud, embezzlement,
1326 misrepresentation, or deceit;

1327 (l) Is of bad business repute;

1328 (m) Has been the subject of any decision, finding,
1329 injunction, suspension, prohibition, revocation, denial,
1330 judgment, or administrative order by any court of competent
1331 jurisdiction, administrative law judge, or by any state or
1332 federal agency, national securities, commodities, or option



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1333 exchange, or national securities, commodities, or option
1334 association, involving a violation of any federal or state
1335 securities or commodities law or any rule or regulation
1336 promulgated thereunder, or any rule or regulation of any
1337 national securities, commodities, or options exchange or
1338 national securities, commodities, or options association, or has
1339 been the subject of any injunction or adverse administrative
1340 order by a state or federal agency regulating banking,
1341 insurance, finance or small loan companies, real estate,
1342 mortgage brokers or lenders, money transmitters, or other
1343 related or similar industries. For purposes of this subsection,
1344 the office may not deny registration to any applicant who has
1345 been continuously registered with the office for 5 years after
1346 the date of entry of such decision, finding, injunction,
1347 suspension, prohibition, revocation, denial, judgment, or
1348 administrative order provided such decision, finding,
1349 injunction, suspension, prohibition, revocation, denial,
1350 judgment, or administrative order has been timely reported to
1351 the office pursuant to the commission's rules; or

1352 (n) Made payment to the office for a registration with a
1353 check or electronic transmission of funds that is dishonored by
1354 the applicant's or registrant's financial institution.

1355 (2) The payment or anticipated payment of any amount from
1356 the Securities Guaranty Fund in settlement of a claim or in
1357 satisfaction of a judgment against an applicant or registrant
1358 constitutes prima facie grounds for the denial of the
1359 applicant's application for registration or the revocation of
1360 the registrant's registration.

1361 (3) In the event the office determines to deny an



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1362 application or revoke a registration, it shall enter a final
1363 order with its findings on the register of dealers and
1364 associated persons; and denial, suspension, or revocation of the
1365 registration of a dealer, intermediary, or investment adviser
1366 shall also deny, suspend, or revoke the registration of all her
1367 or his associated persons.

1368 (4) It shall be sufficient cause for denial of an
1369 application or revocation of registration, in the case of a
1370 partnership, corporation, or unincorporated association, if any
1371 member of the partnership or any officer, director, or ultimate
1372 equitable owner of the corporation or association has committed
1373 any act or omission which would be cause for denying, revoking,
1374 restricting, or suspending the registration of an individual
1375 dealer, investment adviser, intermediary, or associated person.
1376 As used in this subsection, the term "ultimate equitable owner"
1377 means a natural person who directly or indirectly owns or
1378 controls an ownership interest in the corporation, partnership,
1379 association, or other legal entity however organized, regardless
1380 of whether such natural person owns or controls such ownership
1381 interest through one or more proxies, powers of attorney,
1382 nominees, corporations, associations, partnerships, trusts,
1383 joint stock companies, or other entities or devices, or any
1384 combination thereof.

1385 (5) The office may deny any request to terminate or
1386 withdraw any application or registration if the office believes
1387 that an act which would be a ground for denial, suspension,
1388 restriction, or revocation under this chapter has been
1389 committed.

1390 (6) Registration under s. 517.12 may be denied or any



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1391 registration granted may be suspended or restricted if an
1392 applicant or registrant is charged, in a pending enforcement
1393 action or pending criminal prosecution, with any conduct that
1394 would authorize denial or revocation under subsection (1).
1395 Registration under s. 517.12 may be suspended or restricted if a
1396 registrant is arrested for any conduct that would authorize
1397 revocation under subsection (1).

1398 (a) Any denial of registration ordered under this
1399 subsection shall be without prejudice to the applicant's ability
1400 to reapply for registration.

1401 (b) Any order of suspension or restriction under this
1402 subsection shall:

1403 1. Take effect only after a hearing, unless no hearing is
1404 requested by the registrant or unless the suspension or
1405 restriction is made in accordance with s. 120.60(6).

1406 2. Contain a finding that evidence of a prima facie case
1407 supports the charge made in the enforcement action or criminal
1408 prosecution.

1409 3. Operate for no longer than 10 days beyond receipt of
1410 notice by the office of termination with respect to the
1411 registrant of the enforcement action or criminal prosecution.

1412 (c) For purposes of this subsection:

1413 1. The term "enforcement action" means any judicial
1414 proceeding or any administrative proceeding where such judicial
1415 or administrative proceeding is brought by an agency of the
1416 United States or of any state to enforce or restrain violation
1417 of any state or federal law, or any disciplinary proceeding
1418 maintained by the Financial Industry Regulatory Authority, the
1419 National Futures Association, or any other similar self-



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1420 regulatory organization.

1421 2. An enforcement action is pending at any time after
1422 notice to the applicant or registrant of such action and is
1423 terminated at any time after entry of final judgment or decree
1424 in the case of judicial proceedings, final agency action in the
1425 case of administrative proceedings, and final disposition by a
1426 self-regulatory organization in the case of disciplinary
1427 proceedings.

1428 3. A criminal prosecution is pending at any time after
1429 criminal charges are filed and is terminated at any time after
1430 conviction, acquittal, or dismissal.

1431 Section 7. Paragraph (b) of subsection (4) of section
1432 626.9911, Florida Statutes, is amended to read:

1433 626.9911 Definitions.—As used in this act, the term:

1434 (4) "Life expectancy provider" means a person who
1435 determines, or holds himself or herself out as determining, life
1436 expectancies or mortality ratings used to determine life
1437 expectancies:

1438 (b) In connection with a viatical settlement investment,
1439 pursuant to s. 517.021(24) ~~s. 517.021(23)~~; or

1440 Section 8. For the 2015-2016 fiscal year, the sum of
1441 \$120,000 in nonrecurring funds from the Regulatory Trust Fund is
1442 appropriated to the Office of Financial Regulation for the
1443 purpose of implementing this act.

1444 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.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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 Act¹ (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.

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/jobact/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 506(d), 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senator Richter

597-03200-15

2015914c1

1 A bill to be entitled
 2 An act relating to intrastate crowdfunding; amending
 3 s. 517.021, F.S.; conforming a cross-reference;
 4 defining the term "intermediary" for purposes of the
 5 Florida Securities and Investor Protection Act;
 6 amending s. 517.061, F.S.; exempting offers or sales
 7 of securities by certain issuers from registration
 8 requirements; creating s. 517.0611, F.S.; providing a
 9 short title; exempting the intrastate offering and
 10 sale of certain securities from certain regulatory
 11 requirements; providing applicability; providing
 12 registration and reporting requirements for issuers
 13 and intermediaries offering such securities; requiring
 14 the issuer to provide to the office a copy of a
 15 specified escrow agreement; limiting the aggregate
 16 amount of sales of such securities within a specified
 17 period; limiting the aggregate amount of sales to
 18 specified investors; requiring an issuer to produce
 19 and distribute an annual report to investors;
 20 requiring a notice-filing to be suspended under
 21 certain circumstances; specifying that fees collected
 22 become revenue of the state; requiring a qualified
 23 third party to hold certain funds in escrow; amending
 24 s. 517.12, F.S.; providing registration requirements
 25 for an intermediary; conforming a cross-reference;
 26 amending s. 517.121, F.S.; requiring an intermediary
 27 to comply with specified recordkeeping requirements;
 28 amending s. 517.161, F.S.; including an intermediary
 29 in the disciplinary provisions; amending s. 626.9911,

Page 1 of 50

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

597-03200-15

2015914c1

30 F.S.; conforming a cross-reference; providing an
 31 effective date.
 32

33 Be It Enacted by the Legislature of the State of Florida:
 34

35 Section 1. Subsection (9) of section 517.021, Florida
 36 Statutes, is amended, subsections (13) through (23) are
 37 redesignated as subsections (14) through (24), respectively, and
 38 a new subsection (13) is added to that section, to read:

39 517.021 Definitions.—When used in this chapter, unless the
 40 context otherwise indicates, the following terms have the
 41 following respective meanings:

42 (9) "Federal covered adviser" means a person who is
 43 registered or required to be registered under s. 203 of the
 44 Investment Advisers Act of 1940. The term "federal covered
 45 adviser" does not include any person who is excluded from the
 46 definition of investment adviser under subparagraphs (14)(b)1.-
 47 8. ~~(13)(b)1.-8.~~

48 (13) "Intermediary" means a natural person residing in the
 49 state or a corporation, trust, partnership, association, or
 50 other legal entity registered with the Secretary of State to do
 51 business in the state which represents an issuer in a
 52 transaction involving the offer or sale of securities under s.
 53 517.061.

54 Section 2. Section 517.061, Florida Statutes, is amended to
 55 read:

56 517.061 Exempt transactions.—Except as otherwise provided
 57 in s. 517.0611 for a transaction listed in subsection (21), the
 58 exemption for each transaction listed below is self-executing

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59 and does not require any filing with the office before ~~prior to~~
 60 claiming ~~the such~~ exemption. Any person who claims entitlement
 61 to any of the exemptions bears the burden of proving such
 62 entitlement in any proceeding brought under this chapter. The
 63 registration provisions of s. 517.07 do not apply to any of the
 64 following transactions; however, such transactions are subject
 65 to the provisions of ss. 517.301, 517.311, and 517.312:

66 (1) At any judicial, executor's, administrator's,
 67 guardian's, or conservator's sale, or at any sale by a receiver
 68 or trustee in insolvency or bankruptcy, or any transaction
 69 incident to a judicially approved reorganization in which a
 70 security is issued in exchange for one or more outstanding
 71 securities, claims, or property interests.

72 (2) By or for the account of a pledgeholder or mortgagee
 73 selling or offering for sale or delivery in the ordinary course
 74 of business and not for the purposes of avoiding the provisions
 75 of this chapter, to liquidate a bona fide debt, a security
 76 pledged in good faith as security for such debt.

77 (3) The isolated sale or offer for sale of securities when
 78 made by or on behalf of a vendor not the issuer or underwriter
 79 of the securities, who, being the bona fide owner of such
 80 securities, disposes of her or his own property for her or his
 81 own account, and such sale is not made directly or indirectly
 82 for the benefit of the issuer or an underwriter of such
 83 securities or for the direct or indirect promotion of any scheme
 84 or enterprise with the intent of violating or evading any
 85 provision of this chapter. For purposes of this subsection,
 86 isolated offers or sales include, but are not limited to, an
 87 isolated offer or sale made by or on behalf of a vendor of

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88 securities not the issuer or underwriter of the securities if:

89 (a) The offer or sale of securities is in a transaction
 90 satisfying all of the requirements of subparagraphs (11)(a)1.,
 91 2., 3., and 4. and paragraph (11)(b); or

92 (b) The offer or sale of securities is in a transaction
 93 exempt under s. 4(1) of the Securities Act of 1933, as amended.

94
 95 For purposes of this subsection, any person, including, without
 96 limitation, a promoter or affiliate of an issuer, shall not be
 97 deemed an underwriter, an issuer, or a person acting for the
 98 direct or indirect benefit of the issuer or an underwriter with
 99 respect to any securities of the issuer which she or he has
 100 owned beneficially for at least 1 year.

101 (4) The distribution by a corporation, trust, or
 102 partnership, actively engaged in the business authorized by its
 103 charter or other organizational articles or agreement, of
 104 securities to its stockholders or other equity security holders,
 105 partners, or beneficiaries as a stock dividend or other
 106 distribution out of earnings or surplus.

107 (5) The issuance of securities to such equity security
 108 holders or other creditors of a corporation, trust, or
 109 partnership in the process of a reorganization of such
 110 corporation or entity, made in good faith and not for the
 111 purpose of avoiding the provisions of this chapter, either in
 112 exchange for the securities of such equity security holders or
 113 claims of such creditors or partly for cash and partly in
 114 exchange for the securities or claims of such equity security
 115 holders or creditors.

116 (6) Any transaction involving the distribution of the

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117 securities of an issuer exclusively among its own security
 118 holders, including any person who at the time of the transaction
 119 is a holder of any convertible security, any nontransferable
 120 warrant, or any transferable warrant which is exercisable within
 121 not more than 90 days of issuance, when no commission or other
 122 remuneration is paid or given directly or indirectly in
 123 connection with the sale or distribution of such additional
 124 securities.

125 (7) The offer or sale of securities to a bank, trust
 126 company, savings institution, insurance company, dealer,
 127 investment company as defined by the Investment Company Act of
 128 1940, pension or profit-sharing trust, or qualified
 129 institutional buyer as defined by rule of the commission in
 130 accordance with Securities and Exchange Commission Rule 144A (17
 131 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting
 132 in its individual or fiduciary capacity; provided that such
 133 offer or sale of securities is not for the direct or indirect
 134 promotion of any scheme or enterprise with the intent of
 135 violating or evading any provision of this chapter.

136 (8) The sale of securities from one corporation to another
 137 corporation provided that:

138 (a) The sale price of the securities is \$50,000 or more;
 139 and

140 (b) The buyer and seller corporations each have assets of
 141 \$500,000 or more.

142 (9) The offer or sale of securities from one corporation to
 143 another corporation, or to security holders thereof, pursuant to
 144 a vote or consent of such security holders as may be provided by
 145 the articles of incorporation and the applicable corporate

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146 statutes in connection with mergers, share exchanges,
 147 consolidations, or sale of corporate assets.

148 (10) The issuance of notes or bonds in connection with the
 149 acquisition of real property or renewals thereof, if such notes
 150 or bonds are issued to the sellers of, and are secured by all or
 151 part of, the real property so acquired.

152 (11)(a) The offer or sale, by or on behalf of an issuer, of
 153 its own securities, which offer or sale is part of an offering
 154 made in accordance with all of the following conditions:

155 1. There are no more than 35 purchasers, or the issuer
 156 reasonably believes that there are no more than 35 purchasers,
 157 of the securities of the issuer in this state during an offering
 158 made in reliance upon this subsection or, if such offering
 159 continues for a period in excess of 12 months, in any
 160 consecutive 12-month period.

161 2. Neither the issuer nor any person acting on behalf of
 162 the issuer offers or sells securities pursuant to this
 163 subsection by means of any form of general solicitation or
 164 general advertising in this state.

165 3. Before ~~Prior to~~ the sale, each purchaser or the
 166 purchaser's representative, if any, is provided with, or given
 167 reasonable access to, full and fair disclosure of all material
 168 information.

169 4. No person defined as a "dealer" in this chapter is paid
 170 a commission or compensation for the sale of the issuer's
 171 securities unless such person is registered as a dealer under
 172 this chapter.

173 5. When sales are made to five or more persons in this
 174 state, any sale in this state made pursuant to this subsection

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175 is voidable by the purchaser in such sale either within 3 days
 176 after the first tender of consideration is made by such
 177 purchaser to the issuer, an agent of the issuer, or an escrow
 178 agent or within 3 days after the availability of that privilege
 179 is communicated to such purchaser, whichever occurs later.

180 (b) The following purchasers are excluded from the
 181 calculation of the number of purchasers under subparagraph
 182 (a)1.:

183 1. Any relative or spouse, or relative of such spouse, of a
 184 purchaser who has the same principal residence as such
 185 purchaser.

186 2. Any trust or estate in which a purchaser, any of the
 187 persons related to such purchaser specified in subparagraph 1.,
 188 and any corporation specified in subparagraph 3. collectively
 189 have more than 50 percent of the beneficial interest (excluding
 190 contingent interest).

191 3. Any corporation or other organization of which a
 192 purchaser, any of the persons related to such purchaser
 193 specified in subparagraph 1., and any trust or estate specified
 194 in subparagraph 2. collectively are beneficial owners of more
 195 than 50 percent of the equity securities or equity interest.

196 4. Any purchaser who makes a bona fide investment of
 197 \$100,000 or more, provided such purchaser or the purchaser's
 198 representative receives, or has access to, the information
 199 required to be disclosed by subparagraph (a)3.

200 5. Any accredited investor, as defined by rule of the
 201 commission in accordance with Securities and Exchange Commission
 202 Regulation 230.501 (17 C.F.R. s. 230.501).

203 (c)1. For purposes of determining which offers and sales of

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204 securities constitute part of the same offering under this
 205 subsection and are therefore deemed to be integrated with one
 206 another:

207 a. Offers or sales of securities occurring more than 6
 208 months ~~before~~ ~~prior to~~ an offer or sale of securities made
 209 pursuant to this subsection shall not be considered part of the
 210 same offering, provided there are no offers or sales by or for
 211 the issuer of the same or a similar class of securities during
 212 such 6-month period.

213 b. Offers or sales of securities occurring at any time
 214 after 6 months from an offer or sale made pursuant to this
 215 subsection shall not be considered part of the same offering,
 216 provided there are no offers or sales by or for the issuer of
 217 the same or a similar class of securities during such 6-month
 218 period.

219 2. Offers or sales which do not satisfy the conditions of
 220 any of the provisions of subparagraph 1. may or may not be part
 221 of the same offering, depending on the particular facts and
 222 circumstances in each case. The commission may adopt a rule or
 223 rules indicating what factors should be considered in
 224 determining whether offers and sales not qualifying for the
 225 provisions of subparagraph 1. are part of the same offering for
 226 purposes of this subsection.

227 (d) Offers or sales of securities made pursuant to, and in
 228 compliance with, any other subsection of this section or any
 229 subsection of s. 517.051 shall not be considered part of an
 230 offering pursuant to this subsection, regardless of when such
 231 offers and sales are made.

232 (12) The sale of securities by a bank or trust company

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233 organized or incorporated under the laws of the United States or
 234 this state at a profit to such bank or trust company of not more
 235 than 2 percent of the total sale price of such securities;
 236 provided that there is no solicitation of this business by such
 237 bank or trust company where such bank or trust company acts as
 238 agent in the purchase or sale of such securities.

239 (13) An unsolicited purchase or sale of securities on order
 240 of, and as the agent for, another by a dealer registered
 241 pursuant to the provisions of s. 517.12; provided that this
 242 exemption applies solely and exclusively to such registered
 243 dealers and does not authorize or permit the purchase or sale of
 244 securities on order of, and as agent for, another by any person
 245 other than a dealer so registered; and provided, further, that
 246 such purchase or sale is not directly or indirectly for the
 247 benefit of the issuer or an underwriter of such securities or
 248 for the direct or indirect promotion of any scheme or enterprise
 249 with the intent of violation or evading any provision of this
 250 chapter.

251 (14) The offer or sale of shares of a corporation which
 252 represent ownership, or entitle the holders of the shares to
 253 possession and occupancy, of specific apartment units in
 254 property owned by such corporation and organized and operated on
 255 a cooperative basis, solely for residential purposes.

256 (15) The offer or sale of securities under a bona fide
 257 employer-sponsored stock option, stock purchase, pension,
 258 profit-sharing, savings, or other benefit plan when offered only
 259 to employees of the sponsoring organization or to employees of
 260 its controlled subsidiaries.

261 (16) The sale by or through a registered dealer of any

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262 securities option if at the time of the sale of the option:

263 (a) The performance of the terms of the option is
 264 guaranteed by any dealer registered under the federal Securities
 265 Exchange Act of 1934, as amended, which guaranty and dealer are
 266 in compliance with such requirements or rules as may be approved
 267 or adopted by the commission; or

268 (b) Such options transactions are cleared by the Options
 269 Clearing Corporation or any other clearinghouse recognized by
 270 the office; and

271 (c) The option is not sold by or for the benefit of the
 272 issuer of the underlying security; and

273 (d) The underlying security may be purchased or sold on a
 274 recognized securities exchange or is quoted on the National
 275 Association of Securities Dealers Automated Quotation System;
 276 and

277 (e) Such sale is not directly or indirectly for the purpose
 278 of providing or furthering any scheme to violate or evade any
 279 provisions of this chapter.

280 (17) (a) The offer or sale of securities, as agent or
 281 principal, by a dealer registered pursuant to s. 517.12, when
 282 such securities are offered or sold at a price reasonably
 283 related to the current market price of such securities, provided
 284 such securities are:

285 1. Securities of an issuer for which reports are required
 286 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
 287 of 1934, as amended;

288 2. Securities of a company registered under the Investment
 289 Company Act of 1940, as amended;

290 3. Securities of an insurance company, as that term is

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291 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
292 amended;

293 4. Securities, other than any security that is a federal
294 covered security pursuant to s. 18(b)(1) of the Securities Act
295 of 1933 and is not subject to any registration or filing
296 requirements under this act, which appear in any list of
297 securities dealt in on any stock exchange registered pursuant to
298 the Securities Exchange Act of 1934, as amended, and which
299 securities have been listed or approved for listing upon notice
300 of issuance by such exchange, and also all securities senior to
301 any securities so listed or approved for listing upon notice of
302 issuance, or represented by subscription rights which have been
303 so listed or approved for listing upon notice of issuance, or
304 evidences of indebtedness guaranteed by companies any stock of
305 which is so listed or approved for listing upon notice of
306 issuance, such securities to be exempt only so long as such
307 listings or approvals remain in effect. The exemption provided
308 for herein does not apply when the securities are suspended from
309 listing approval for listing or trading.

310 (b) The exemption provided in this subsection does not
311 apply if the sale is made for the direct or indirect benefit of
312 an issuer or controlling persons of such issuer or if such
313 securities constitute the whole or part of an unsold allotment
314 to, or subscription or participation by, a dealer as an
315 underwriter of such securities.

316 (c) This exemption shall not be available for any
317 securities which have been denied registration pursuant to s.
318 517.111. Additionally, the office may deny this exemption with
319 reference to any particular security, other than a federal

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320 covered security, by order published in such manner as the
321 office finds proper.

322 (18) The offer or sale of any security effected by or
323 through a person in compliance with s. 517.12(17).

324 (19) Other transactions defined by rules as transactions
325 exempted from the registration provisions of s. 517.07, which
326 rules the commission may adopt from time to time, but only after
327 a finding by the office that the application of the provisions
328 of s. 517.07 to a particular transaction is not necessary in the
329 public interest and for the protection of investors because of
330 the small dollar amount of securities involved or the limited
331 character of the offering. In conjunction with its adoption of
332 such rules, the commission may also provide in such rules that
333 persons selling or offering for sale the exempted securities are
334 exempt from the registration requirements of s. 517.12. No rule
335 so adopted may have the effect of narrowing or limiting any
336 exemption provided for by statute in the other subsections of
337 this section.

338 (20) Any nonissuer transaction by a registered associated
339 person of a registered dealer, and any resale transaction by a
340 sponsor of a unit investment trust registered under the
341 Investment Company Act of 1940, in a security of a class that
342 has been outstanding in the hands of the public for at least 90
343 days; provided, at the time of the transaction:

344 (a) The issuer of the security is actually engaged in
345 business and is not in the organization stage or in bankruptcy
346 or receivership and is not a blank check, blind pool, or shell
347 company whose primary plan of business is to engage in a merger
348 or combination of the business with, or an acquisition of, any

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349 unidentified person;

350 (b) The security is sold at a price reasonably related to
351 the current market price of the security;

352 (c) The security does not constitute the whole or part of
353 an unsold allotment to, or a subscription or participation by,
354 the broker-dealer as an underwriter of the security;

355 (d) A nationally recognized securities manual designated by
356 rule of the commission or order of the office or a document
357 filed with the Securities and Exchange Commission that is
358 publicly available through the commission's electronic data
359 gathering and retrieval system contains:

360 1. A description of the business and operations of the
361 issuer;

362 2. The names of the issuer's officers and directors, if
363 any, or, in the case of an issuer not domiciled in the United
364 States, the corporate equivalents of such persons in the
365 issuer's country of domicile;

366 3. An audited balance sheet of the issuer as of a date
367 within 18 months before such transaction or, in the case of a
368 reorganization or merger in which parties to the reorganization
369 or merger had such audited balance sheet, a pro forma balance
370 sheet; and

371 4. An audited income statement for each of the issuer's
372 immediately preceding 2 fiscal years, or for the period of
373 existence of the issuer, if in existence for less than 2 years
374 or, in the case of a reorganization or merger in which the
375 parties to the reorganization or merger had such audited income
376 statement, a pro forma income statement; and

377 (e) The issuer of the security has a class of equity

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378 securities listed on a national securities exchange registered
379 under the Securities Exchange Act of 1934 or designated for
380 trading on the National Association of Securities Dealers
381 Automated Quotation System, unless:

382 1. The issuer of the security is a unit investment trust
383 registered under the Investment Company Act of 1940;

384 2. The issuer of the security has been engaged in
385 continuous business, including predecessors, for at least 3
386 years; or

387 3. The issuer of the security has total assets of at least
388 \$2 million based on an audited balance sheet as of a date within
389 18 months before such transaction or, in the case of a
390 reorganization or merger in which parties to the reorganization
391 or merger had such audited balance sheet, a pro forma balance
392 sheet.

393 (21) The offer or sale of a security by an issuer conducted
394 in accordance with s. 517.0611.

395 Section 3. Section 517.0611, Florida Statutes, is created
396 to read:

397 517.0611 Intrastate crowdfunding.—

398 (1) This section may be cited as the "Florida Intrastate
399 Crowdfunding Exemption."

400 (2) Notwithstanding any other provision of this chapter, an
401 offer or sale of a security by an issuer is an exempt
402 transaction under s. 517.061 if the offer or sale is conducted
403 in accordance with this section. The exemption provided in this
404 section may not be used in conjunction with any other exemption
405 under s. 517.051 or s.517.061.

406 (3) The offer or sale of securities under this section must

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407 be conducted in accordance with the requirements of the federal
 408 exemption for intrastate offerings in s. 3(a)(11) of the
 409 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United
 410 States Securities and Exchange Commission Rule 147, 17 C.F.R. s.
 411 230.147, adopted pursuant to the Securities Act of 1933.

412 (4) An issuer must:

413 (a) Be a for-profit business entity formed under the laws
 414 of this state, be registered with the Secretary of State,
 415 maintain its principal place of business in this state, and
 416 derive its revenues primarily from operations in this state.

417 (b) Conduct transactions for the offering through a dealer
 418 registered with the office or an intermediary registered under
 419 s. 517.12(20).

420 (c) Not be, either before or as a result of the offering,
 421 an investment company as defined in s. 3 of the Investment
 422 Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the
 423 reporting requirements of s. 13 or s. 15(d) of the Securities
 424 Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

425 (d) Not be a company with an undefined business operation,
 426 a company that lacks a business plan, a company that lacks a
 427 stated investment goal for the funds being raised, or a company
 428 that plans to engage in a merger or acquisition with an
 429 unspecified business entity.

430 (e) Not be subject to a disqualification established by the
 431 commission or office or a disqualification described in s.
 432 517.1611 or United States Securities and Exchange Commission
 433 Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the
 434 Securities Act of 1933. Each director, officer, person occupying
 435 a similar status or performing a similar function, or person

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436 holding more than 20 percent of the shares of the issuer, is
 437 subject to this requirement.

438 (f) Execute an escrow agreement with a federally insured
 439 financial institution authorized to do business in this state
 440 for the deposit of investor funds, and ensure that all offering
 441 proceeds are provided to the issuer only when the aggregate
 442 capital raised from all investors is equal to or greater than
 443 the target offering amount.

444 (g) Allow investors to cancel a commitment to invest within
 445 3 business days before the offering deadline, as stated in the
 446 disclosure statement, and issue refunds to all investors if the
 447 target offering amount is not reached by the offering deadline.

448 (5) The issuer must file a notice of the offering with the
 449 office, in writing or in electronic form, in a format prescribed
 450 by commission rule, together with a nonrefundable filing fee of
 451 \$200. The commission may adopt rules establishing procedures for
 452 the deposit of fees and the filing of documents by electronic
 453 means if the procedures provide the office with the information
 454 and data required by this section. A notice is effective upon
 455 receipt of the completed form, filing fee, and an irrevocable
 456 written consent to service of civil process, as provided for in
 457 s. 517.101, by the office. The notice may be terminated by
 458 filing with the office a notice of termination. The notice and
 459 offering expire 12 months after filing the notice with the
 460 office and are not eligible for renewal. The notice must:

461 (a) Be filed with the office at least 10 days before the
 462 issuer commences an offering of securities or the offering is
 463 displayed on a website of an intermediary in reliance upon the
 464 exemption provided by this section.

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- 465 (b) Indicate that the issuer is conducting an offering in
 466 reliance upon the exemption provided by this section.
- 467 (c) Contain the name and contact information of the issuer.
- 468 (d) Identify any predecessors, owners, officers, directors,
 469 and control persons or any person occupying a similar status or
 470 performing a similar function of the issuer, including that
 471 person's title, his or her status as a partner, trustee, sole
 472 proprietor or similar role, and his or her ownership percentage.
- 473 (e) Identify the federally insured financial institution,
 474 authorized to do business in this state, in which investor funds
 475 will be deposited, in accordance with the escrow agreement.
- 476 (f) Require an attestation under oath that the issuer, its
 477 predecessors, affiliated issuers, directors, officers, and
 478 control persons, or any other person occupying a similar status
 479 or performing a similar function, are not currently and have not
 480 been within the past 10 years the subject of regulatory or
 481 criminal actions involving fraud or deceit.
- 482 (g) Include documentation verifying that the issuer is
 483 organized under the laws of this state and authorized to do
 484 business in this state.
- 485 (h) Include the intermediary's website address where the
 486 issuer's securities will be offered.
- 487 (i) Include the target offering amount.
- 488 (6) The issuer must amend the notice form within 30 days
 489 after any information contained in the notice becomes inaccurate
 490 for any reason. The commission may require, by rule, an issuer
 491 who has filed a notice under this section to file amendments
 492 with the office.
- 493 (7) The issuer must provide to investors and the dealer or

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- 494 intermediary, along with a copy to the office at the time the
 495 notice is filed, and make available to potential investors
 496 through the dealer or intermediary, a disclosure statement
 497 containing material information about the issuer and the
 498 offering, including:
- 499 (a) The name, legal status, physical address, and website
 500 address of the issuer.
- 501 (b) The names of the directors, officers, and any person
 502 occupying a similar status or performing a similar function, and
 503 the name of each person holding more than 20 percent of the
 504 shares of the issuer.
- 505 (c) A description of the business of the issuer and the
 506 anticipated business plan of the issuer.
- 507 (d) A description of the stated purpose and intended use of
 508 the proceeds of the offering.
- 509 (e) The target offering amount, the deadline to reach the
 510 target offering amount, and regular updates regarding the
 511 progress of the issuer in meeting the target offering amount.
- 512 (f) The price to the public of the securities or the method
 513 for determining the price, provided that before the sale each
 514 investor receives in writing the final price and all required
 515 disclosures, with an opportunity to rescind the commitment to
 516 purchase the securities.
- 517 (g) A description of the ownership and capital structure of
 518 the issuer, including:
- 519 1. Terms of the securities being offered and each class of
 520 security of the issuer, including how those terms may be
 521 modified, and a summary of the differences between such
 522 securities, including how the rights of the securities being

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523 offered may be materially limited, diluted, or qualified by
 524 rights of any other class of security of the issuer;
 525 2. A description of how the exercise of the rights held by
 526 the principal shareholders of the issuer could negatively impact
 527 the purchasers of the securities being offered;
 528 3. The name and ownership level of each existing
 529 shareholder who owns more than 20 percent of any class of the
 530 securities of the issuer;
 531 4. How the securities being offered are being valued, and
 532 examples of methods of how such securities may be valued by the
 533 issuer in the future, including during subsequent corporate
 534 actions; and
 535 5. The risks to purchasers of the securities relating to
 536 minority ownership in the issuer, the risks associated with
 537 corporate action, including additional issuances of shares, a
 538 sale of the issuer or of assets of the issuer, or transactions
 539 with related parties.
 540 (h) A description of the financial condition of the issuer.
 541 1. For offerings that, in combination with all other
 542 offerings of the issuer within the preceding 12-month period,
 543 have target offering amounts of \$100,000 or less, the
 544 description must include the most recent income tax return filed
 545 by the issuer, if any, and a financial statement that must be
 546 certified by the principal executive officer of the issuer as
 547 true and complete in all material respects.
 548 2. For offerings that, in combination with all other
 549 offerings of the issuer within the preceding 12-month period,
 550 have target offering amounts of more than \$100,000, but not more
 551 than \$500,000, the description must include financial statements

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552 prepared in accordance with generally accepted accounting
 553 principles and reviewed by a certified public accountant, as
 554 defined in s. 473.302, who is independent of the issuer, using
 555 professional standards and procedures for such review or
 556 standards and procedures established by the office, by rule, for
 557 such purpose.
 558 3. For offerings that, in combination with all other
 559 offerings of the issuer within the preceding 12-month period,
 560 have target offering amounts of more than \$500,000, the
 561 description must include audited financial statements prepared
 562 in accordance with generally accepted accounting principles by a
 563 certified public accountant, as defined in s. 473.302, who is
 564 independent of the issuer, and other requirements as the
 565 commission may establish by rule.
 566 (i) The following statement in boldface, conspicuous type
 567 on the front page of the disclosure statement:
 568
 569 These securities are offered under and will be sold in reliance
 570 upon an exemption from the registration requirements of federal
 571 and Florida securities laws. Consequently, neither the Federal
 572 Government nor the State of Florida has reviewed the accuracy or
 573 completeness of any offering materials. In making an investment
 574 decision, investors must rely on their own examination of the
 575 issuer and the terms of the offering, including the merits and
 576 risks involved. These securities are subject to restrictions on
 577 transferability and resale and may not be transferred or resold
 578 except as specifically authorized by applicable federal and
 579 state securities laws. Investing in these securities involves a
 580 speculative risk, and investors should be able to bear the loss

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581 of their entire investment.

582 (8) The issuer shall provide to the office a copy of the
 583 escrow agreement with a financial institution authorized to
 584 conduct business in this state. All investor funds must be
 585 deposited in the escrow account. The escrow agreement must
 586 require that all offering proceeds be released to the issuer
 587 only when the aggregate capital raised from all investors is
 588 equal to or greater than the minimum target offering amount
 589 specified in the disclosure statement as necessary to implement
 590 the business plan, and that all investors will receive a full
 591 return of their investment commitment if that target offering
 592 amount is not raised by the date stated in the disclosure
 593 statement.

594 (9) The sum of all cash and other consideration received
 595 for sales of a security under this section may not exceed \$1
 596 million, less the aggregate amount received for all sales of
 597 securities by the issuer within the 12 months preceding the
 598 first offer or sale made in reliance upon this exemption. Offers
 599 or sales to a person owning 20 percent or more of the
 600 outstanding shares of any class or classes of securities or to
 601 an officer, director, partner, or trustee, or a person occupying
 602 a similar status, do not count toward this limitation.

603 (10) Unless the investor is an accredited investor as
 604 defined by Rule 501 of Regulation D, adopted pursuant to the
 605 Securities Act of 1933, the aggregate amount sold by an issuer
 606 to an investor in transactions exempt from registration
 607 requirements under this subsection in a 12-month period may not
 608 exceed:

609 (a) The greater of \$2,000 or 5 percent of the annual income

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610 or net worth of such investor, if the annual income or the net
 611 worth of the investor is less than \$100,000.

612 (b) Ten percent of the annual income or net worth of such
 613 investor, not to exceed a maximum aggregate amount sold of
 614 \$100,000, if either the annual income or net worth of the
 615 investor is equal to or exceeds \$100,000.

616 (11) The issuer shall file with the office and provide to
 617 investors free of charge an annual report of the results of
 618 operations and financial statements of the issuer within 45 days
 619 of its fiscal year end, until no securities under this offering
 620 are outstanding. The annual reports must meet the following
 621 requirements:

622 (a) Include an analysis by management of the issuer of the
 623 business operations and the financial condition of the issuer,
 624 and disclose the compensation received by each director,
 625 executive officer, and person having an ownership interest of 20
 626 percent or more of the issuer, including cash compensation
 627 earned since the previous report and on an annual basis, and any
 628 bonuses, stock options, other rights to receive securities of
 629 the issuer, or any affiliate of the issuer, or other
 630 compensation received.

631 (b) Disclose any material change to information contained
 632 in the disclosure statements which was not disclosed in a
 633 previous report.

634 (12) (a) A notice-filing under this section shall be
 635 summarily suspended by the office if the payment for the filing
 636 is dishonored by the financial institution upon which the funds
 637 are drawn. For purposes of s. 120.60(6), failure to pay the
 638 required notice filing fee constitutes an immediate and serious

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639 danger to the public health, safety, and welfare. The office
 640 shall enter a final order revoking a notice-filing in which the
 641 payment for the filing is dishonored by the financial
 642 institution upon which the funds are drawn.

643 (b) A notice-filing under this section shall be summarily
 644 suspended by the office if the issuer made a material false
 645 statement in the issuer's notice-filing. The summary suspension
 646 shall remain in effect until a final order is entered by the
 647 office. For purposes of s. 120.60(6), a material false statement
 648 made in the issuer's notice-filing constitutes an immediate and
 649 serious danger to the public health, safety, and welfare. If an
 650 issuer made a material false statement in the issuer's notice-
 651 filing, the office shall enter a final order revoking the
 652 notice-filing, issue a fine as prescribed by s. 517.221(3), and
 653 issue permanent bars under s. 517.221(4) to the issuer and all
 654 owners, officers, directors, and control persons, or any person
 655 occupying a similar status or performing a similar function of
 656 the issuer, including titles; status as a partner, trustee, sole
 657 proprietor, or similar roles; and ownership percentage.

658 (13) All fees collected under this section become the
 659 revenue of the state, except for those assessments provided for
 660 under s. 517.131(1) until such time as the Securities Guaranty
 661 Fund satisfies the statutory limits, and are not returnable in
 662 the event that a notice filing is withdrawn.

663 (14) An intermediary must:

664 (a) Take measures, as established by commission rule, to
 665 reduce the risk of fraud with respect to transactions, including
 666 verifying that the issuer is in compliance with the requirements
 667 of this section and, if necessary, denying an issuer access to

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668 its platform if the intermediary believes it is unable to
 669 adequately assess the risk of fraud of the issuer or its
 670 potential offering.

671 (b) Provide basic information on its website regarding the
 672 high risk of investment in and limitation on the resale of
 673 exempt securities and the potential for loss of an entire
 674 investment. The basic information must include:

675 1. A description of the escrow agreement that the issuer
 676 has executed and the conditions for release of such funds to the
 677 issuer in accordance with the agreement and subsection (4).

678 2. A description of whether financial information provided
 679 by the issuer has been audited by an independent certified
 680 public accountant, as defined in s. 473.302.

681 (c) Obtain a zip code or residence address from each
 682 potential investor who seeks to view information regarding
 683 specific investment opportunities, in order to confirm that the
 684 potential investor is a resident of this state.

685 (d) Obtain and verify, pursuant to commission rule, a valid
 686 Florida driver license number or official identification card
 687 number from each investor before purchase of a security or other
 688 information, as defined by commission rule, to confirm that the
 689 investor is a resident of the state.

690 (e) Obtain an affidavit from each investor stating that the
 691 investment being made by the investor is consistent with the
 692 income requirements of subsection (10).

693 (f) Direct the release of investor funds in escrow in
 694 accordance with subsection (4).

695 (g) Direct investors to transmit funds directly to the
 696 financial institution designated in the escrow agreement to hold

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697 the funds for the benefit of the investor.

698 (h) Provide a monthly update for each offering, after the
 699 first full month after the date of the offering. The update must
 700 be accessible on the intermediary's website and must display the
 701 date and amount of each sale of securities, and each
 702 cancellation of commitment to invest in the previous calendar
 703 month.

704 (i) Require each investor to certify in writing, including
 705 as part of such certification his or her signature and his or
 706 her initials next to each paragraph of the certification, as
 707 follows:

708
 709 I understand and acknowledge that:

710
 711 I am investing in a high-risk, speculative business venture. I
 712 may lose all of my investment, and I can afford the loss of my
 713 investment.

714
 715 This offering has not been reviewed or approved by any state or
 716 federal securities commission or other regulatory authority and
 717 no regulatory authority has confirmed the accuracy or determined
 718 the adequacy of any disclosure made to me relating to this
 719 offering.

720
 721 The securities I am acquiring in this offering are illiquid and
 722 are subject to possible dilution. There is no ready market for
 723 the sale of the securities. It may be difficult or impossible
 724 for me to sell or otherwise dispose of the securities, and I may
 725 be required to hold the securities indefinitely.

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726
 727 I may be subject to tax on my share of the taxable income and
 728 losses of the issuer, whether or not I have sold or otherwise
 729 disposed of my investment or received any dividends or other
 730 distributions from the issuer.

731
 732 By entering into this transaction with the issuer, I am
 733 affirmatively representing myself as being a Florida resident at
 734 the time this contract is formed, and if this representation is
 735 subsequently shown to be false, the contract is void.

736
 737 If I resell any of the securities I am acquiring in this
 738 offering to a person that is not a Florida resident within 9
 739 months after the closing of the offering, my contract with the
 740 issuer for the purchase of these securities is void.

741
 742 (j) Require each investor to answer questions demonstrating
 743 an understanding of the level of risk generally applicable to
 744 investments in startups, emerging businesses, and small issuers,
 745 and an understanding of the risk of illiquidity.

746 (k) Take reasonable steps to protect personal information
 747 collected from investors, as required by s. 501.171.

748 (l) Prohibit its directors and officers from having any
 749 financial interest in the issuer using its services.

750 (m) Implement written policies and procedures that are
 751 reasonably designed to achieve compliance with federal and state
 752 securities laws; comply with anti-money laundering requirements
 753 of 31 C.F.R. ch. X applicable to registered brokers; and comply
 754 with the privacy requirements of 17 C.F.R. part 248 as they

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755 apply to brokers.756 (15) An intermediary not registered as a dealer under s.
757 517.12(6) may not:758 (a) Offer investment advice or recommendations. A refusal
759 by an intermediary to post an offering that it deems not
760 credible or that represents a potential for fraud may not be
761 construed as an offer of investment advice or recommendation.762 (b) Solicit purchases, sales, or offers to buy securities
763 offered or displayed on its website.764 (c) Compensate employees, agents, or other persons for the
765 solicitation or based on the sale of securities offered or
766 displayed on its website.767 (d) Hold, manage, possess, or otherwise handle investor
768 funds or securities.769 (e) Compensate promoters, finders, or lead generators for
770 providing the intermediary with the personal identifying
771 information of any potential investor.772 (f) Engage in any other activities set forth by commission
773 rule.774 (16) All funds received from investors must be directed to
775 the financial institution designated in the escrow agreement to
776 hold the funds and must be used in accordance with
777 representations made to investors by the intermediary. If an
778 investor cancels a commitment to invest, the intermediary must
779 direct the financial institution designated to hold the funds to
780 promptly refund the funds of the investor.781 Section 4. Section 517.12, Florida Statutes, is amended to
782 read:

783 517.12 Registration of dealers, associated persons,

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784 intermediaries, and investment advisers.-785 (1) No dealer, associated person, or issuer of securities
786 shall sell or offer for sale any securities in or from offices
787 in this state, or sell securities to persons in this state from
788 offices outside this state, by mail or otherwise, unless the
789 person has been registered with the office pursuant to the
790 provisions of this section. The office shall not register any
791 person as an associated person of a dealer unless the dealer
792 with which the applicant seeks registration is lawfully
793 registered with the office pursuant to this chapter.794 (2) The registration requirements of this section do not
795 apply to the issuers of securities exempted by s. 517.051(1)-(8)
796 and (10).797 (3) Except as otherwise provided in s. 517.061(11)(a)4.,
798 (13), (16), (17), or (19), the registration requirements of this
799 section do not apply in a transaction exempted by s. 517.061(1)-
800 (12), (14), and (15).801 (4) No investment adviser or associated person of an
802 investment adviser or federal covered adviser shall engage in
803 business from offices in this state, or render investment advice
804 to persons of this state, by mail or otherwise, unless the
805 federal covered adviser has made a notice-filing with the office
806 pursuant to s. 517.1201 or the investment adviser is registered
807 pursuant to the provisions of this chapter and associated
808 persons of the federal covered adviser or investment adviser
809 have been registered with the office pursuant to this section.
810 The office shall not register any person or an associated person
811 of a federal covered adviser or an investment adviser unless the
812 federal covered adviser or investment adviser with which the

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813 applicant seeks registration is in compliance with the notice-
 814 filing requirements of s. 517.1201 or is lawfully registered
 815 with the office pursuant to this chapter. A dealer or associated
 816 person who is registered pursuant to this section may render
 817 investment advice upon notification to and approval from the
 818 office.

819 (5) No dealer or investment adviser shall conduct business
 820 from a branch office within this state unless the branch office
 821 is notice-filed with the office pursuant to s. 517.1202.

822 (6) A dealer, associated person, or investment adviser, in
 823 order to obtain registration, must file with the office a
 824 written application, on a form which the commission may by rule
 825 prescribe. The commission may establish, by rule, procedures for
 826 depositing fees and filing documents by electronic means
 827 provided such procedures provide the office with the information
 828 and data required by this section. Each dealer or investment
 829 adviser must also file an irrevocable written consent to service
 830 of civil process similar to that provided for in s. 517.101. The
 831 application shall contain such information as the commission or
 832 office may require concerning such matters as:

833 (a) The name of the applicant and the address of its
 834 principal office and each office in this state.

835 (b) The applicant's form and place of organization; and, if
 836 the applicant is a corporation, a copy of its articles of
 837 incorporation and amendments to the articles of incorporation
 838 or, if a partnership, a copy of the partnership agreement.

839 (c) The applicant's proposed method of doing business and
 840 financial condition and history, including a certified financial
 841 statement showing all assets and all liabilities, including

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842 contingent liabilities of the applicant as of a date not more
 843 than 90 days prior to the filing of the application.

844 (d) The names and addresses of all associated persons of
 845 the applicant to be employed in this state and the offices to
 846 which they will be assigned.

847 (7) The application must also contain such information as
 848 the commission or office may require about the applicant; any
 849 member, principal, or director of the applicant or any person
 850 having a similar status or performing similar functions; any
 851 person directly or indirectly controlling the applicant; or any
 852 employee of a dealer or of an investment adviser rendering
 853 investment advisory services. Each applicant and any direct
 854 owners, principals, or indirect owners that are required to be
 855 reported on Form BD or Form ADV pursuant to subsection (15)
 856 shall submit fingerprints for live-scan processing in accordance
 857 with rules adopted by the commission. The fingerprints may be
 858 submitted through a third-party vendor authorized by the
 859 Department of Law Enforcement to provide live-scan
 860 fingerprinting. The costs of fingerprint processing shall be
 861 borne by the person subject to the background check. The
 862 Department of Law Enforcement shall conduct a state criminal
 863 history background check, and a federal criminal history
 864 background check must be conducted through the Federal Bureau of
 865 Investigation. The office shall review the results of the state
 866 and federal criminal history background checks and determine
 867 whether the applicant meets licensure requirements. The
 868 commission may waive, by rule, the requirement that applicants,
 869 including any direct owners, principals, or indirect owners that
 870 are required to be reported on Form BD or Form ADV pursuant to

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871 subsection (15), submit fingerprints or the requirement that
 872 such fingerprints be processed by the Department of Law
 873 Enforcement or the Federal Bureau of Investigation. The
 874 commission or office may require information about any such
 875 applicant or person concerning such matters as:

876 (a) His or her full name, and any other names by which he
 877 or she may have been known, and his or her age, social security
 878 number, photograph, qualifications, and educational and business
 879 history.

880 (b) Any injunction or administrative order by a state or
 881 federal agency, national securities exchange, or national
 882 securities association involving a security or any aspect of the
 883 securities business and any injunction or administrative order
 884 by a state or federal agency regulating banking, insurance,
 885 finance, or small loan companies, real estate, mortgage brokers,
 886 or other related or similar industries, which injunctions or
 887 administrative orders relate to such person.

888 (c) His or her conviction of, or plea of nolo contendere
 889 to, a criminal offense or his or her commission of any acts
 890 which would be grounds for refusal of an application under s.
 891 517.161.

892 (d) The names and addresses of other persons of whom the
 893 office may inquire as to his or her character, reputation, and
 894 financial responsibility.

895 (8) The commission or office may require the applicant or
 896 one or more principals or general partners, or natural persons
 897 exercising similar functions, or any associated person applicant
 898 to successfully pass oral or written examinations. Because any
 899 principal, manager, supervisor, or person exercising similar

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900 functions shall be responsible for the acts of the associated
 901 persons affiliated with a dealer, the examination standards may
 902 be higher for a dealer, office manager, principal, or person
 903 exercising similar functions than for a nonsupervisory
 904 associated person. The commission may waive the examination
 905 process when it determines that such examinations are not in the
 906 public interest. The office shall waive the examination
 907 requirements for any person who has passed any tests as
 908 prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934
 909 that relates to the position to be filled by the applicant.

910 (9) (a) All dealers, except securities dealers who are
 911 designated by the Federal Reserve Bank of New York as primary
 912 government securities dealers or securities dealers registered
 913 as issuers of securities, shall comply with the net capital and
 914 ratio requirements imposed pursuant to the Securities Exchange
 915 Act of 1934. The commission may by rule require a dealer to file
 916 with the office any financial or operational information that is
 917 required to be filed by the Securities Exchange Act of 1934 or
 918 any rules adopted under such act.

919 (b) The commission may by rule require the maintenance of a
 920 minimum net capital for securities dealers who are designated by
 921 the Federal Reserve Bank of New York as primary government
 922 securities dealers and securities dealers registered as issuers
 923 of securities and investment advisers, or prescribe a ratio
 924 between net capital and aggregate indebtedness, to assure
 925 adequate protection for the investing public. The provisions of
 926 this section shall not apply to any investment adviser that
 927 maintains its principal place of business in a state other than
 928 this state, provided such investment adviser is registered in

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929 the state where it maintains its principal place of business and
 930 is in compliance with such state's net capital requirements.

931 (10) An applicant for registration shall pay an assessment
 932 fee of \$200, in the case of a dealer or investment adviser, or
 933 \$50, in the case of an associated person. An associated person
 934 may be assessed an additional fee to cover the cost for the
 935 fingerprints to be processed by the office. Such fee shall be
 936 determined by rule of the commission. Such fees become the
 937 revenue of the state, except for those assessments provided for
 938 under s. 517.131(1) until such time as the Securities Guaranty
 939 Fund satisfies the statutory limits, and are not returnable in
 940 the event that registration is withdrawn or not granted.

941 (11) If the office finds that the applicant is of good
 942 repute and character and has complied with the provisions of
 943 this chapter and the rules made pursuant hereto, it shall
 944 register the applicant. The registration of each dealer,
 945 investment adviser, and associated person expires on December 31
 946 of the year the registration became effective unless the
 947 registrant has renewed his or her registration on or before that
 948 date. Registration may be renewed by furnishing such information
 949 as the commission may require, together with payment of the fee
 950 required in subsection (10) for dealers, investment advisers, or
 951 associated persons and the payment of any amount lawfully due
 952 and owing to the office pursuant to any order of the office or
 953 pursuant to any agreement with the office. Any dealer,
 954 investment adviser, or associated person who has not renewed a
 955 registration by the time the current registration expires may
 956 request reinstatement of such registration by filing with the
 957 office, on or before January 31 of the year following the year

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958 of expiration, such information as may be required by the
 959 commission, together with payment of the fee required in
 960 subsection (10) for dealers, investment advisers, or associated
 961 persons and a late fee equal to the amount of such fee. Any
 962 reinstatement of registration granted by the office during the
 963 month of January shall be deemed effective retroactive to
 964 January 1 of that year.

965 (12) (a) The office may issue a license to a dealer,
 966 investment adviser, or associated person to evidence
 967 registration under this chapter. The office may require the
 968 return to the office of any license it may issue prior to
 969 issuing a new license.

970 (b) Every dealer, investment adviser, or federal covered
 971 adviser shall promptly file with the office, as prescribed by
 972 rules adopted by the commission, notice as to the termination of
 973 employment of any associated person registered for such dealer
 974 or investment adviser in this state and shall also furnish the
 975 reason or reasons for such termination.

976 (c) Each dealer or investment adviser shall designate in
 977 writing to, and register with, the office a manager for each
 978 office the dealer or investment adviser has in this state.

979 (13) Changes in registration occasioned by changes in
 980 personnel of a partnership or in the principals, copartners,
 981 officers, or directors of any dealer or investment adviser or by
 982 changes of any material fact or method of doing business shall
 983 be reported by written amendment in such form and at such time
 984 as the commission may specify. In any case in which a person or
 985 a group of persons, directly or indirectly or acting by or
 986 through one or more persons, proposes to purchase or acquire a

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987 controlling interest in a registered dealer or investment
 988 adviser, such person or group shall submit an initial
 989 application for registration as a dealer or investment adviser
 990 prior to such purchase or acquisition. The commission shall
 991 adopt rules providing for waiver of the application required by
 992 this subsection where control of a registered dealer or
 993 investment adviser is to be acquired by another dealer or
 994 investment adviser registered under this chapter or where the
 995 application is otherwise unnecessary in the public interest.

996 (14) Every dealer or investment adviser registered or
 997 required to be registered or branch office notice-filed or
 998 required to be notice-filed with the office shall keep records
 999 of all currency transactions in excess of \$10,000 and shall file
 1000 reports, as prescribed under the financial recordkeeping
 1001 regulations in 31 C.F.R. part 103, with the office when
 1002 transactions occur in or from this state. All reports required
 1003 by this subsection to be filed with the office shall be
 1004 confidential and exempt from s. 119.07(1) except that any law
 1005 enforcement agency or the Department of Revenue shall have
 1006 access to, and shall be authorized to inspect and copy, such
 1007 reports.

1008 (15) (a) In order to facilitate uniformity and streamline
 1009 procedures for persons who are subject to registration or
 1010 notification in multiple jurisdictions, the commission may adopt
 1011 by rule uniform forms that have been approved by the Securities
 1012 and Exchange Commission, and any subsequent amendments to such
 1013 forms, if the forms are substantially consistent with the
 1014 provisions of this chapter. Uniform forms that the commission
 1015 may adopt to administer this section include, but are not

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1016 limited to:

- 1017 1. Form BR, Uniform Branch Office Registration Form,
 1018 adopted October 2005.
- 1019 2. Form U4, Uniform Application for Securities Industry
 1020 Registration or Transfer, adopted October 2005.
- 1021 3. Form U5, Uniform Termination Notice for Securities
 1022 Industry Registration, adopted October 2005.
- 1023 4. Form ADV, Uniform Application for Investment Adviser
 1024 Registration, adopted October 2003.
- 1025 5. Form ADV-W, Notice of Withdrawal from Registration as an
 1026 Investment Adviser, adopted October 2003.
- 1027 6. Form BD, Uniform Application for Broker-Dealer
 1028 Registration, adopted July 1999.
- 1029 7. Form BDW, Uniform Request for Broker-Dealer Withdrawal,
 1030 adopted August 1999.

1031 (b) In lieu of filing with the office the applications
 1032 specified in subsection (6), the fees required by subsection
 1033 (10), the renewals required by subsection (11), and the
 1034 termination notices required by subsection (12), the commission
 1035 may by rule establish procedures for the deposit of such fees
 1036 and documents with the Central Registration Depository or the
 1037 Investment Adviser Registration Depository of the Financial
 1038 Industry Regulatory Authority, as developed under contract with
 1039 the North American Securities Administrators Association, Inc.

1040 (16) Except for securities dealers who are designated by
 1041 the Federal Reserve Bank of New York as primary government
 1042 securities dealers or securities dealers registered as issuers
 1043 of securities, every applicant for initial or renewal
 1044 registration as a securities dealer and every person registered

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1045 as a securities dealer shall be registered as a broker or dealer
 1046 with the Securities and Exchange Commission and shall be subject
 1047 to insurance coverage by the Securities Investor Protection
 1048 Corporation.

1049 (17) (a) A dealer that is located in Canada, does not have
 1050 an office or other physical presence in this state, and has made
 1051 a notice-filing in accordance with this subsection is exempt
 1052 from the registration requirements of this section and may
 1053 effect transactions in securities with or for, or induce or
 1054 attempt to induce the purchase or sale of any security by:

1055 1. A person from Canada who is present in this state and
 1056 with whom the Canadian dealer had a bona fide dealer-client
 1057 relationship before the person entered the United States; or

1058 2. A person from Canada who is present in this state and
 1059 whose transactions are in a self-directed, tax-advantaged
 1060 retirement plan in Canada of which the person is the holder or
 1061 contributor.

1062 (b) A notice-filing under this subsection must consist of
 1063 documents the commission by rule requires to be filed, together
 1064 with a consent to service of process and a nonrefundable filing
 1065 fee of \$200. The commission may establish by rule procedures for
 1066 the deposit of fees and the filing of documents to be made by
 1067 electronic means, if such procedures provide the office with the
 1068 information and data required by this section.

1069 (c) A Canadian dealer may make a notice-filing under this
 1070 subsection if the dealer provides to the office:

1071 1. A notice-filing in the form the commission requires by
 1072 rule.

1073 2. A consent to service of process.

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1074 3. Evidence that the Canadian dealer is registered as a
 1075 dealer in the jurisdiction in which the dealer's main office is
 1076 located.

1077 4. Evidence that the Canadian dealer is a member of a self-
 1078 regulatory organization or stock exchange in Canada.

1079 (d) The office may issue a permit to evidence the
 1080 effectiveness of a notice-filing for a Canadian dealer.

1081 (e) A notice-filing is effective upon receipt by the
 1082 office. A notice-filing expires on December 31 of the year in
 1083 which the filing becomes effective unless the Canadian dealer
 1084 has renewed the filing on or before that date. A Canadian dealer
 1085 may annually renew a notice-filing by furnishing to the office
 1086 such information as the office requires together with a renewal
 1087 fee of \$200 and the payment of any amount due and owing the
 1088 office pursuant to any agreement with the office. Any Canadian
 1089 dealer who has not renewed a notice-filing by the time a current
 1090 notice-filing expires may request reinstatement of such notice-
 1091 filing by filing with the office, on or before January 31 of the
 1092 year following the year the notice-filing expires, such
 1093 information as the commission requires by rule, together with
 1094 the payment of \$200 and a late fee of \$200. A reinstatement of a
 1095 notice-filing granted by the office during the month of January
 1096 is effective retroactively to January 1 of that year.

1097 (f) An associated person who represents a Canadian dealer
 1098 who has made a notice-filing under this subsection is exempt
 1099 from the registration requirements of this section and may
 1100 effect transactions in securities in this state as permitted for
 1101 a dealer under paragraph (a) if such person is registered in the
 1102 jurisdiction from which he or she is effecting transactions into

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1103 this state.

1104 (g) A Canadian dealer who has made a notice-filing under
1105 this subsection shall:

1106 1. Maintain its provincial or territorial registration and
1107 its membership in a self-regulatory organization or stock
1108 exchange in good standing.

1109 2. Provide the office upon request with its books and
1110 records relating to its business in this state as a dealer.

1111 3. Provide the office upon request notice of each civil,
1112 criminal, or administrative action initiated against the dealer.

1113 4. Disclose to its clients in this state that the dealer
1114 and its associated persons are not subject to the full
1115 regulatory requirements under this chapter.

1116 5. Correct any inaccurate information within 30 days after
1117 the information contained in the notice-filing becomes
1118 inaccurate for any reason.

1119 (h) An associated person representing a Canadian dealer who
1120 has made a notice-filing under this subsection shall:

1121 1. Maintain provincial or territorial registration in good
1122 standing.

1123 2. Provide the office upon request with notice of each
1124 civil, criminal, or administrative action initiated against such
1125 person.

1126 (i) A notice-filing may be terminated by filing notice of
1127 such termination with the office. Unless another date is
1128 specified by the Canadian dealer, such notice is effective upon
1129 receipt of the notice by the office.

1130 (j) All fees collected under this subsection become the
1131 revenue of the state, except those assessments provided for

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1132 under s. 517.131(1), until the Securities Guaranty Fund has
1133 satisfied the statutory limits. Such fees are not returnable if
1134 a notice-filing is withdrawn.

1135 (18) Every dealer or associated person registered or
1136 required to be registered with the office shall satisfy any
1137 continuing education requirements established by rule pursuant
1138 to law.

1139 (19) The registration requirements of this section which
1140 apply to investment advisers and associated persons do not apply
1141 to a commodity trading adviser who:

1142 (a) Is registered as such with the Commodity Futures
1143 Trading Commission pursuant to the Commodity Exchange Act.

1144 (b) Advises or exercises trading discretion, with respect
1145 to foreign currency options listed and traded exclusively on the
1146 Philadelphia Stock Exchange, on behalf of an "appropriate
1147 person" as defined by the Commodity Exchange Act.

1148
1149 The exemption provided in this subsection does not apply to a
1150 commodity trading adviser who engages in other activities that
1151 require registration under this chapter.

1152 (20) An intermediary may not engage in business in this
1153 state unless the intermediary is registered as a dealer or as an
1154 intermediary with the office pursuant to this section to
1155 facilitate the offer or sale of securities in accordance with s.
1156 517.0611. An intermediary, in order to obtain registration, must
1157 file with the office a written application on a form prescribed
1158 by commission rule and pay a registration fee of \$200. The
1159 commission may establish by rule procedures for depositing fees
1160 and filing documents by electronic means if such procedures

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1161 provide the office with the information and data required by
 1162 this section. Each intermediary must also file an irrevocable
 1163 written consent to service of civil process, as provided for in
 1164 s. 517.101.

1165 (a) The application must contain such information as the
 1166 commission or office may require concerning:

1167 1. The name of the applicant and address of its principal
 1168 office and each office in this state.

1169 2. The applicant's form and place of organization; and if
 1170 the applicant is a corporation, a copy of its articles of
 1171 incorporation and amendments to the articles of incorporation
 1172 or, if a partnership, a copy of the partnership agreement.

1173 3. The website address where securities of the issuer will
 1174 be offered.

1175 4. Contact information.

1176 (b) The application must also contain such information as
 1177 the commission may require by rule about the applicant; any
 1178 member, principal, or director of the applicant or any person
 1179 having a similar status or performing similar functions; or any
 1180 persons directly or indirectly controlling the applicant. Each
 1181 applicant and any direct owners, principals, or indirect owners
 1182 that are required to be reported on a form adopted by commission
 1183 rule shall submit fingerprints for live-scan processing in
 1184 accordance with rules adopted by the commission. The
 1185 fingerprints may be submitted through a third-party vendor
 1186 authorized by the Department of Law Enforcement to provide live-
 1187 scan fingerprinting. The costs of fingerprint processing shall
 1188 be borne by the person subject to the background check. The
 1189 Department of Law Enforcement shall conduct a state criminal

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1190 history background check, and a federal criminal history
 1191 background check must be conducted through the Federal Bureau of
 1192 Investigation. The office shall review the results of the state
 1193 and federal criminal history background checks and determine
 1194 whether the applicant meets licensure requirements. The
 1195 commission may waive, by rule, the requirement that applicants,
 1196 including any direct owners, principals, or indirect owners,
 1197 that are required to be reported on a form adopted by commission
 1198 rule submit fingerprints or the requirement that such
 1199 fingerprints be processed by the Department of Law Enforcement
 1200 or the Federal Bureau of Investigation. The commission, by rule,
 1201 or the office may require information about any applicant or
 1202 person concerning such matters as:

1203 1. His or her full name and any other names by which he or
 1204 she may have been known and his or her age, social security
 1205 number, photograph, qualifications, and educational and business
 1206 history.

1207 2. Any injunction or administrative order by a state or
 1208 federal agency, national securities exchange, or national
 1209 securities association involving a security or any aspect of the
 1210 securities business and any injunction or administrative order
 1211 by a state or federal agency regulating banking, insurance,
 1212 finance, or small loan companies, real estate, mortgage brokers,
 1213 or other related or similar industries, which relate to such
 1214 person.

1215 3. His or her conviction of, or plea of nolo contendere to,
 1216 a criminal offense or his or her commission of any acts that
 1217 would be grounds for refusal of an application under s. 517.161.

1218 (c) The application must be amended within 30 days if any

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1219 information contained in the form becomes inaccurate for any
 1220 reason.

1221 (d) An intermediary or persons affiliated with the
 1222 intermediary may not be subject to any disqualification
 1223 described in s. 517.1611 or the United States Securities and
 1224 Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted
 1225 pursuant to the Securities Act of 1933. Each director, officer,
 1226 control person of the issuer, any person occupying a similar
 1227 status or performing a similar function, and each person holding
 1228 more than 20 percent of the shares of the intermediary is
 1229 subject to this requirement.

1230 (e) If the office finds that the applicant is of good
 1231 repute and character and has complied with the provisions of
 1232 this chapter and the rules made pursuant hereto, it shall
 1233 register the applicant. The registration of each intermediary
 1234 expires on December 31 of the year the registration became
 1235 effective unless the registrant has renewed his or her
 1236 registration on or before that date. Registration may be renewed
 1237 by furnishing such information as the commission may require by
 1238 rule, together with payment of the fee of \$200 and the payment
 1239 of any amount due to the office pursuant to any order of the
 1240 office or pursuant to any agreement with the office. An
 1241 intermediary who has not renewed a registration by filing with
 1242 the office on or before January 31 of the year following the
 1243 year of expiration must submit the information that may be
 1244 required by the commission, together with payment of the \$200
 1245 fee and a late fee of \$200. Any reinstatement of registration
 1246 granted by the office during the month of January shall be
 1247 deemed effective retroactive to January 1 of that year.

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1248 (21)(20) The registration requirements of this section do
 1249 not apply to any general lines insurance agent or life insurance
 1250 agent licensed under chapter 626, for the sale of a security as
 1251 defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the
 1252 individual is directly authorized by the issuer to offer or sell
 1253 the security on behalf of the issuer and the issuer is a
 1254 federally chartered savings bank subject to regulation by the
 1255 Federal Deposit Insurance Corporation. Actions under this
 1256 subsection shall constitute activity under the insurance agent's
 1257 license for purposes of ss. 626.611 and 626.621.

1258 Section 5. Subsections (1) and (2) of section 517.121,
 1259 Florida Statutes, are amended to read:

1260 517.121 Books and records requirements; examinations.—

1261 (1) A dealer, investment adviser, branch office, or
 1262 associated person, or intermediary shall maintain such books and
 1263 records as the commission may prescribe by rule.

1264 (2) The office shall, at intermittent periods, examine the
 1265 affairs and books and records of each registered dealer,
 1266 investment adviser, associated person, intermediary, or branch
 1267 office notice-filed with the office, or require such records and
 1268 reports to be submitted to it as required by rule of the
 1269 commission, to determine compliance with this act.

1270 Section 6. Section 517.161, Florida Statutes, is amended to
 1271 read:

1272 517.161 Revocation, denial, or suspension of registration
 1273 of dealer, investment adviser, intermediary, or associated
 1274 person.—

1275 (1) Registration under s. 517.12 may be denied or any
 1276 registration granted may be revoked, restricted, or suspended by

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1277 the office if the office determines that such applicant or
 1278 registrant; any member, principal, or director of the applicant
 1279 or registrant or any person having a similar status or
 1280 performing similar functions; or any person directly or
 1281 indirectly controlling the applicant or registrant:

1282 (a) Has violated any provision of this chapter or any rule
 1283 or order made under this chapter;

1284 (b) Has made a material false statement in the application
 1285 for registration;

1286 (c) Has been guilty of a fraudulent act in connection with
 1287 rendering investment advice or in connection with any sale of
 1288 securities, has been or is engaged or is about to engage in
 1289 making fictitious or pretended sales or purchases of any such
 1290 securities or in any practice involving the rendering of
 1291 investment advice or the sale of securities which is fraudulent
 1292 or in violation of the law;

1293 (d) Has made a misrepresentation or false statement to, or
 1294 concealed any essential or material fact from, any person in the
 1295 rendering of investment advice or the sale of a security to such
 1296 person;

1297 (e) Has failed to account to persons interested for all
 1298 money and property received;

1299 (f) Has not delivered, after a reasonable time, to persons
 1300 entitled thereto securities held or agreed to be delivered by
 1301 the dealer, broker, intermediary, or investment adviser, as and
 1302 when paid for, and due to be delivered;

1303 (g) Is rendering investment advice or selling or offering
 1304 for sale securities through any associated person not registered
 1305 in compliance with the provisions of this chapter;

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1306 (h) Has demonstrated unworthiness to transact the business
 1307 of dealer, investment adviser, intermediary, or associated
 1308 person;

1309 (i) Has exercised management or policy control over or
 1310 owned 10 percent or more of the securities of any dealer,
 1311 intermediary, or investment adviser that has been declared
 1312 bankrupt, or had a trustee appointed under the Securities
 1313 Investor Protection Act; or is, in the case of a dealer,
 1314 intermediary, or investment adviser, insolvent;

1315 (j) Has been convicted of, or has entered a plea of guilty
 1316 or nolo contendere to, regardless of whether adjudication was
 1317 withheld, a crime against the laws of this state or any other
 1318 state or of the United States or of any other country or
 1319 government which relates to registration as a dealer, investment
 1320 adviser, issuer of securities, intermediary, or associated
 1321 person; which relates to the application for such registration;
 1322 or which involves moral turpitude or fraudulent or dishonest
 1323 dealing;

1324 (k) Has had a final judgment entered against her or him in
 1325 a civil action upon grounds of fraud, embezzlement,
 1326 misrepresentation, or deceit;

1327 (l) Is of bad business repute;

1328 (m) Has been the subject of any decision, finding,
 1329 injunction, suspension, prohibition, revocation, denial,
 1330 judgment, or administrative order by any court of competent
 1331 jurisdiction, administrative law judge, or by any state or
 1332 federal agency, national securities, commodities, or option
 1333 exchange, or national securities, commodities, or option
 1334 association, involving a violation of any federal or state

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1335 securities or commodities law or any rule or regulation
 1336 promulgated thereunder, or any rule or regulation of any
 1337 national securities, commodities, or options exchange or
 1338 national securities, commodities, or options association, or has
 1339 been the subject of any injunction or adverse administrative
 1340 order by a state or federal agency regulating banking,
 1341 insurance, finance or small loan companies, real estate,
 1342 mortgage brokers or lenders, money transmitters, or other
 1343 related or similar industries. For purposes of this subsection,
 1344 the office may not deny registration to any applicant who has
 1345 been continuously registered with the office for 5 years after
 1346 the date of entry of such decision, finding, injunction,
 1347 suspension, prohibition, revocation, denial, judgment, or
 1348 administrative order provided such decision, finding,
 1349 injunction, suspension, prohibition, revocation, denial,
 1350 judgment, or administrative order has been timely reported to
 1351 the office pursuant to the commission's rules; or

1352 (n) Made payment to the office for a registration with a
 1353 check or electronic transmission of funds that is dishonored by
 1354 the applicant's or registrant's financial institution.

1355 (2) The payment or anticipated payment of any amount from
 1356 the Securities Guaranty Fund in settlement of a claim or in
 1357 satisfaction of a judgment against an applicant or registrant
 1358 constitutes prima facie grounds for the denial of the
 1359 applicant's application for registration or the revocation of
 1360 the registrant's registration.

1361 (3) In the event the office determines to deny an
 1362 application or revoke a registration, it shall enter a final
 1363 order with its findings on the register of dealers and

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1364 associated persons; and denial, suspension, or revocation of the
 1365 registration of a dealer, intermediary, or investment adviser
 1366 shall also deny, suspend, or revoke the registration of all her
 1367 or his associated persons.

1368 (4) It shall be sufficient cause for denial of an
 1369 application or revocation of registration, in the case of a
 1370 partnership, corporation, or unincorporated association, if any
 1371 member of the partnership or any officer, director, or ultimate
 1372 equitable owner of the corporation or association has committed
 1373 any act or omission which would be cause for denying, revoking,
 1374 restricting, or suspending the registration of an individual
 1375 dealer, investment adviser, intermediary, or associated person.
 1376 As used in this subsection, the term "ultimate equitable owner"
 1377 means a natural person who directly or indirectly owns or
 1378 controls an ownership interest in the corporation, partnership,
 1379 association, or other legal entity however organized, regardless
 1380 of whether such natural person owns or controls such ownership
 1381 interest through one or more proxies, powers of attorney,
 1382 nominees, corporations, associations, partnerships, trusts,
 1383 joint stock companies, or other entities or devices, or any
 1384 combination thereof.

1385 (5) The office may deny any request to terminate or
 1386 withdraw any application or registration if the office believes
 1387 that an act which would be a ground for denial, suspension,
 1388 restriction, or revocation under this chapter has been
 1389 committed.

1390 (6) Registration under s. 517.12 may be denied or any
 1391 registration granted may be suspended or restricted if an
 1392 applicant or registrant is charged, in a pending enforcement

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1393 action or pending criminal prosecution, with any conduct that
 1394 would authorize denial or revocation under subsection (1).
 1395 Registration under s. 517.12 may be suspended or restricted if a
 1396 registrant is arrested for any conduct that would authorize
 1397 revocation under subsection (1).

1398 (a) Any denial of registration ordered under this
 1399 subsection shall be without prejudice to the applicant's ability
 1400 to reapply for registration.

1401 (b) Any order of suspension or restriction under this
 1402 subsection shall:

1403 1. Take effect only after a hearing, unless no hearing is
 1404 requested by the registrant or unless the suspension or
 1405 restriction is made in accordance with s. 120.60(6).

1406 2. Contain a finding that evidence of a prima facie case
 1407 supports the charge made in the enforcement action or criminal
 1408 prosecution.

1409 3. Operate for no longer than 10 days beyond receipt of
 1410 notice by the office of termination with respect to the
 1411 registrant of the enforcement action or criminal prosecution.

1412 (c) For purposes of this subsection:

1413 1. The term "enforcement action" means any judicial
 1414 proceeding or any administrative proceeding where such judicial
 1415 or administrative proceeding is brought by an agency of the
 1416 United States or of any state to enforce or restrain violation
 1417 of any state or federal law, or any disciplinary proceeding
 1418 maintained by the Financial Industry Regulatory Authority, the
 1419 National Futures Association, or any other similar self-
 1420 regulatory organization.

1421 2. An enforcement action is pending at any time after

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1422 notice to the applicant or registrant of such action and is
 1423 terminated at any time after entry of final judgment or decree
 1424 in the case of judicial proceedings, final agency action in the
 1425 case of administrative proceedings, and final disposition by a
 1426 self-regulatory organization in the case of disciplinary
 1427 proceedings.

1428 3. A criminal prosecution is pending at any time after
 1429 criminal charges are filed and is terminated at any time after
 1430 conviction, acquittal, or dismissal.

1431 Section 7. Paragraph (b) of subsection (4) of section
 1432 626.9911, Florida Statutes, is amended to read:

1433 626.9911 Definitions.—As used in this act, the term:

1434 (4) "Life expectancy provider" means a person who
 1435 determines, or holds himself or herself out as determining, life
 1436 expectancies or mortality ratings used to determine life
 1437 expectancies:

1438 (b) In connection with a viatical settlement investment,
 1439 pursuant to s. 517.021(24) ~~or s. 517.021(23)~~; or

1440 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-semi-trailer 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:

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.

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. 810(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 decal²² 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 IRP²⁷ 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 vehicles³⁰ 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 used 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/WeightEnforcement.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 feet³⁸ 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 file 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.

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 benefits⁵⁰ 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 subdivision⁵⁹ 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 area⁶¹ 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

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

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 curblin, 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 colored⁸⁸ portions of the roadway at an intersection used by pedestrians for crossing the roadway.

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 1980⁹⁴, 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.

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 Greenway⁹⁹ 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

⁹⁶The 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)

¹⁰⁰St. 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

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.

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

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.shtml>. Last visited February 16, 2015.

- The power to borrow money and issue bonds¹¹⁶ 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.

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 law¹⁴⁰ 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.



777084

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 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



777084

11 department, county, or municipality shall notify the public that
12 a traffic infraction device may be in use at that intersection
13 and must specifically include notification of camera enforcement
14 of violations concerning right turns. A notice of a violation
15 may not be issued to a motorist unless signage notifying the
16 public of the traffic infraction detector is present, ~~Such~~
17 signage used to notify the public must meet meets the
18 specifications for uniform signals and devices adopted by the
19 Department of Transportation pursuant to s. 316.0745- , and:

20 1. Is 3 feet wide by 2 feet tall and displays visible,
21 prominent letters at least 6 inches tall stating "Photo
22 Enforced"; and

23 2. Is installed at an intersection having a traffic
24 infraction detector on or before November 30, 2015. The signage
25 must be prominently displayed over the intersection and be
26 clearly visible to drivers traveling in all directions. The
27 traffic infraction detector company is responsible for any costs
28 associated with the manufacture and installation of such
29 signage.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Delete line 37

34 and insert:

35 redefining terms; amending s. 316.0776, F.S.;

36 prohibiting violations from being issued unless

37 traffic infraction detector notification signage is

38 present, meets certain requirements, and is installed

39 at an intersection with a traffic infraction detector



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40 by a certain date; requiring that the traffic
41 infraction detector company be responsible for certain
42 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)



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11 (b)1.a. Within 30 days after a violation, notification must
12 be sent to the registered owner of the motor vehicle involved in
13 the violation specifying the remedies available under s. 318.14
14 and that the violator must pay the penalty of \$158 to the
15 department, county, or municipality, or furnish an affidavit in
16 accordance with paragraph (d), or request a hearing within 60
17 days following the date of the notification in order to avoid
18 the issuance of a traffic citation. The notification must be
19 sent by first-class mail. The mailing of the notice of violation
20 constitutes notification.

21 b. Included with the notification to the registered owner
22 of the motor vehicle involved in the infraction must be a notice
23 that the owner has the right to review the photographic or
24 electronic images or the streaming video evidence that
25 constitutes a rebuttable presumption against the owner of the
26 vehicle. The notice must state the time and place or Internet
27 location where the evidence may be examined and observed.

28 c. Notwithstanding any other provision of law, a person who
29 receives a notice of violation under this section may request a
30 hearing within 60 days following the notification of violation
31 or pay the penalty pursuant to the notice of violation, but a
32 payment or fee may not be required before the hearing requested
33 by the person. The notice of violation must be accompanied by,
34 or direct the person to a website that provides, information on
35 the person's right to request a hearing and on all court costs
36 related thereto and a form to request a hearing. As used in this
37 sub-subparagraph, the term "person" includes a natural person,
38 registered owner or coowner of a motor vehicle, or person
39 identified on an affidavit as having care, custody, or control



40 of the motor vehicle at the time of the violation.

41 d. If the registered owner or coowner of the motor vehicle,
42 or the person designated as having care, custody, or control of
43 the motor vehicle at the time of the violation, or an authorized
44 representative of the owner, coowner, or designated person,
45 initiates a proceeding to challenge the violation pursuant to
46 this paragraph, such person waives any challenge or dispute as
47 to the delivery of the notice of violation.

48 2. Penalties assessed and collected by the department,
49 county, or municipality authorized to collect the funds provided
50 for in this paragraph, less the amount retained by the county or
51 municipality pursuant to subparagraph 3., shall be paid to the
52 Department of Revenue weekly. Payment by the department, county,
53 or municipality to the state shall be made by means of
54 electronic funds transfers. In addition to the payment, summary
55 detail of the penalties remitted shall be reported to the
56 Department of Revenue.

57 3. Penalties to be assessed and collected by the
58 department, county, or municipality are as follows:

59 a. One hundred fifty-eight dollars for a violation of s.
60 316.074(1) or s. 316.075(1)(c)1. when a driver failed to stop at
61 a traffic signal if enforcement is by the department's traffic
62 infraction enforcement officer. One hundred dollars shall be
63 remitted to the Department of Revenue for deposit into the
64 General Revenue Fund, \$10 shall be remitted to the Department of
65 Revenue for deposit into the Department of Health Emergency
66 Medical Services Trust Fund, \$3 shall be remitted to the
67 Department of Revenue for deposit into the Brain and Spinal Cord
68 Injury Trust Fund, and \$45 shall be distributed to the



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69 municipality in which the violation occurred, or, if the
70 violation occurred in an unincorporated area, to the county in
71 which the violation occurred. Funds deposited into the
72 Department of Health Emergency Medical Services Trust Fund under
73 this sub-subparagraph shall be distributed as provided in s.
74 395.4036(1). Proceeds of the infractions in the Brain and Spinal
75 Cord Injury Trust Fund shall be distributed quarterly to the
76 Miami Project to Cure Paralysis and used for brain and spinal
77 cord research.

78 b. One hundred fifty-eight dollars for a violation of s.
79 316.074(1) or s. 316.075(1)(c)1. when a driver failed to stop at
80 a traffic signal if enforcement is by a county or municipal
81 traffic infraction enforcement officer. Seventy dollars shall be
82 remitted by the county or municipality to the Department of
83 Revenue for deposit into the General Revenue Fund, \$10 shall be
84 remitted to the Department of Revenue for deposit into the
85 Department of Health Emergency Medical Services Trust Fund, \$3
86 shall be remitted to the Department of Revenue for deposit into
87 the Brain and Spinal Cord Injury Trust Fund, and \$75 shall be
88 retained by the county or municipality enforcing the ordinance
89 enacted pursuant to this section. Funds deposited into the
90 Department of Health Emergency Medical Services Trust Fund under
91 this sub-subparagraph shall be distributed as provided in s.
92 395.4036(1). Proceeds of the infractions in the Brain and Spinal
93 Cord Injury Trust Fund shall be distributed quarterly to the
94 Miami Project to Cure Paralysis and used for brain and spinal
95 cord research.

96 4. If a county or municipality fails to comply with the
97 reporting requirements in subsection (4), as determined by the



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98 department, the department shall annually, on October 1, provide
99 notice of the failure to the county or municipality. The county
100 or municipality shall have 30 days from the date of the notice
101 within which to establish compliance with the reporting
102 requirements. If compliance is not established within the 30
103 days, the department shall immediately notify the Department of
104 Revenue of the county's or municipality's noncompliance. In
105 cases of such noncompliance, notwithstanding subparagraph 3.,
106 the portion of revenues collected and otherwise retained by the
107 county or municipality may not be retained but shall be remitted
108 to the Department of Revenue. The Department of Revenue shall
109 maintain records of such remissions reflecting the total amount
110 of revenues received from each noncompliant county or
111 municipality. On notice from the department that the county or
112 municipality has established compliance, the Department of
113 Revenue shall return those revenues to the affected county or
114 municipality.

115 5.4. An individual may not receive a commission from any
116 revenue collected from violations detected through the use of a
117 traffic infraction detector. A manufacturer or vendor may not
118 receive a fee or remuneration based upon the number of
119 violations detected through the use of a traffic infraction
120 detector.

121 (4) (a) Each county or municipality that operates a traffic
122 infraction detector shall submit a report ~~by October 1, 2012,~~
123 ~~and annually thereafter,~~ to the department no later than
124 September 30 of each year which details the results of using the
125 traffic infraction detector and the procedures for enforcement
126 for the preceding state fiscal year. The information submitted



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127 by the counties and municipalities must include statistical data
128 and information required by the department to complete the
129 report required under paragraph (b), and must include all of the
130 following:-

131 1. The name of the jurisdiction and contact information for
132 the person responsible for the administration of the traffic
133 infraction detector program.

134 2. The location of each camera, including both geospatial
135 and cross-road descriptions of the location of each device.

136 3. The date that each red light camera became operational,
137 and the dates of camera operation during the fiscal year,
138 including any status changes of the camera's use during the
139 reporting period.

140 4. Data related to the issuance and disposition of notices
141 of violation and subsequent uniform traffic citations issued
142 during the reporting period.

143 5. Vehicle crash data, including fatalities and injuries,
144 for crashes that occurred within 250 feet of the approach to, or
145 250 feet following, a traffic infraction detector on the
146 specific road monitored by the traffic infraction detector
147 during the 12-month period immediately preceding the initial
148 date of camera operation. Data submitted as required under this
149 subsection should be able to be validated against department
150 data.

151 6. Identification of any and all alternative safety
152 measures, including increasing the interval between the yellow
153 change light and the red clearance light, increasing the
154 visibility of traffic lights, and installing advance dilemma-
155 zone detection systems, which the jurisdiction considered or



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156 implemented during the reporting period in lieu of or in
157 addition to the use of a traffic infraction detector. The
158 jurisdiction shall include the date of implementation of any
159 such measures to assist the department in the analysis of crash
160 data at a specified location.

161 Section 11. Subsection (9) of section 316.0745, Florida
162 Statutes, is created to read:

163 316.0745 Uniform signals and devices.—

164 (9) The Department of Transportation is authorized to
165 inspect, at random, any traffic control device or any traffic
166 infraction detector at any intersection with a traffic
167 infraction detector for the purpose of verifying that such
168 device and detector conform to the specifications and
169 requirements of this section.

170 Section 12. Subsection (1) of section 316.0776, Florida
171 Statutes, is amended to read:

172 316.0776 Traffic infraction detectors; placement and
173 installation.—

174 (1) Traffic infraction detectors are allowed on state roads
175 when permitted by the Department of Transportation and under
176 placement and installation specifications developed by the
177 Department of Transportation. Traffic infraction detectors are
178 allowed on streets and highways under the jurisdiction of
179 counties or municipalities in accordance with placement and
180 installation specifications developed by the Department of
181 Transportation. A notice of violation or uniform traffic
182 citation may not be issued through the use of a traffic
183 infraction detector that is not in compliance with all
184 specifications. Additionally, before installation of any traffic



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185 infraction detector, the county or municipality shall document
186 and make available upon the request of the Department of
187 Transportation consideration and reasons for rejection of other
188 engineering countermeasures set forth in the most recent
189 publication addressing countermeasures by the Institute of
190 Transportation Engineers that are intended to reduce violations
191 of ss. 316.074(1) and 316.075(1) (c)1.

192
193 ===== T I T L E A M E N D M E N T =====

194 And the title is amended as follows:

195 Delete line 37

196 and insert:

197 redefining terms; amending s. 316.0083, F.S.; relating
198 to traffic infraction detectors; requiring the
199 Department of Highway Safety & Motor Vehicles to
200 provide notice of failure to comply with certain
201 reporting requirements; providing a period within
202 which to become compliant with such reporting
203 requirements; requiring a municipality or county to
204 remit certain revenues to the Department of Revenue;
205 requiring the Department of Revenue to maintain
206 records of such remissions; providing for the return
207 of certain revenues to a municipality or county under
208 certain circumstances; requiring the annual report
209 detailing the results of using traffic infraction
210 detectors and the procedures for enforcement to
211 include specified information; amending s. 316.0745,
212 F.S.; authorizing the Department of Transportation to
213 randomly inspect any traffic control device or any



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214 traffic infraction detector at certain locations to
215 verify compliance with certain specifications and
216 requirements; amending s. 316.0776, F.S.; prohibiting
217 issuance of a notice of violation or traffic citation
218 through use of a traffic infraction detector that is
219 not in compliance with all specifications; requiring a
220 municipality or county to document and make available
221 upon request of the Department of Transportation
222 consideration and reasons for rejection of certain
223 engineering countermeasures before installing any
224 traffic infraction detector; amending s. 316.0895,
225 F.S.;



327768

LEGISLATIVE ACTION

Senate

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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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11 extreme rear end of the load, at the times specified in s.
12 316.217, two red lamps visible from a distance of at least 500
13 feet to the rear, two red reflectors visible at night from all
14 distances within 600 feet to 100 feet to the rear when directly
15 in front of lawful lower beams of headlamps and located so as to
16 indicate maximum width, and on each side one red lamp visible
17 from a distance of at least 500 feet to the side and located so
18 as to indicate maximum overhang. There shall be displayed at all
19 other times on any vehicle having a load which extends beyond
20 its sides or more than 4 feet beyond its rear, red flags, not
21 less than 18 ~~12~~ inches square, marking the extremities of such
22 load, at each point where a lamp would otherwise be required by
23 this section. A violation of this section is a noncriminal
24 traffic infraction punishable as a nonmoving violation as
25 provided in chapter 318.

26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete line 44

30 and insert:

31 roadways; amending s. 316.228, F.S.; requiring a
32 vehicle with a load that extends beyond its sides or a
33 certain amount beyond its rear to display red flags
34 not less than 18 inches square under certain
35 circumstances; amending s. 316.303, F.S.; providing



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LEGISLATIVE ACTION

Senate

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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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11 (b) "Rebuilt inspection services" means an examination of a
12 rebuilt vehicle and a properly endorsed certificate of title,
13 salvage certificate of title, or manufacturer's statement of
14 origin and an application for a rebuilt certificate of title, a
15 rebuilder's affidavit, a photograph of the junk or salvage
16 vehicle taken before repairs began, receipts or invoices for all
17 major component parts, as defined in s. 319.30, and repairs
18 which were changed, and proof that notice of rebuilding of the
19 vehicle has been reported to the National Motor Vehicle Title
20 Information System.

21 (2) By July 1, 2015 ~~October 1, 2013~~, the department shall
22 oversee implement a pilot program in Miami-Dade County and
23 ~~Hillsborough Counties~~ to evaluate alternatives for rebuilt
24 inspection services ~~to be~~ offered by existing ~~the~~ private sector
25 operators, including the continued use ~~feasibility~~ of using
26 private facilities, the cost impact to consumers, and the
27 potential savings to the department.

28 (3) The department shall establish a memorandum of
29 understanding that allows private parties participating in the
30 pilot program to conduct rebuilt motor vehicle inspections and
31 specifies requirements for oversight, bonding and insurance,
32 procedures, and forms and requires the electronic transmission
33 of documents.

34 (4) Before an applicant is approved, the department shall
35 ensure that the applicant meets basic criteria designed to
36 protect the public. At a minimum, the applicant shall meet all
37 of the following requirements:

38 (a) Have and maintain a surety bond or irrevocable letter
39 of credit in the amount of \$100,000 ~~\$50,000~~ executed by the



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40 applicant.

41 (b) Secure and maintain a facility at a permanent structure
42 at an address recognized by the United States Postal Service
43 where the only services provided on such property are rebuilt
44 inspection services. The operator of a facility shall annually
45 attest that he or she is not employed by or does not have an
46 ownership interest in or other financial arrangement with the
47 owner, operator, manager, or employee of a motor vehicle repair
48 shop as defined in s. 559.903, a motor vehicle dealer as defined
49 in s. 320.27(1)(c), a towing company, a vehicle storage company,
50 a vehicle auction, an insurance company, a salvage yard, a metal
51 retailer, or a metal rebuilder from which he or she receives
52 remuneration, directly or indirectly, for the referral of
53 customers for rebuilt inspection services.

54 (c) ~~(b)~~ Have and maintain garage liability and other
55 insurance required by the department.

56 (d) ~~(c)~~ Have completed criminal background checks of the
57 owners, partners, and corporate officers and the inspectors
58 employed by the facility.

59 (e) ~~(d)~~ Meet any additional criteria the department
60 determines necessary to conduct proper inspections.

61 (5) A participant in the program shall access vehicle and
62 title information and enter inspection results through an
63 electronic filing system authorized by the department and shall
64 maintain records of each rebuilt vehicle inspection processed at
65 such facility for at least 5 years.

66 (6) The department shall immediately terminate any operator
67 from the program who fails to meet the minimum eligibility
68 requirements specified in subsection (4). Prior to a change in



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69 ownership of the rebuilt inspection facility, the current
70 operator must give the department 45 days written notice of the
71 intended sale. The prospective owner must meet the eligibility
72 requirements of this section and execute a new memorandum of
73 understanding with the department prior to operating the
74 facility.

75 ~~(6) The department shall submit a report to the President~~
76 ~~of the Senate and the Speaker of the House of Representatives~~
77 ~~providing the results of the pilot program by February 1, 2015.~~

78 (7) This section is shall stand repealed on July 1, 2018
79 2015, unless saved from repeal through reenactment by the
80 Legislature.

81 Section 14. Subsection (1) and paragraph (a) of subsection
82 (2) of section 320.086, Florida Statutes, are amended to read:

83 320.086 Ancient or antique motor vehicles; horseless
84 carriage, antique, or historical license plates; former military
85 vehicles.—

86 (1) The owner of a motor vehicle for private use
87 manufactured in the model year 1945 or earlier, ~~equipped with an~~
88 ~~engine manufactured in 1945 or earlier or manufactured to the~~
89 ~~specifications of the original engine,~~ and operated on the
90 streets and highways of this state shall, upon application in
91 the manner and at the time prescribed by the department and upon
92 payment of the license tax for an ancient motor vehicle
93 prescribed by s. 320.08(1)(d), (2)(a), or (3)(e), be issued a
94 special license plate for such motor vehicle. The license plate
95 shall be permanent and valid for use without renewal so long as
96 the vehicle is in existence. In addition to the payment of all
97 other fees required by law, the applicant shall pay such fee for



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98 the issuance of the special license plate as may be prescribed
99 by the department commensurate with the cost of its manufacture.
100 The registration numbers and special license plates assigned to
101 such motor vehicles shall run in a separate numerical series,
102 commencing with "Horseless Carriage No. 1," and the plates shall
103 be of a distinguishing color.

104 (2) (a) The owner of a motor vehicle for private use
105 manufactured in the model year after 1945 and of the age of 30
106 years or more after the model year ~~date of manufacture, equipped~~
107 ~~with an engine of the age of 30 years or more after the date of~~
108 ~~manufacture~~, and operated on the streets and highways of this
109 state may, upon application in the manner and at the time
110 prescribed by the department and upon payment of the license tax
111 prescribed by s. 320.08(1) (d), (2) (a), or (3) (e), be issued a
112 special license plate for such motor vehicle. In addition to the
113 payment of all other fees required by law, the applicant shall
114 pay the fee for the issuance of the special license plate
115 prescribed by the department, commensurate with the cost of its
116 manufacture. The registration numbers and special license plates
117 assigned to such motor vehicles shall run in a separate
118 numerical series, commencing with "Antique No. 1," and the
119 plates shall be of a distinguishing color. The owner of the
120 motor vehicle may, upon application and payment of the license
121 tax prescribed by s. 320.08, be issued a regular Florida license
122 plate or specialty license plate in lieu of the special
123 "Antique" license plate.

124 Section 15. For the purpose of incorporating the amendment
125 made by this act to section 320.086, Florida Statutes, in a
126 reference thereto, paragraph (c) of subsection (3) of section



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127 319.23, Florida Statutes, is reenacted to read:

128 319.23 Application for, and issuance of, certificate of
129 title.—

130 (3) If a certificate of title has not previously been
131 issued for a motor vehicle or mobile home in this state, the
132 application, unless otherwise provided for in this chapter,
133 shall be accompanied by a proper bill of sale or sworn statement
134 of ownership, or a duly certified copy thereof, or by a
135 certificate of title, bill of sale, or other evidence of
136 ownership required by the law of the state or county from which
137 the motor vehicle or mobile home was brought into this state.

138 The application shall also be accompanied by:

139 (c) If the vehicle is an ancient or antique vehicle, as
140 defined in s. 320.086, the application shall be accompanied by a
141 certificate of title; a bill of sale and a registration; or a
142 bill of sale and an affidavit by the owner defending the title
143 from all claims. The bill of sale must contain a complete
144 vehicle description to include the vehicle identification or
145 engine number, year make, color, selling price, and signatures
146 of the seller and purchaser.

147
148 Verification of the vehicle identification number is not
149 required for any new motor vehicle; any mobile home; any trailer
150 or semitrailer with a net weight of less than 2,000 pounds; or
151 any travel trailer, camping trailer, truck camper, or fifth-
152 wheel recreation trailer.

153 Section 16. For the purpose of incorporating the amendment
154 made by this act to section 320.086, Florida Statutes, in a
155 reference thereto, paragraph (a) of subsection (2) and paragraph



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156 (e) of subsection (3) of section 320.08, Florida Statutes, are
157 reenacted to read:

158 320.08 License taxes.—Except as otherwise provided herein,
159 there are hereby levied and imposed annual license taxes for the
160 operation of motor vehicles, mopeds, motorized bicycles as
161 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
162 and mobile homes, as defined in s. 320.01, which shall be paid
163 to and collected by the department or its agent upon the
164 registration or renewal of registration of the following:

165 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

166 (a) An ancient or antique automobile, as defined in s.
167 320.086, or a street rod, as defined in s. 320.0863: \$7.50 flat.

168 (3) TRUCKS.—

169 (e) An ancient or antique truck, as defined in s. 320.086:
170 \$7.50 flat.

171 Section 17. Subsection (2) of section 324.242, Florida
172 Statutes, is amended, present subsection (3) of that section is
173 redesignated as subsection (6), and new subsections (3), (4),
174 and (5) are added to that section, to read:

175 324.242 Personal injury protection and property damage
176 liability insurance policies; public records exemption.—

177 (2) Upon receipt of a ~~written~~ request and proof ~~a copy~~ of a
178 crash report as required under s. 316.065, s. 316.066, or s.
179 316.068, or a crash report created pursuant to the laws of
180 another state, the department shall release the policy number
181 for a policy covering a vehicle involved in a motor vehicle
182 accident to:

183 (a) Any person involved in such accident;

184 (b) The attorney of any person involved in such accident;



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185 or

186 (c) A representative of the insurer of any person involved
187 in such accident.

188 (3) The department shall provide personal injury protection
189 and property damage liability insurance policy numbers to
190 department-approved third parties that provide data collection
191 services to an insurer of any person involved in such accident.

192 (4) Before the department's release of a policy number in
193 accordance with subsection (2) or subsection (3), an insurer's
194 representative, a contracted third party, or an attorney for a
195 person involved in an accident must provide the department with
196 documentation confirming proof of representation.

197 (5) Information made confidential and exempt by this
198 section may be disclosed to another governmental entity without
199 a written request or copy of the crash report if disclosure is
200 necessary for the receiving governmental entity to perform its
201 duties and responsibilities. For purposes of this subsection,
202 the term "governmental entity" means any federal, state, county,
203 district, authority, or municipal officer, department, division,
204 board, bureau, or commission created or established by law.

205 (6)~~(3)~~ This exemption applies to personal identifying
206 information of an insured or former insured and insurance policy
207 numbers held by the department before, on, or after October 11,
208 2007.

209
210 ===== T I T L E A M E N D M E N T =====

211 And the title is amended as follows:

212 Delete line 61

213 and insert:



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214 location; amending s. 319.141, F.S.; defining the term
215 "rebuilt inspection services"; directing the
216 Department of Highway Safety and Motor Vehicles to
217 oversee a pilot program in Miami-Dade County to
218 evaluate alternatives for certain rebuilt inspection
219 services by a specified date; revising the minimum
220 criteria an applicant must meet before he or she is
221 approved; requiring that participants in the program
222 maintain records of each rebuilt vehicle inspection
223 processed at such facility for a specified period of
224 time; requiring the department to terminate any
225 operator from the program under certain circumstances;
226 requiring a current operator to give the department
227 written notice of an intended sale within a specified
228 period of time; requiring a prospective owner to meet
229 specified requirements and execute a certain
230 memorandum; deleting a provision requiring the
231 department to submit a certain report to the
232 Legislature; revising the date of repeal for this
233 section; amending s. 320.086, F.S.; requiring the
234 department to issue a special license plate to the
235 owner of a motor vehicle manufactured in the model
236 year 1945 or earlier for such motor vehicle, subject
237 to certain requirements; requiring the department to
238 issue a special license plate to the owner of a motor
239 vehicle manufactured in the model year after 1945 and
240 of the age of 30 years or more after the model year
241 for such motor vehicle, subject to certain
242 requirements; reenacting s. 319.23(3)(c), F.S.,



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243 relating to application for, and issuance of,
244 certificate of title, to incorporate the amendment
245 made to s. 320.086, F.S., in a reference thereto;
246 reenacting s. 320.08(2)(a) and (3)(e), F.S., relating
247 to license taxes, to incorporate the amendment made to
248 s. 320.086, F.S., in a reference thereto; amending s.
249 324.242, F.S.; requiring the department to release the
250 policy number of a policy covering a vehicle involved
251 in a motor vehicle accident to certain persons upon
252 receipt of a request and proof of a crash report
253 created pursuant to the laws of another state;
254 requiring the department to provide personal injury
255 protection and property damage liability insurance
256 policy numbers to department-approved third parties
257 that provide data collection services to certain
258 insurers; requiring an insurer's representative, a
259 contracted third party, or an attorney for a person
260 involved in an accident to provide the department with
261 documentation confirming proof of representation prior
262 to the release of certain policy numbers; authorizing
263 the department to disclose certain confidential and
264 exempt information to another governmental entity
265 under certain circumstances; defining the term
266 "governmental entity"; amending s. 333.01, F.S.;
267 defining and



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LEGISLATIVE ACTION

Senate

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House

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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11 bidder in an amount equal to the awarded contract price.
12 However, the department may choose, in its discretion and
13 applicable only to multiyear maintenance contracts, to allow for
14 incremental annual contract bonds that cumulatively total the
15 full, awarded, multiyear contract price.

16 1. The department may waive the requirement for all or a
17 portion of a surety bond if:

18 a. ~~For a project for which~~ The contract price is \$250,000
19 or less ~~and the department, the department may waive the~~
20 ~~requirement for all or a portion of a surety bond if it~~
21 determines the project is of a noncritical nature and
22 nonperformance will not endanger public health, safety, or
23 property;

24 b. The prime contractor is a qualified nonprofit agency for
25 the blind or for the other severely handicapped under s.
26 413.036(2); or

27 c. The prime contractor is using a subcontractor that is a
28 qualified nonprofit agency for the blind or for the other
29 severely handicapped under s. 413.036(2); however, the
30 department may not waive more than the amount of the
31 subcontract.

32 2. If the Secretary of Transportation or the secretary's
33 designee determines that it is in the best interests of the
34 department to reduce the bonding requirement for a project and
35 that to do so will not endanger public health, safety, or
36 property, the department may waive the requirement of a surety
37 bond in an amount equal to the awarded contract price for a
38 project having a contract price of \$250 million or more and, in
39 its place, may set a surety bond amount that is a portion of the



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40 total contract price and provide an alternate means of security
41 for the balance of the contract amount that is not covered by
42 the surety bond or provide for incremental surety bonding and
43 provide an alternate means of security for the balance of the
44 contract amount that is not covered by the surety bond. Such
45 alternative means of security may include letters of credit,
46 United States bonds and notes, parent company guarantees, and
47 cash collateral. The department may require alternate means of
48 security if a surety bond is waived. The surety on such bond
49 shall be a surety company authorized to do business in the
50 state. All bonds shall be payable to the department and
51 conditioned for the prompt, faithful, and efficient performance
52 of the contract according to plans and specifications and within
53 the time period specified, and for the prompt payment of all
54 persons defined in s. 713.01 furnishing labor, material,
55 equipment, and supplies for work provided in the contract;
56 however, whenever an improvement, demolition, or removal
57 contract price is \$25,000 or less, the security may, in the
58 discretion of the bidder, be in the form of a cashier's check,
59 bank money order of any state or national bank, certified check,
60 or postal money order. The department shall adopt rules to
61 implement this subsection. Such rules shall include provisions
62 under which the department shall refuse to accept bonds on
63 contracts when a surety wrongfully fails or refuses to settle or
64 provide a defense for claims or actions arising under a contract
65 for which the surety previously furnished a bond.

66
67 ===== T I T L E A M E N D M E N T =====

68 And the title is amended as follows:



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69 Delete line 197
70 and insert:
71 trails; amending s. 337.18, F.S.; authorizing the
72 department to waive a surety bond on certain contracts
73 with specified contractors; amending s. 338.165, F.S.;
74 removing an option



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LEGISLATIVE ACTION

Senate

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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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11 | least 5 but not more than 25 apportioned members, with the exact
12 | number determined on an equitable geographic-population ratio
13 | basis, based on an agreement among the affected units of
14 | general-purpose local government and the Governor, as required
15 | by federal regulations. In accordance with 23 U.S.C. s. 134, the
16 | Governor may also allow M.P.O. members who represent
17 | municipalities to alternate with representatives from other
18 | municipalities within the metropolitan planning area which do
19 | not have members on the M.P.O. With the exception of counties
20 | chartered under s. 6(e), Art. VIII of the State Constitution and
21 | instances in which all of the county commissioners in a single-
22 | county M.P.O. are members of the M.P.O. governing board, county
23 | commissioners shall compose at least one-third of the M.P.O.
24 | governing board membership. A multicounty M.P.O. may satisfy
25 | this requirement by any combination of county commissioners from
26 | each of the counties constituting the M.P.O. Voting members
27 | shall be elected officials of general-purpose local governments,
28 | one of whom may represent a group of general-purpose local
29 | governments through an entity created by an M.P.O. for that
30 | purpose. An M.P.O. may include, as part of its apportioned
31 | voting members, a member of a statutorily authorized planning
32 | board, an official of an agency that operates or administers a
33 | major mode of transportation, or an official of Space Florida.
34 | As used in this section, the term "elected officials of a
35 | general-purpose local government" excludes constitutional
36 | officers, including sheriffs, tax collectors, supervisors of
37 | elections, property appraisers, clerks of the court, and similar
38 | types of officials. County commissioners shall compose not less
39 | than 20 percent of the M.P.O. membership if an official of an



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40 agency that operates or administers a major mode of
41 transportation has been appointed to an M.P.O.

42 (c) Except as provided in paragraph (d), and any other
43 provision of this section to the contrary notwithstanding, a
44 chartered county with over 1 million population may elect to
45 reapportion the membership of an M.P.O. whose jurisdiction is
46 wholly within the county. The charter county may exercise the
47 provisions of this paragraph if:

48 1. The M.P.O. approves the reapportionment plan by a three-
49 fourths vote of its membership;

50 2. The M.P.O. and the charter county determine that the
51 reapportionment plan is needed to fulfill specific goals and
52 policies applicable to that metropolitan planning area; and

53 3. The charter county determines the reapportionment plan
54 otherwise complies with all federal requirements pertaining to
55 M.P.O. membership.

56

57 Any charter county that elects to exercise the provisions of
58 this paragraph shall notify the Governor in writing.

59 (d) Any other provision of this section to the contrary
60 notwithstanding, the membership of an M.P.O. in any county
61 chartered under s. 6(e), Art. VIII of the State Constitution
62 whose jurisdiction is wholly contained within the county shall
63 be the county mayor, the chairperson of the county commission,
64 the chairperson of the county's transportation committee, one
65 elected official appointed by the governing body of each
66 municipality with a population of 50,000 or more residents, one
67 county commissioner appointed by the Governor whose district
68 includes at least three municipalities with a population less



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69 than 50,000 each, one county commissioner appointed by the
70 Governor whose district includes only unincorporated areas of
71 the county, one county commissioner appointed by the Governor
72 whose district includes Biscayne National Park, one school board
73 member appointed by the Governor, one nonvoting representative
74 from the county's expressway authority appointed by the
75 Governor, and one representative of the department serving as a
76 nonvoting advisor may elect to have its county commission serve
77 as the M.P.O., if the M.P.O. jurisdiction is wholly contained
78 within the county. Any charter county that elects to exercise
79 the provisions of this paragraph shall so notify the Governor in
80 writing. Upon receipt of such notification, the Governor must
81 designate the county commission as the M.P.O. The Governor must
82 appoint four additional voting members to the M.P.O., one of
83 whom must be an elected official representing a municipality
84 within the county, one of whom must be an expressway authority
85 member, one of whom must be a person who does not hold elected
86 public office and who resides in the unincorporated portion of
87 the county, and one of whom must be a school board member.

88 (7) LONG-RANGE TRANSPORTATION PLAN.—Each M.P.O. must
89 develop a long-range transportation plan that addresses at least
90 a 20-year planning horizon. The plan must include both long-
91 range and short-range strategies and must comply with all other
92 state and federal requirements. The prevailing principles to be
93 considered in the long-range transportation plan are: preserving
94 the existing transportation infrastructure; enhancing Florida's
95 economic competitiveness; and improving travel choices to ensure
96 mobility. The long-range transportation plan must be consistent,
97 to the maximum extent feasible, with future land use elements



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98 and the goals, objectives, and policies of the approved local
99 government comprehensive plans of the units of local government
100 located within the jurisdiction of the M.P.O. Each M.P.O. is
101 encouraged to consider strategies that integrate transportation
102 and land use planning to provide for sustainable development and
103 reduce greenhouse gas emissions. The approved long-range
104 transportation plan must be considered by local governments in
105 the development of the transportation elements in local
106 government comprehensive plans and any amendments thereto. The
107 long-range transportation plan must, at a minimum:

108 (c) Assess capital investment and other measures necessary
109 to:

110 1. Ensure the preservation of the existing metropolitan
111 transportation system including requirements for the operation,
112 resurfacing, restoration, and rehabilitation of major roadways
113 and requirements for the operation, maintenance, modernization,
114 and rehabilitation of public transportation facilities; and

115 2. Make the most efficient use of existing transportation
116 facilities to relieve vehicular congestion, improve safety, and
117 maximize the mobility of people and goods. Such efforts shall
118 include, but not be limited to, consideration of infrastructure
119 and technological improvements necessary to accommodate advances
120 in vehicle technology, such as autonomous vehicle technology and
121 other developments.

122
123 In the development of its long-range transportation plan, each
124 M.P.O. must provide the public, affected public agencies,
125 representatives of transportation agency employees, freight
126 shippers, providers of freight transportation services, private



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127 providers of transportation, representatives of users of public
128 transit, and other interested parties with a reasonable
129 opportunity to comment on the long-range transportation plan.
130 The long-range transportation plan must be approved by the
131 M.P.O.

132 Section 36. Section 339.176, Florida Statutes, is amended
133 to read:

134 339.176 Voting membership for M.P.O. with boundaries
135 including certain counties.—In addition to the voting membership
136 established by s. 339.175(3) and notwithstanding any other
137 provision of law to the contrary, the voting membership of any
138 Metropolitan Planning Organization whose geographical boundaries
139 include any county as defined in s. 125.011(1) must include an
140 additional voting member appointed by the ~~that city's~~ governing
141 body for each municipality ~~city~~ with a population of 50,000 or
142 more residents, except as otherwise provided in s.
143 339.175(3)(d).

144
145 ===== T I T L E A M E N D M E N T =====

146 And the title is amended as follows:

147 Delete lines 212 - 219

148 and insert:

149 s. 339.175, F.S.; revising the membership of certain
150 metropolitan planning organizations; requiring certain
151 long-range transportation plans to include assessment
152 of capital investment and other measures necessary to
153 make the most efficient use of existing transportation
154 facilities to improve safety; requiring the
155 assessments to include consideration of infrastructure



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156 and technological improvements necessary to
157 accommodate advances in vehicle technology; amending
158 s. 339.176, F.S.; providing an exception to the voting
159 membership of metropolitan planning organizations in
160 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



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56 length under certain circumstances; amending s.
57 316.545, F.S.; providing a specified penalty for
58 commercial motor vehicles that obtain temporary
59 registration permits entering the state at, or
60 operating on designated routes to, a port-of-entry
61 location; amending s. 333.01, F.S.; defining and
62 redefining terms; amending s. 333.025, F.S.; revising
63 requirements relating to securing a permit for the
64 proposed construction or alteration of structures that
65 would exceed specified federal obstruction standards;
66 requiring such permits only within an airport hazard
67 area if the proposed construction is within a set
68 radius of a certain airport reference point; providing
69 that existing, planned, and proposed facilities at
70 public-use airports contained in certain plans or
71 documents will be protected from structures that
72 exceed federal obstruction standards; providing that a
73 permit is not required when political subdivisions
74 have adopted adequate airport protection zoning
75 regulations and have established a permitting process,
76 subject to certain requirements; providing for a
77 review period by the department to run concurrent with
78 such permitting process, subject to certain
79 requirements and exemptions; specifying certain
80 factors the department shall consider in determining
81 whether to issue or deny a permit; directing the
82 department to require an owner of a permitted
83 obstruction or vegetation to install, operate, and
84 maintain marking and lighting subject to certain



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85 requirements; prohibiting a permit from being approved
86 solely on the basis that a proposed structure will not
87 exceed specified federal obstruction standards;
88 providing certain administrative review for the denial
89 of a permit; amending s. 333.03, F.S.; revising the
90 requirements relating to the adoption of airport
91 protection zoning regulations by certain political
92 subdivisions; revising the requirements of such
93 adopted airport protection zoning regulations;
94 providing that the department is available to assist
95 political subdivisions with regard to federal
96 obstruction standards; revising requirements relating
97 to airport land use compatibility zoning regulations
98 that address, at a minimum, landfill locations and
99 noise contours; requiring adoption of airport zoning
100 regulations that restrict substantial modifications to
101 existing incompatible uses within runway protection
102 zones; requiring that updates and amendments to local
103 airport zoning codes, rules, and regulations be filed
104 with the department within a certain time after
105 adoption; revising requirements relating to
106 educational structures or sites; providing that a
107 governing body operating a public-use airport may
108 establish more restrictive airport protection zoning
109 regulations for certain purposes; amending s. 333.04,
110 F.S.; revising provisions relating to comprehensive
111 plan or policy regulations, including airport
112 protection zoning regulations under certain
113 circumstances; amending s. 333.05, F.S.; revising



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114 provisions relating to the procedure for adoption,
115 amendment, or deletion of airport zoning regulations;
116 revising provisions relating to airport zoning
117 commissions; amending s. 333.06, F.S.; revising
118 provisions relating to airport zoning requirements,
119 and airport master plans that are prepared by certain
120 public-use airports; repealing s. 333.065, F.S.,
121 relating to guidelines regarding land use near
122 airports; amending s. 333.07, F.S.; revising
123 provisions relating to permits for use of structures
124 or vegetation in violation of airport protection
125 zoning regulations; specifying factors a political
126 subdivision or its administrative agency must consider
127 when determining whether to issue or deny a permit;
128 deleting provisions relating to applying for a
129 variance from zoning regulations; revising provisions
130 relating to obstruction marking and lighting
131 requirements when a political subdivision or its
132 administrative agency issues a permit; repealing s.
133 333.08, F.S., relating to appeals in regard to airport
134 zoning regulations; amending s. 333.09, F.S.;
135 requiring all airport zoning regulations to provide
136 for the administration and enforcement of such
137 regulations by the affected political subdivisions or
138 an administrative agency created by the subdivisions;
139 requiring a political subdivision that must adopt
140 airport zoning regulations to provide a permitting
141 process subject to certain requirements and
142 exceptions; providing for an appeals process for



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143 decisions in the administration of airport zoning
144 regulations, subject to certain requirements;
145 repealing s. 333.10, F.S., relating to boards of
146 adjustment provided for by all airport zoning
147 regulations; amending s. 333.11, F.S.; revising
148 provisions relating to judicial review for decisions
149 made by any governing body of a political subdivision,
150 joint airport zoning board, or administrative agency;
151 requiring the appellant to exhaust all its remedies
152 through application for local government permits,
153 exceptions, and appeals before judicial appeal is
154 permitted; amending s. 333.12, F.S.; revising
155 provisions relating to the acquisition of air rights;
156 providing that a certain political subdivision may
157 acquire air right, avigation easement, other estate,
158 or interest in a nonconforming structure or use that
159 presents an air hazard and cannot be removed, lowered,
160 or otherwise terminated, subject to certain
161 requirements; creating s. 333.135, F.S.; requiring
162 that certain airport zoning regulations be amended to
163 conform by a certain date; requiring certain political
164 subdivisions to adopt airport zoning regulations by a
165 certain date; directing the department to administer
166 the permitting process for local governments that have
167 not adopted airport protection zoning regulations;
168 repealing s. 333.14, F.S., relating to a short title;
169 amending s. 334.03, F.S.; redefining the term "511" or
170 "511 services"; deleting the term "interactive voice
171 response"; amending s. 334.044, F.S.; removing the



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172 provision of interactive voice response telephone
173 systems accessible via the 511 number that may be
174 included in traveler information systems; removing a
175 requirement that applied uniform standards and
176 criteria for collection and dissemination of traveler
177 information using interactive voice response systems;
178 authorizing the department to assume certain
179 responsibilities under the National Environmental
180 Policy Act with respect to highway projects within the
181 state and certain related responsibilities relating to
182 review or approval of a highway project; authorizing
183 the department to enter into certain agreements
184 related to the federal surface transportation project
185 delivery program under certain federal law;
186 authorizing the department to adopt implementing
187 rules; authorizing the department to adopt certain
188 relevant federal environmental standards; providing a
189 limited waiver of sovereign immunity to civil suit in
190 federal court consistent with certain federal law;
191 amending s. 334.60, F.S.; revising provisions relating
192 to the 511 traveler information system; amending s.
193 335.065, F.S.; deleting provisions relating to certain
194 commercial sponsorship displays on multiuse trails and
195 related facilities; deleting provisions relating to
196 funding a statewide system of interconnected multiuse
197 trails; amending s. 338.165, F.S.; removing an option
198 to issue certain bonds secured by toll revenues
199 collected on the Beeline-East Expressway and the
200 Navarre Bridge; amending s. 338.227, F.S.; providing



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201 that bonds issued are not required to be validated
202 pursuant to ch. 75, F.S., but may be validated at the
203 option of the Division of Bond Finance; providing
204 filing, notice, and service requirements relating to
205 complaints for such validation; amending s. 338.231,
206 F.S.; increasing the number of years before an
207 inactive prepaid toll account shall be presumed
208 unclaimed; deleting provisions relating to using the
209 revenues from the turnpike system to pay the principal
210 and interest of a specified series of bonds and
211 certain expenses of the Sawgrass Expressway; amending
212 s. 339.175, F.S.; requiring certain long-range
213 transportation plans to include assessment of capital
214 investment and other measures necessary to make the
215 most efficient use of existing transportation
216 facilities to improve safety; requiring the
217 assessments to include consideration of infrastructure
218 and technological improvements necessary to
219 accommodate advances in vehicle technology; amending
220 s. 339.64, F.S.; requiring the Department of
221 Transportation to coordinate with certain partners and
222 industry representatives to consider infrastructure
223 and technological improvements necessary to
224 accommodate advances in vehicle technology in
225 Strategic Intermodal System facilities; requiring the
226 Strategic Intermodal System Plan to include a needs
227 assessment regarding such infrastructure and
228 technological improvements; creating s. 339.81, F.S.;
229 creating the Florida Shared-Use Nonmotorized Trail



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230 Network; specifying the composition of the network;
231 requiring the network to be included in the Department
232 of Transportation's work program; declaring the
233 planning, development, operation, and maintenance of
234 the network to be a public purpose; authorizing the
235 department to transfer maintenance responsibilities to
236 local governments or other state agencies and contract
237 with not-for-profit or private sector entities to
238 provide maintenance services; requiring funding to be
239 allocated to the Florida Shared-Use Nonmotorized Trail
240 Network in the program and resource plan of the
241 department; authorizing the department to adopt rules;
242 creating s. 339.82, F.S.; directing the department to
243 develop a Shared-Use Nonmotorized Trail Network Plan,
244 subject to certain requirements; creating s. 339.83,
245 F.S.; creating a trail sponsorship program, subject to
246 certain requirements and restrictions; directing the
247 Office of Economic and Demographic Research to
248 evaluate and determine the economic benefits of the
249 state's investment in the Department of
250 Transportation's adopted work program for a certain
251 timeframe, subject to certain requirements; directing
252 the Department of Transportation and each of its
253 district offices to provide the Office of Economic and
254 Demographic Research full access to certain data;
255 requiring the Office of Economic and Demographic
256 Research to submit the analysis to the Legislature by
257 a certain date; repealing s. 341.0532, F.S., relating
258 to statewide transportation corridors; providing a



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259 directive to the Division of Law Revision and
260 Information; creating s. 345.0001, F.S.; providing a
261 short title; creating s. 345.0002, F.S.; defining
262 terms; creating s. 345.0003, F.S.; authorizing certain
263 counties to form the Northwest Florida Regional
264 Transportation Finance Authority to construct,
265 maintain, or operate transportation projects in a
266 given region of the state; specifying procedural
267 requirements; creating s. 345.0004, F.S.; specifying
268 the powers and duties of the authority, subject to
269 certain restrictions; requiring that the authority
270 comply with certain reporting and documentation
271 requirements; creating s. 345.0005, F.S.; authorizing
272 the issuing of bonds on behalf of the authority under
273 the State Bond Act and by the authority itself;
274 specifying requirements and restrictions for such
275 bonds under certain circumstances; creating s.
276 345.0006, F.S.; providing rights and remedies of
277 bondholders; creating s. 345.0007, F.S.; designating
278 the Department of Transportation as the agent of the
279 authority for specified purposes; authorizing the
280 administration and management of projects by the
281 department; limiting the powers of the department as
282 an agent; establishing the fiscal responsibilities of
283 the authority; creating s. 345.0008, F.S.; authorizing
284 the department to provide for or commit its resources
285 for the authority project or system, if approved by
286 the Legislature, subject to legislative budget request
287 procedures and prohibitions and appropriation



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288 procedures; authorizing the payment of expenses
289 incurred by the department on behalf of the authority;
290 requiring the department to receive a share of the
291 revenue from the authority; providing calculations for
292 disbursement of revenues; creating s. 345.0009, F.S.;
293 authorizing the authority to acquire private or public
294 property and property rights for a project or plan;
295 establishing the rights and liabilities and remedial
296 actions relating to property acquired for a
297 transportation project or corridor; creating s.
298 345.001, F.S.; authorizing contracts between
299 governmental entities and the authority; creating s.
300 345.0011, F.S.; pledging that the state will not limit
301 or alter the vested rights of the authority or the
302 department with regard to any issued bonds or other
303 rights relating to the bonds if such vested rights
304 affect the rights of bondholders; creating s.
305 345.0012, F.S.; exempting the authority from certain
306 taxes and assessments; providing exceptions; creating
307 s. 345.0013, F.S.; providing that bonds or obligations
308 issued under this chapter are legal investments for
309 specified entities; creating s. 345.0014, F.S.;
310 providing applicability; providing legislative
311 findings and intent relating to transportation
312 funding; directing the Center for Urban Transportation
313 Research to conduct a study on implementing a system
314 in this state which charges drivers based on their
315 vehicle miles traveled as an alternative to the
316 present fuel tax structure to fund transportation



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317 projects; specifying requirements of the study;
318 requiring that the findings of the study be presented
319 to the Legislature by a certain date; directing the
320 center, in consultation with the Florida
321 Transportation Commission, to establish the framework
322 for a pilot project that will evaluate the feasibility
323 of implementing a system that charges drivers based on
324 their vehicle miles traveled; specifying requirements
325 for the design of the pilot project framework;
326 authorizing the center to expend up to a certain
327 amount for the study and pilot project design
328 contingent upon legislative appropriation; requiring
329 that the pilot project design be completed by a
330 certain date and submitted in a report to the
331 Legislature; reenacting s. 350.81(6), F.S., relating
332 to the definition of the term "airport layout plan,"
333 to incorporate the amendment made to s. 333.01, F.S.,
334 in a reference thereto; providing an effective date.

335
336 Be It Enacted by the Legislature of the State of Florida:

337
338 Section 1. Paragraph (d) of subsection (3) and paragraph
339 (d) of subsection (4) of section 20.23, Florida Statutes, are
340 amended to read:

341 20.23 Department of Transportation.—There is created a
342 Department of Transportation which shall be a decentralized
343 agency.

344 (3)

345 ~~(d) The secretary shall appoint an inspector general~~



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346 ~~pursuant to s. 20.055 who shall be directly responsible to the~~
347 ~~secretary and shall serve at the pleasure of the secretary.~~

348 (4)

349 ~~(d) The district director for the Fort Myers Urban Office~~
350 ~~of the Department of Transportation is responsible for~~
351 ~~developing the 5-year Transportation Plan for Charlotte,~~
352 ~~Collier, DeSoto, Glades, Hendry, and Lee Counties. The Fort~~
353 ~~Myers Urban Office also is responsible for providing policy,~~
354 ~~direction, local government coordination, and planning for those~~
355 ~~counties.~~

356 Section 2. Subsection (2) of section 215.82, Florida
357 Statutes, is amended to read:

358 215.82 Validation; when required.—

359 (2) Any bonds issued pursuant to this act which are
360 validated shall be validated in the manner provided by chapter
361 75. In actions to validate bonds to be issued in the name of the
362 State Board of Education under s. 9(a) and (d), Art. XII of the
363 State Constitution and bonds to be issued pursuant to chapter
364 259, the Land Conservation Act of 1972, the complaint shall be
365 filed in the circuit court of the county where the seat of state
366 government is situated, the notice required to be published by
367 s. 75.06 shall be published only in the county where the
368 complaint is filed, and the complaint and order of the circuit
369 court shall be served only on the state attorney of the circuit
370 in which the action is pending. In any action to validate bonds
371 issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1),
372 Art. XII of the State Constitution or issued pursuant to s.
373 215.605 ~~or s. 338.227~~, the complaint shall be filed in the
374 circuit court of the county where the seat of state government



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375 is situated, the notice required to be published by s. 75.06
376 shall be published in a newspaper of general circulation in the
377 county where the complaint is filed and in two other newspapers
378 of general circulation in the state, and the complaint and order
379 of the circuit court shall be served only on the state attorney
380 of the circuit in which the action is pending; provided,
381 however, that if publication of notice pursuant to this section
382 would require publication in more newspapers than would
383 publication pursuant to s. 75.06, such publication shall be made
384 pursuant to s. 75.06.

385 Section 3. Section 260.0144, Florida Statutes, is amended
386 to read:

387 260.0144 Sponsorship of state greenways and trails.—The
388 department may enter into a concession agreement with a not-for-
389 profit entity or private sector business or entity for
390 commercial sponsorship to be displayed on state greenway and
391 trail facilities not included within the Florida Shared-Use
392 Nonmotorized Trail Network established in chapter 339 or
393 ~~property specified in this section~~. The department may establish
394 the cost for entering into a concession agreement.

395 (1) A concession agreement shall be administered by the
396 department and must include the requirements found in this
397 section.

398 (2) (a) Space for a commercial sponsorship display may be
399 provided through a concession agreement on certain state-owned
400 greenway or trail facilities or property.

401 (b) Signage or displays erected under this section shall
402 comply with the provisions of s. 337.407 and chapter 479, and
403 shall be limited as follows:



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404 1. One large sign or display, not to exceed 16 square feet
405 in area, may be located at each trailhead or parking area.

406 2. One small sign or display, not to exceed 4 square feet
407 in area, may be located at each designated trail public access
408 point.

409 (c) Before installation, each name or sponsorship display
410 must be approved by the department.

411 (d) The department shall ensure that the size, color,
412 materials, construction, and location of all signs are
413 consistent with the management plan for the property and the
414 standards of the department, do not intrude on natural and
415 historic settings, and contain only a logo selected by the
416 sponsor and the following sponsorship wording:

417

418 ... (Name of the sponsor) ... proudly sponsors the costs
419 of maintaining the ... (Name of the greenway or
420 trail)

421

422 ~~(e) Sponsored state greenways and trails are authorized at~~
423 ~~the following facilities or property:~~

424 ~~1. Florida Keys Overseas Heritage Trail.~~

425 ~~2. Blackwater Heritage Trail.~~

426 ~~3. Tallahassee-St. Marks Historic Railroad State Trail.~~

427 ~~4. Nature Coast State Trail.~~

428 ~~5. Withlacoochee State Trail.~~

429 ~~6. General James A. Van Fleet State Trail.~~

430 ~~7. Palatka Lake Butler State Trail.~~

431 ~~(e)~~ (f) The department may enter into commercial sponsorship
432 agreements for other state greenways or trails as authorized in



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433 this section. A qualified entity that desires to enter into a
434 commercial sponsorship agreement shall apply to the department
435 on forms adopted by department rule.

436 ~~(f)~~ (g) All costs of a display, including development,
437 construction, installation, operation, maintenance, and removal
438 costs, shall be paid by the concessionaire.

439 (3) A concession agreement shall be for a minimum of 1
440 year, but may be for a longer period under a multiyear
441 agreement, and may be terminated for just cause by the
442 department upon 60 days' advance notice. Just cause for
443 termination of a concession agreement includes, but is not
444 limited to, violation of the terms of the concession agreement
445 or any provision of this section.

446 (4) Commercial sponsorship pursuant to a concession
447 agreement is for public relations or advertising purposes of the
448 not-for-profit entity or private sector business or entity, and
449 may not be construed by that not-for-profit entity or private
450 sector business or entity as having a relationship to any other
451 actions of the department.

452 (5) This section does not create a proprietary or
453 compensable interest in any sign, display site, or location.

454 (6) Proceeds from concession agreements shall be
455 distributed as follows:

456 (a) Eighty-five percent shall be deposited into the
457 appropriate department trust fund that is the source of funding
458 for management and operation of state greenway and trail
459 facilities and properties.

460 (b) Fifteen percent shall be deposited into the State
461 Transportation Trust Fund for use in the Traffic and Bicycle



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462 Safety Education Program and the Safe Paths to School Program
463 administered by the Department of Transportation.

464 (7) The department may adopt rules to administer this
465 section.

466 Section 4. Section 288.365, Florida Statutes, is created to
467 read:

468 288.365 Notwithstanding chapter 74-570, Laws of Florida, as
469 amended by chapter 90-462, Laws of Florida, the Port of Palm
470 Beach is deemed eligible and granted authority to apply to the
471 Federal Government to seek approval from the Foreign-Trade Zones
472 Board through an alternative site framework to include all of
473 Palm Beach, Martin, and St. Lucie Counties in the proposed
474 service area without requirement to obtain approvals from
475 incorporated municipalities within the service area. However,
476 the designation of any area as a foreign-trade zone does not
477 authorize an exemption from any law, any local zoning or land
478 use designation or ordinance of any municipality or county, or
479 any tax imposed by the state or by any political subdivision,
480 agency, or instrumentality thereof.

481 Section 5. Subsection (2) of section 311.07, Florida
482 Statutes, is amended to read:

483 311.07 Florida seaport transportation and economic
484 development funding.—

485 (2) A minimum of ~~\$25~~ \$15 million per year shall be made
486 available from the State Transportation Trust Fund to fund the
487 Florida Seaport Transportation and Economic Development Program.
488 The Florida Seaport Transportation and Economic Development
489 Council created in s. 311.09 shall develop guidelines for
490 project funding. Council staff, the Department of



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491 Transportation, and the Department of Economic Opportunity shall
492 work in cooperation to review projects and allocate funds in
493 accordance with the schedule required for the Department of
494 Transportation to include these projects in the tentative work
495 program developed pursuant to s. 339.135(4).

496 Section 6. Subsections (1), (9), and (12) of section
497 311.09, Florida Statutes, are amended to read:

498 311.09 Florida Seaport Transportation and Economic
499 Development Council.—

500 (1) The Florida Seaport Transportation and Economic
501 Development Council is created within the Department of
502 Transportation. The council consists of the following ~~16~~ 17
503 members: the port director, or the port director's designee, of
504 each of the ports of Jacksonville, Port Canaveral, ~~Port Citrus,~~
505 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,
506 St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key
507 West, and Fernandina; the secretary of the Department of
508 Transportation or his or her designee; and the director of the
509 Department of Economic Opportunity or his or her designee.

510 (9) The Department of Transportation shall include at least
511 \$25 ~~no less than \$15~~ million per year in its annual legislative
512 budget request for the Florida Seaport Transportation and
513 Economic Development Program funded under s. 311.07. Such budget
514 shall include funding for projects approved by the council which
515 have been determined by each agency to be consistent. The
516 department shall include the specific approved Florida Seaport
517 Transportation and Economic Development Program projects to be
518 funded under s. 311.07 during the ensuing fiscal year in the
519 tentative work program developed pursuant to s. 339.135(4). The



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520 total amount of funding to be allocated to Florida Seaport
521 Transportation and Economic Development Program projects under
522 s. 311.07 during the successive 4 fiscal years shall also be
523 included in the tentative work program developed pursuant to s.
524 339.135(4). The council may submit to the department a list of
525 approved projects that could be made production-ready within the
526 next 2 years. The list shall be submitted by the department as
527 part of the needs and project list prepared pursuant to s.
528 339.135(2)(b). However, the department shall, upon written
529 request of the Florida Seaport Transportation and Economic
530 Development Council, submit work program amendments pursuant to
531 s. 339.135(7) to the Governor within 10 days after the later of
532 the date the request is received by the department or the
533 effective date of the amendment, termination, or closure of the
534 applicable funding agreement between the department and the
535 affected seaport, as required to release the funds from the
536 existing commitment. Notwithstanding s. 339.135(7)(c), any work
537 program amendment to transfer prior year funds from one approved
538 seaport project to another seaport project is subject to the
539 procedures in s. 339.135(7)(d). Notwithstanding any provision of
540 law to the contrary, the department may transfer unexpended
541 budget between the seaport projects as identified in the
542 approved work program amendments.

543 ~~(12) Until July 1, 2014, Citrus County may apply for a~~
544 ~~grant through the Florida Seaport Transportation and Economic~~
545 ~~Development Council to perform a feasibility study regarding the~~
546 ~~establishment of a port in Citrus County. The council shall~~
547 ~~evaluate such application pursuant to subsections (5)-(8) and,~~
548 ~~if approved, the Department of Transportation shall include the~~



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549 ~~feasibility study in its budget request pursuant to subsection~~
550 ~~(9). If the study determines that a port in Citrus County is not~~
551 ~~feasible, the membership of Port Citrus on the council shall~~
552 ~~terminate.~~

553 Section 7. Subsections (6), (47), and present subsection
554 (90) of section 316.003, Florida Statutes, are amended, present
555 subsections (91), (92), and (93) of that section are
556 redesignated as subsections (93), (95), and (96), respectively,
557 and new subsections (90), (92), and (94) are added to that
558 section, to read:

559 316.003 Definitions.—The following words and phrases, when
560 used in this chapter, shall have the meanings respectively
561 ascribed to them in this section, except where the context
562 otherwise requires:

563 (6) CROSSWALK.—

564 (a) Unmarked crosswalk.—An unmarked part of the roadway at
565 an intersection used by pedestrians for crossing the roadway
566 ~~That part of a roadway at an intersection included within the~~
567 ~~connections of the lateral lines of the sidewalks on opposite~~
568 ~~sides of the highway, measured from the curbs or, in the absence~~
569 ~~of curbs, from the edges of the traversable roadway.~~

570 (b) Marked crosswalk.—Pavement marking lines on the roadway
571 surface, which may include contrasting pavement texture, style,
572 or colored portions of the roadway at an intersection used by
573 pedestrians for crossing the roadway Any portion of a roadway at
574 an intersection or elsewhere distinctly indicated for pedestrian
575 crossing by lines or other markings on the surface.

576 (c) Midblock crosswalk.—A location between intersections
577 where the roadway surface is marked by pavement marking lines,



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578 which may include contrasting pavement texture, style or colored
579 portion of the roadway at a signalized or unsignalized crosswalk
580 used for pedestrian roadway crossings and may include a
581 pedestrian refuge island.

582 (47) SIDEWALK.—That portion of a street ~~between the~~
583 ~~curbline, or the lateral line, of a roadway and the adjacent~~
584 ~~property lines,~~ intended for use by pedestrians, adjacent to the
585 roadway between the curb or edge of the roadway and the property
586 line.

587 (90) AUTONOMOUS TECHNOLOGY.—Technology installed on a motor
588 vehicle which has the capability to drive the vehicle on which
589 the technology is installed without the active control of or
590 monitoring by a human operator.

591 ~~(91)(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with
592 autonomous technology. The term "autonomous technology" means
593 technology installed on a motor vehicle that has the capability
594 to drive the vehicle on which the technology is installed
595 without the active control or monitoring by a human operator.
596 The term excludes a motor vehicle enabled with active safety
597 systems or driver assistance systems, including, without
598 limitation, a system to provide electronic blind spot
599 assistance, crash avoidance, emergency braking, parking
600 assistance, adaptive cruise control, lane keep assistance, lane
601 departure warning, or traffic jam and queuing assistant, unless
602 any such system alone or in combination with other systems
603 enables the vehicle on which the technology is installed to
604 drive without the active control or monitoring by a human
605 operator.

606 (92) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle



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607 automation technology that integrates sensor array, wireless
608 communications, vehicle controls, and specialized software to
609 synchronize acceleration and braking between up to two truck
610 tractor-semitrailer combinations, while leaving each vehicle's
611 steering control and systems command in the control of the
612 vehicle's driver.

613 (94) PORT-OF-ENTRY.—A designated location that allows
614 drivers of commercial motor vehicles to purchase temporary
615 registration permits necessary to operate legally within the
616 state. The locations and the designated routes to such locations
617 shall be determined by the Department of Transportation.

618 Section 8. Subsection (2) of section 316.0895, Florida
619 Statutes, is amended to read:

620 316.0895 Following too closely.—

621 (2) It is unlawful for the driver of any motor truck, motor
622 truck drawing another vehicle, or vehicle towing another vehicle
623 or trailer, when traveling upon a roadway outside of a business
624 or residence district, to follow within 300 feet of another
625 motor truck, motor truck drawing another vehicle, or vehicle
626 towing another vehicle or trailer. The provisions of this
627 subsection shall not be construed to prevent overtaking and
628 passing nor shall the same apply upon any lane specially
629 designated for use by motor trucks or other slow-moving
630 vehicles. This subsection does not apply to two truck tractor-
631 semitrailer combinations equipped and connected with driver-
632 assistive truck-platooning technology, as defined in s. 316.003,
633 and operating on a multilane limited access facility, if the
634 owner or operator complies with the financial responsibility
635 requirement of s. 316.86.



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636 Section 9. Paragraphs (b) and (c) of subsection (7) of
637 section 316.130, Florida Statutes, are amended to read:

638 316.130 Pedestrians; traffic regulations.—

639 (7)

640 (b) The driver of a vehicle at any crosswalk location where
641 the approach is not controlled by a traffic signal or stop sign
642 must signage so indicates shall stop and remain stopped to allow
643 a pedestrian to cross a roadway when the pedestrian is in the
644 crosswalk or steps into the crosswalk and is upon the half of
645 the roadway upon which the vehicle is traveling or turning, or
646 when the pedestrian is approaching so closely from the opposite
647 half of the roadway as to be in danger. Any pedestrian crossing
648 a roadway at a point where a pedestrian tunnel or overhead
649 pedestrian crossing has been provided must yield the right-of-
650 way to all vehicles upon the roadway.

651 ~~(c) When traffic control signals are not in place or in~~
652 ~~operation and there is no signage indicating otherwise, the~~
653 ~~driver of a vehicle shall yield the right of way, slowing down~~
654 ~~or stopping if need be to so yield, to a pedestrian crossing the~~
655 ~~roadway within a crosswalk when the pedestrian is upon the half~~
656 ~~of the roadway upon which the vehicle is traveling or when the~~
657 ~~pedestrian is approaching so closely from the opposite half of~~
658 ~~the roadway as to be in danger. Any pedestrian crossing a~~
659 ~~roadway at a point where a pedestrian tunnel or overhead~~
660 ~~pedestrian crossing has been provided shall yield the right-of-~~
661 ~~way to all vehicles upon the roadway.~~

662 Section 10. Subsections (1) and (3) of section 316.303,
663 Florida Statutes, are amended to read:

664 316.303 Television receivers.—



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665 (1) No motor vehicle operated on the highways of this state
666 shall be equipped with television-type receiving equipment so
667 located that the viewer or screen is visible from the driver's
668 seat, unless the vehicle is equipped with autonomous technology,
669 as defined in s. 316.003(90), and is being operated in
670 autonomous mode, as provided in s. 316.85(2); or unless the
671 vehicle is equipped and operating with driver-assistive truck-
672 platooning technology, as defined in s. 316.003(92).

673 (3) This section does not prohibit the use of an electronic
674 display used in conjunction with a vehicle navigation system; or
675 an electronic display used by an operator of a vehicle equipped
676 with autonomous technology, as defined in s. 316.003(90), while
677 the vehicle is being operated in autonomous mode, as provided in
678 s. 316.85(2); or an electronic display used by the operator of a
679 vehicle equipped and operating with driver-assistive truck
680 platooning technology, as defined in s. 316.003(92).

681 Section 11. Paragraph (b) of subsection (3) and subsection
682 (14) of section 316.515, Florida Statutes, are amended to read:
683 316.515 Maximum width, height, length.—

684 (3) LENGTH LIMITATION.—Except as otherwise provided in this
685 section, length limitations apply solely to a semitrailer or
686 trailer, and not to a truck tractor or to the overall length of
687 a combination of vehicles. No combination of commercial motor
688 vehicles coupled together and operating on the public roads may
689 consist of more than one truck tractor and two trailing units.
690 Unless otherwise specifically provided for in this section, a
691 combination of vehicles not qualifying as commercial motor
692 vehicles may consist of no more than two units coupled together;
693 such nonqualifying combination of vehicles may not exceed a



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694 total length of 65 feet, inclusive of the load carried thereon,
695 but exclusive of safety and energy conservation devices approved
696 by the department for use on vehicles using public roads.
697 Notwithstanding any other provision of this section, a truck
698 tractor-semitrailer combination engaged in the transportation of
699 automobiles or boats may transport motor vehicles or boats on
700 part of the power unit; and, except as may otherwise be mandated
701 under federal law, an automobile or boat transporter semitrailer
702 may not exceed 50 feet in length, exclusive of the load;
703 however, the load may extend up to an additional 6 feet beyond
704 the rear of the trailer. The 50-foot length limitation does not
705 apply to non-stinger-steered automobile or boat transporters
706 that are 65 feet or less in overall length, exclusive of the
707 load carried thereon, or to stinger-steered automobile or boat
708 transporters that are 75 feet or less in overall length,
709 exclusive of the load carried thereon. For purposes of this
710 subsection, a "stinger-steered automobile or boat transporter"
711 is an automobile or boat transporter configured as a semitrailer
712 combination wherein the fifth wheel is located on a drop frame
713 located behind and below the rearmost axle of the power unit.
714 Notwithstanding paragraphs (a) and (b), any straight truck or
715 truck tractor-semitrailer combination engaged in the
716 transportation of horticultural trees may allow the load to
717 extend up to an additional 10 feet beyond the rear of the
718 vehicle, provided said trees are resting against a retaining bar
719 mounted above the truck bed so that the root balls of the trees
720 rest on the floor and to the front of the truck bed and the tops
721 of the trees extend up over and to the rear of the truck bed,
722 and provided the overhanging portion of the load is covered with



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723 protective fabric.
724 (b) *Semitrailers.*—
725 1. A semitrailer operating in a truck tractor-semitrailer
726 combination may not exceed 48 feet in extreme overall outside
727 dimension, measured from the front of the unit to the rear of
728 the unit and the load carried thereon, exclusive of safety and
729 energy conservation devices approved by the department for use
730 on vehicles using public roads, unless it complies with
731 subparagraph 2. A semitrailer which exceeds 48 feet in length
732 and is used to transport divisible loads may operate in this
733 state only if issued a permit under s. 316.550 and if such
734 trailer meets the requirements of this chapter relating to
735 vehicle equipment and safety. Except for highways on the tandem
736 trailer truck highway network, public roads deemed unsafe for
737 longer semitrailer vehicles or those roads on which such longer
738 vehicles are determined not to be in the interest of public
739 convenience shall, in conformance with s. 316.006, be restricted
740 by the Department of Transportation or by the local authority to
741 use by semitrailers not exceeding a length of 48 feet, inclusive
742 of the load carried thereon but exclusive of safety and energy
743 conservation devices approved by the department for use on
744 vehicles using public roads. Truck tractor-semitrailer
745 combinations shall be afforded reasonable access to terminals;
746 facilities for food, fuel, repairs, and rest; and points of
747 loading and unloading.
748 2. A semitrailer which is more than 48 feet but not more
749 than ~~57~~ 53 feet in extreme overall outside dimension, as
750 measured pursuant to subparagraph 1., may operate on public
751 roads, except roads on the State Highway System which are



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752 restricted by the Department of Transportation or other roads
753 restricted by local authorities, if:

754 a. The distance between the kingpin or other peg that locks
755 into the fifth wheel of a truck tractor and the center of the
756 rear axle or rear group of axles does not exceed 41 feet, or, in
757 the case of a semitrailer used exclusively or primarily to
758 transport vehicles in connection with motorsports competition
759 events, the distance does not exceed 46 feet from the kingpin to
760 the center of the rear axles; and

761 b. It is equipped with a substantial rear-end underride
762 protection device meeting the requirements of 49 C.F.R. s.
763 393.86, "Rear End Protection."

764 (14) MANUFACTURED BUILDINGS.—The Department of
765 Transportation may, in its discretion and upon application and
766 good cause shown therefor that the same is not contrary to the
767 public interest, issue a special permit for truck tractor-
768 semitrailer combinations where the total number of overwidth
769 deliveries of manufactured buildings, as defined in s.
770 553.36(13), may be reduced by permitting the use of multiple
771 sections or single units on an overlength trailer of no more
772 than 80 54 feet.

773 Section 12. Paragraph (b) of subsection (2) of section
774 316.545, Florida Statutes, is amended to read:

775 316.545 Weight and load unlawful; special fuel and motor
776 fuel tax enforcement; inspection; penalty; review.—

777 (2)

778 (b) The officer or inspector shall inspect the license
779 plate or registration certificate of the commercial vehicle, as
780 defined in s. 316.003(66), to determine if its gross weight is



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781 in compliance with the declared gross vehicle weight. If its
782 gross weight exceeds the declared weight, the penalty shall be 5
783 cents per pound on the difference between such weights. In those
784 cases when the commercial vehicle, as defined in s. 316.003(66),
785 is being operated over the highways of the state with an expired
786 registration or with no registration from this or any other
787 jurisdiction or is not registered under the applicable
788 provisions of chapter 320, the penalty herein shall apply on the
789 basis of 5 cents per pound on that scaled weight which exceeds
790 35,000 pounds on laden truck tractor-semitrailer combinations or
791 tandem trailer truck combinations, 10,000 pounds on laden
792 straight trucks or straight truck-trailer combinations, or
793 10,000 pounds on any unladen commercial motor vehicle. A
794 commercial motor vehicle entering the state at a designated
795 port-of-entry location, as defined in s. 316.003(94), or
796 operating on designated routes to a port-of-entry location,
797 which obtains a temporary registration permit shall be assessed
798 a penalty limited to the difference between its gross weight and
799 the declared gross vehicle weight at 5 cents per pound. If the
800 license plate or registration has not been expired for more than
801 90 days, the penalty imposed under this paragraph may not exceed
802 \$1,000. In the case of special mobile equipment as defined in s.
803 316.003(48), which qualifies for the license tax provided for in
804 s. 320.08(5)(b), being operated on the highways of the state
805 with an expired registration or otherwise not properly
806 registered under the applicable provisions of chapter 320, a
807 penalty of \$75 shall apply in addition to any other penalty
808 which may apply in accordance with this chapter. A vehicle found
809 in violation of this section may be detained until the owner or



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810 operator produces evidence that the vehicle has been properly
811 registered. Any costs incurred by the retention of the vehicle
812 shall be the sole responsibility of the owner. A person who has
813 been assessed a penalty pursuant to this paragraph for failure
814 to have a valid vehicle registration certificate pursuant to the
815 provisions of chapter 320 is not subject to the delinquent fee
816 authorized in s. 320.07 if such person obtains a valid
817 registration certificate within 10 working days after such
818 penalty was assessed.

819 Section 13. Section 333.01, Florida Statutes, is amended to
820 read:

821 333.01 Definitions.—For the purpose of this chapter, the
822 following words, terms, and phrases shall have the following
823 ~~meanings herein given, unless otherwise specifically defined, or~~
824 ~~unless another intention clearly appears, or the context~~
825 ~~otherwise requires:~~

826 (1) “Aeronautical study” means a Federal Aviation
827 Administration review conducted pursuant to 14 C.F.R. part 77,
828 concerning the effect of proposed construction or alteration on
829 the use of air navigation facilities or navigable airspace by
830 aircraft. “Aeronautics” means transportation by aircraft; the
831 operation, construction, repair, or maintenance of aircraft,
832 aircraft power plants and accessories, including the repair,
833 packing, and maintenance of parachutes; the design,
834 establishment, construction, extension, operation, improvement,
835 repair, or maintenance of airports, restricted landing areas, or
836 other air navigation facilities, and air instruction.

837 (2) “Airport” means any area of land or water designed and
838 set aside for the landing and taking off of aircraft and



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839 utilized or to be utilized in the interest of the public for
840 such purpose.

841 (3) “Airport hazard” means any obstruction that exceeds
842 ~~structure or tree or use of land which would exceed~~ the federal
843 obstruction standards as contained in 14 C.F.R. ss. 77.15,
844 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and~~
845 ~~77.29~~ and which obstructs the airspace required for the flight
846 of aircraft in taking off, maneuvering, or landing, or that is
847 otherwise hazardous to such taking off, maneuvering, or landing
848 of aircraft and for which no person has ~~previously~~ obtained a
849 permit ~~or variance~~ pursuant to s. 333.025 or s. 333.07.

850 (4) “Airport hazard area” means any area of land or water
851 upon which an airport hazard might be established ~~if not~~
852 ~~prevented as provided in this chapter.~~

853 (5) “Airport land use compatibility zoning” means airport
854 zoning regulations governing ~~restricting~~ the use of land
855 adjacent to or in the immediate vicinity of airports in the
856 manner ~~provided enumerated~~ in ss. 333.03(2) ~~s. 333.03(2) to~~
857 ~~activities and (3) purposes compatible with the continuation of~~
858 ~~normal airport operations including landing and takeoff of~~
859 ~~aircraft in order to promote public health, safety, and general~~
860 ~~welfare.~~

861 (6) “Airport layout plan” means a scaled detailed, scale
862 engineering drawing or set of drawings in either paper or
863 electronic form of the existing, including pertinent dimensions,
864 of an airport’s current and planned airport facilities which
865 provides a graphic representation of the existing and long-term
866 development plan for the airport and demonstrates the
867 preservation and continuity of safety, utility, and efficiency



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868 ~~of the airport, their locations, and runway usage.~~

869 (7) "Airport master plan" means a comprehensive plan for an
870 airport that describes the immediate and long-term development
871 plans to meet future aviation demand.

872 (8) "Airport protection zoning" means airport zoning
873 regulations governing airport hazards in the manner provided in
874 s. 333.03.

875 (9) "Department" means the Department of Transportation as
876 created by s. 20.23.

877 (10) "Educational facility" means any structure, land, or
878 use thereof that includes a public or private kindergarten
879 through grade 12 school, charter school, magnet school, college
880 campus, or university campus. Space used for educational
881 purposes within a multitenant building may not be treated as an
882 educational facility for the purpose of this chapter.

883 (11) "Landfill" has the same meaning as in s. 403.703.

884 (12)(7) "Obstruction" means any object of natural growth,
885 terrain, or permanent or temporary construction or alteration,
886 including equipment or materials used and any permanent or
887 temporary apparatus, or alteration of any permanent or temporary
888 existing structure by a change in its height, including existing
889 or proposed appurtenances, or lateral dimensions, including
890 equipment or material used therein, which exceeds existing or
891 proposed manmade object or object of natural growth or terrain
892 that violates the standards contained in 14 C.F.R. ss. 77.15,
893 77.17, 77.19, 77.21, and 77.23 77.21, 77.23, 77.25, 77.28, and
894 77.29.

895 (13)(8) "Person" means any individual, firm, copartnership,
896 corporation, company, association, joint-stock association, or



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897 body politic, and includes any trustee, receiver, assignee, or
898 other similar representative thereof.

899 (14)(9) "Political subdivision" means the local government
900 of any county, city, town, village, or other subdivision or
901 agency thereof, or any district or special district, port
902 commission, port authority, or other such agency authorized to
903 establish or operate airports in the state.

904 (15) "Public-use airport" means an airport, publicly or
905 privately owned and licensed by the state, which is open for use
906 by the public.

907 (16)(10) "Runway protection clear zone" or "RPZ" means an
908 area at ground level beyond the a runway end which is intended
909 to enhance the safety and protection of people and property on
910 the ground clear zone as defined in 14 C.F.R. s. 151.9(b).

911 (17)(11) "Structure" means any object, constructed,
912 erected, altered, or installed by humans, including, but without
913 limitation thereof, buildings, towers, smokestacks, utility
914 poles, power generation equipment, and overhead transmission
915 lines.

916 (18) "Substantial modification" means any repair,
917 reconstruction, rehabilitation, or improvement of a structure
918 when the actual cost of the repair, reconstruction,
919 rehabilitation, or improvement of the structure equals or
920 exceeds 50 percent of the market value of the structure.

921 ~~(12) "Tree" includes any plant of the vegetable kingdom.~~

922 Section 14. Section 333.025, Florida Statutes, is amended
923 to read:

924 333.025 Permit required for structures exceeding federal
925 obstruction standards.-



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926 (1) ~~A person proposing the construction or alteration in~~
927 ~~order to prevent the erection~~ of structures ~~hazardous dangerous~~
928 to air navigation, subject to the provisions of subsections (2),
929 (3), and (4), ~~must each person shall~~ secure from the department
930 ~~of Transportation~~ a permit for the proposed construction or
931 ~~erection, alteration, or modification~~ of any structure the
932 result of which would exceed the federal obstruction standards
933 as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and
934 77.23 77.21, 77.23, 77.25, 77.28, and 77.29. However, permits
935 from the department ~~of Transportation~~ will be required only
936 within an airport hazard area where federal obstruction
937 standards are exceeded and if the proposed construction is
938 within a 10-nautical-mile radius of the airport reference point,
939 located at the approximate geometric ~~geographical~~ center of all
940 useable runways of public-use airports or a publicly owned or
941 operated airport, a military airport, or an airport licensed by
942 the state for public use.

943 (2) ~~Existing, planned, and proposed Affected airports will~~
944 ~~be considered as having these facilities at public-use airports~~
945 ~~contained in an which are shown on the~~ airport master plan, on
946 ~~or~~ an airport layout plan submitted to the Federal Aviation
947 Administration Airport District Office, or in comparable
948 military documents, ~~and will be so~~ protected from structures
949 that exceed federal obstruction standards. Planned or proposed
950 public-use airports which are the subject of a notice or
951 proposal submitted to the Federal Aviation Administration or to
952 the Department of Transportation shall also be protected.

953 (3) Permit requirements of subsection (1) do shall not
954 apply to structures projects which received construction permits



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955 from the Federal Communications Commission for structures
956 exceeding federal obstruction standards prior to May 20, 1975,
957 ~~provided such structures now exist;~~ nor does subsection (1)
958 ~~shall it~~ apply to previously approved structures now existing,
959 or any necessary replacement or repairs to such existing
960 structures, so long as the height and location is unchanged.

961 (4) When political subdivisions have adopted adequate
962 airport airspace protection zoning regulations in compliance
963 with s. 333.03, and such regulations are on file with the
964 department ~~of Transportation~~, and have established a permitting
965 process in compliance with s. 333.09(2), a permit for such
966 structure shall not be required from the department ~~of~~
967 ~~Transportation~~. To evaluate technical consistency with this
968 section, there is a 15-day department review period concurrent
969 with the permitting process prescribed by s. 333.09. Upon
970 receipt of a complete permit application, the local government
971 shall forward to the department's Aviation Office by certified
972 mail, return receipt requested, or by delivery service that
973 provides a receipt evidencing delivery, a copy of the
974 application. Cranes, construction equipment, and other temporary
975 structures, in use or in place for a period not to exceed 18
976 consecutive months, are exempt from this requirement, unless
977 requested by the department's Aviation Office.

978 (5) The department ~~of Transportation~~ shall, within 30 days
979 of the receipt of an application for a permit, issue or deny a
980 permit for the construction or erection, alteration, or
981 modification of any structure ~~the result of which would exceed~~
982 federal obstruction standards as contained in 14 C.F.R. ss.
983 77.15, 77.17, 77.19, 77.21, and 77.23 77.21, 77.23, 77.25,



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984 ~~77.28, and 77.29. The department shall review permit~~
 985 ~~applications in conformity with s. 120.60.~~
 986 (6) In determining whether to issue or deny a permit, the
 987 department shall consider:
 988 (a) ~~The safety of persons on the ground and in the air The~~
 989 ~~nature of the terrain and height of existing structures.~~
 990 (b) ~~The safe and efficient use of navigable airspace Public~~
 991 ~~and private interests and investments.~~
 992 (c) ~~The nature of the terrain and height of existing~~
 993 ~~structures The character of flying operations and planned~~
 994 ~~developments of airports.~~
 995 (d) ~~Whether the construction of the proposed structure~~
 996 ~~would impact the state licensing standards for a public-use~~
 997 ~~airport, contained in chapter 330 and chapter 14-60, Florida~~
 998 ~~Administrative Code Federal airways as designated by the Federal~~
 999 ~~Aviation Administration.~~
 1000 (e) ~~The character of existing and planned flight operations~~
 1001 ~~and developments at public-use airports Whether the construction~~
 1002 ~~of the proposed structure would cause an increase in the minimum~~
 1003 ~~descent altitude or the decision height at the affected airport.~~
 1004 (f) ~~Federal airways; visual flight rules, flyways and~~
 1005 ~~corridors; and instrument approaches as designated by the~~
 1006 ~~Federal Aviation Administration Technological advances.~~
 1007 (g) ~~Whether the construction of the proposed structure~~
 1008 ~~would cause an increase in the minimum descent altitude or the~~
 1009 ~~decision height at the affected airport The safety of persons on~~
 1010 ~~the ground and in the air.~~
 1011 (h) ~~The cumulative effects on navigable airspace of all~~
 1012 ~~existing structures and all other known and proposed structures~~



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1013 ~~in the area Land use density.~~
 1014 ~~(i) The safe and efficient use of navigable airspace.~~
 1015 ~~(j) The cumulative effects on navigable airspace of all~~
 1016 ~~existing structures, proposed structures identified in the~~
 1017 ~~applicable jurisdictions' comprehensive plans, and all other~~
 1018 ~~known proposed structures in the area.~~
 1019 (7) When issuing a permit under this section, the
 1020 department of Transportation shall, as a specific condition of
 1021 such permit, require the owner obstruction marking and lighting
 1022 of the permitted structure or vegetation to install, operate,
 1023 and maintain thereon, at his or her own expense, marking and
 1024 lighting in conformance with the specific standards established
 1025 by the Federal Aviation Administration ~~structure as provided in~~
 1026 ~~s. 333.07(3)(b).~~
 1027 (8) The department ~~may of Transportation shall~~ not approve
 1028 a permit for the ~~construction or alteration erection~~ of a
 1029 structure unless the applicant submits both documentation
 1030 showing compliance with the federal requirement for notification
 1031 of proposed construction ~~or alteration~~ and a valid aeronautical
 1032 ~~study evaluation~~, and no permit shall be approved solely on the
 1033 basis that such proposed structure will not exceed federal
 1034 obstruction standards as contained in 14 C.F.R. ss. ~~77.15,~~
 1035 ~~77.17, 77.19, 77.21, or 77.23 77.21, 77.23, 77.25, 77.28, or~~
 1036 ~~77.29, or any other federal aviation regulation.~~
 1037 (9) ~~The denial of a permit under this section is subject to~~
 1038 ~~the administrative review provisions of chapter 120.~~
 1039 Section 15. Section 333.03, Florida Statutes, is amended to
 1040 read:
 1041 333.03 ~~Requirement Power~~ to adopt airport zoning



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1042 regulations.-

1043 (1) (a) ~~Every In order to prevent the creation or~~
1044 ~~establishment of airport hazards, every~~ political subdivision
1045 having an airport hazard area within its territorial limits
1046 shall, ~~by October 1, 1977,~~ adopt, administer, and enforce, ~~under~~
1047 ~~the police power and~~ in the manner and upon the conditions
1048 ~~hereinafter prescribed in this section,~~ airport protection
1049 zoning regulations for ~~such~~ airport hazards ~~hazard area.~~

1050 (b) Where an airport is owned or controlled by a political
1051 subdivision and an airport hazard area ~~appertaining to such~~
1052 ~~airport~~ is located wholly or partly outside the territorial
1053 limits of ~~the said~~ political subdivision, the political
1054 subdivision owning or controlling the airport and any ~~the~~
1055 political subdivision within which the airport hazard area is
1056 located, must shall either:

1057 1. By interlocal agreement, ~~in accordance with the~~
1058 ~~provisions of chapter 163,~~ adopt, administer, and enforce a set
1059 of airport protection zoning regulations applicable to the
1060 airport hazard area ~~in question;~~ or

1061 2. By ordinance, regulation, or resolution duly adopted,
1062 create a joint airport zoning board, which must ~~board shall have~~
1063 ~~the same power to~~ adopt, administer, and enforce a set of
1064 airport protection zoning regulations applicable to the airport
1065 hazard area in each ~~question as that vested in paragraph (a) in~~
1066 ~~the~~ political subdivision in ~~within~~ which the airport hazard
1067 ~~such~~ area is located. Each such joint airport zoning board shall
1068 have as members two representatives appointed by each
1069 participating political subdivision ~~participating in its~~
1070 ~~creation and,~~ in addition, a chair elected by a majority of the



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1071 members so appointed. ~~The~~ ~~However,~~ the airport manager or
1072 representative of each airport in ~~managers of the affected~~
1073 participating political subdivisions shall serve on the board in
1074 a nonvoting capacity.

1075 (c) Airport protection zoning regulations adopted under
1076 paragraph (a) must shall, at ~~as a~~ minimum, require:

1077 1. A permit ~~variance~~ for the ~~erection,~~ construction or
1078 ~~alteration, or modification~~ of any structure that ~~which~~ would
1079 cause the structure to exceed the federal obstruction standards
1080 as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and
1081 77.23. ~~77.21, 77.23, 77.25, 77.28, and 77.29;~~

1082 2. Obstruction marking and lighting for structures
1083 exceeding the federal obstruction standards as contained in 14
1084 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23, as specified
1085 in s. 333.07(3).~~+~~

1086 3. Documentation showing compliance with the federal
1087 requirement for notification of proposed construction or
1088 alteration and a valid aeronautical study ~~evaluation~~ submitted
1089 by each person applying for a permit. ~~variance,~~ and

1090 4. Consideration of the criteria in s. 333.025(6), when
1091 determining whether to issue or deny a permit. ~~variance,~~ and
1092 5. That a permit may not ~~no variance shall~~ be approved
1093 solely on the basis that ~~the~~ ~~such~~ proposed structure will not
1094 exceed federal obstruction standards as contained in 14 C.F.R.
1095 ss. 77.15, 77.17, 77.19, 77.21, or 77.23 ~~77.21, 77.23, 77.25,~~
1096 ~~77.28, or 77.29,~~ or any other federal aviation regulation.

1097 (d) The department is available to provide assistance to
1098 political subdivisions with regard to federal obstruction
1099 standards ~~shall issue copies of the federal obstruction~~



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1100 ~~standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25,~~
1101 ~~77.28, and 77.29 to each political subdivision having airport~~
1102 ~~hazard areas and, in cooperation with political subdivisions,~~
1103 ~~shall issue appropriate airport zoning maps depicting within~~
1104 ~~each county the maximum allowable height of any structure or~~
1105 ~~tree. Material distributed pursuant to this subsection shall be~~
1106 ~~at no cost to authorized recipients.~~

1107 (2) In the manner provided in subsection (1), interim
1108 airport land use compatibility zoning regulations must shall be
1109 adopted, administered, and enforced. Airport land-use
1110 compatibility zoning When political subdivisions have adopted
1111 land development regulations must, at a minimum, in accordance
1112 with the provisions of chapter 163 which address the use of land
1113 in the manner consistent with the provisions herein, adoption of
1114 airport land use compatibility regulations pursuant to this
1115 subsection shall not be required. Interim airport land use
1116 compatibility zoning regulations shall consider the following:

1117 (a) Prohibiting any new and restricting any existing
1118 Whether sanitary landfills are located within the following
1119 areas:

1120 1. Within 10,000 feet from the nearest point of any runway
1121 used or planned to be used by turbine turbojet or turboprop
1122 aircraft.

1123 2. Within 5,000 feet from the nearest point of any runway
1124 used only by nonturbine piston-type aircraft.

1125 3. Outside the perimeters defined in subparagraphs 1. and
1126 2., but still within the lateral limits of the civil airport
1127 imaginary surfaces defined in 14 C.F.R. part 77.19 77.25. Case-
1128 by-case review of such landfills is advised.



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1129 (b) ~~Where~~ ~~Whether~~ any landfill is located and constructed
1130 so that it attracts or sustains hazardous bird movements from
1131 feeding, water, or roosting areas into, or across, the runways
1132 or approach and departure patterns of aircraft, ~~The political~~
1133 ~~subdivision shall request from the airport authority or other~~
1134 ~~governing body operating the airport a report on such bird~~
1135 ~~feeding or roosting areas that at the time of the request are~~
1136 ~~known to the airport. In preparing its report, the authority, or~~
1137 ~~other governing body, shall consider whether the landfill~~
1138 ~~operator will be required to incorporate bird management~~
1139 ~~techniques or other practices to minimize bird hazards to~~
1140 ~~airborne aircraft. The airport authority or other governing body~~
1141 ~~shall respond to the political subdivision no later than 30 days~~
1142 ~~after receipt of such request.~~

1143 (c) Where an airport authority or other governing body
1144 operating a publicly owned, public-use airport has conducted a
1145 noise study in accordance with the provisions of 14 C.F.R. part
1146 150, or where the public-use airport owner has established noise
1147 contours pursuant to another public study approved by the
1148 Federal Aviation Administration, incompatible uses, as
1149 established in 14 C.F.R. part 150, appendix A noise study, or as
1150 a part of an alternative FAA-approved public study, may not be
1151 permitted within the noise contours established by that study,
1152 except where such use is specifically contemplated by such study
1153 with appropriate mitigation or similar techniques described in
1154 the study neither residential construction nor any educational
1155 facility as defined in chapter 1013, with the exception of
1156 aviation school facilities, shall be permitted within the area
1157 contiguous to the airport defined by an outer noise contour that



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1158 ~~is considered incompatible with that type of construction by 14~~
1159 ~~C.F.R. part 150, Appendix A or an equivalent noise level as~~
1160 ~~established by other types of noise studies.~~

1161 (d) Where an airport authority or other governing body
1162 operating a ~~publicly owned~~, public-use airport has not conducted
1163 a noise study, neither residential construction nor any
1164 educational facility ~~as defined in chapter 1013~~, with the
1165 exception of aviation school facilities, shall be permitted
1166 within an area contiguous to the airport measuring one-half the
1167 length of the longest runway on either side of and at the end of
1168 each runway centerline.

1169 (3) In the manner provided in subsection (1), airport
1170 zoning regulations ~~shall be adopted~~ which restrict new
1171 incompatible uses, ~~activities~~, or substantial modifications to
1172 existing incompatible uses construction within runway protection
1173 clear zones shall be adopted, ~~including uses, activities, or~~
1174 ~~construction in runway clear zones which are incompatible with~~
1175 ~~normal airport operations or endanger public health, safety, and~~
1176 ~~welfare by resulting in congregations of people, emissions of~~
1177 ~~light or smoke, or attraction of birds. Such regulations shall~~
1178 ~~prohibit the construction of an educational facility of a public~~
1179 ~~or private school at either end of a runway of a publicly owned,~~
1180 ~~public-use airport within an area which extends 5 miles in a~~
1181 ~~direct line along the centerline of the runway, and which has a~~
1182 ~~width measuring one-half the length of the runway. Exceptions~~
1183 ~~approving construction of an educational facility within the~~
1184 ~~delineated area shall only be granted when the political~~
1185 ~~subdivision administering the zoning regulations makes specific~~
1186 ~~findings detailing how the public policy reasons for allowing~~



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1187 ~~the construction outweigh health and safety concerns prohibiting~~
1188 ~~such a location.~~

1189 ~~(4) The procedures outlined in subsections (1), (2), and~~
1190 ~~(3) for the adoption of such regulations are supplemental to any~~
1191 ~~existing procedures utilized by political subdivisions in the~~
1192 ~~adoption of such regulations.~~

1193 (4)(5) The department of Transportation shall provide
1194 technical assistance to any political subdivision requesting
1195 assistance in the preparation of an airport zoning regulation
1196 code. A copy of all local airport zoning codes, rules, and
1197 regulations, and amendments and proposed and granted permits
1198 variances thereto, shall be filed with the department. All
1199 updates and amendments to local airport zoning codes, rules, and
1200 regulations must be filed with the department within 30 days
1201 after adoption.

1202 ~~(5)(6) Nothing in Subsection (2) and or subsection (3) may~~
1203 ~~not shall be construed to require the removal, alteration, sound~~
1204 ~~conditioning, or other change, or to interfere with the~~
1205 ~~continued use or adjacent expansion of any educational structure~~
1206 ~~or site in existence on July 1, 1993, or be construed to~~
1207 ~~prohibit the construction of any new structure for which a site~~
1208 ~~has been determined as provided in former s. 235.19, as of July~~
1209 ~~1, 1993.~~

1210 (6) This section may not preclude an airport authority,
1211 local government, or other governing body operating a public-use
1212 airport from establishing airport protection zoning regulations
1213 more restrictive than herein prescribed in order to protect the
1214 safety and welfare of the public in the air and on the ground.

1215 Section 16. Section 333.04, Florida Statutes, is amended to



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1216 read:
 1217 333.04 Comprehensive zoning regulations; most stringent to
 1218 prevail where conflicts occur.-
 1219 (1) INCORPORATION.-In the event that a political
 1220 subdivision has adopted, or hereafter adopts, a comprehensive
 1221 plan or policy zoning ordinance regulating, among other things,
 1222 the height of buildings, structures, and natural objects, and
 1223 uses of property, any airport zoning regulations applicable to
 1224 the same area or portion thereof may be incorporated in and made
 1225 a part of such comprehensive plans or policies zoning
 1226 regulations, and be administered and enforced in connection
 1227 therewith.
 1228 (2) CONFLICT.-In the event of conflict between any airport
 1229 zoning regulations adopted under this chapter and any other
 1230 regulations applicable to the same area, whether the conflict be
 1231 with respect to the height of structures or vegetation trees,
 1232 the use of land, or any other matter, and whether such
 1233 regulations were adopted by the political subdivision which
 1234 adopted the airport zoning regulations or by some other
 1235 political subdivision, the more stringent limitation or
 1236 requirement shall govern and prevail.
 1237 Section 17. Section 333.05, Florida Statutes, is amended to
 1238 read:
 1239 333.05 Procedure for adoption of zoning regulations.-
 1240 (1) NOTICE AND HEARING.-~~No~~ Airport zoning regulations may
 1241 not shall be adopted, amended, or deleted changed under this
 1242 chapter except by action of the legislative body of the
 1243 political subdivision ~~in question~~, or the joint board provided
 1244 in s. 333.03(1)(b) by the political subdivisions bodies therein



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1245 provided and set forth, after a public hearing in relation
 1246 thereto, at which parties in interest and citizens shall have an
 1247 opportunity to be heard. Notice of the hearing shall be
 1248 published at least once a week for 2 consecutive weeks in an
 1249 official paper, or a paper of general circulation, in the
 1250 political subdivision or subdivisions ~~where in which are located~~
 1251 the airport zoning regulations are areas to be adopted, amended,
 1252 or deleted zoned.
 1253 (2) AIRPORT ZONING COMMISSION.-Prior to the initial zoning
 1254 of any airport area under this chapter the political subdivision
 1255 or joint airport zoning board which is to adopt, administer, and
 1256 enforce the regulations shall appoint a commission, to be known
 1257 as the airport zoning commission, to recommend the boundaries of
 1258 the various zones to be established and the regulations to be
 1259 adopted therefor. Such commission shall make a preliminary
 1260 report and hold public hearings thereon before submitting its
 1261 final report, and the legislative body of the political
 1262 subdivision or the joint airport zoning board shall not hold its
 1263 public hearings or take any action until it has received the
 1264 final report of such commission, and at least 15 days shall
 1265 elapse between the receipt of the final report of the commission
 1266 and the hearing to be held by the latter board. Where a planning
 1267 city plan commission, airport commission, or comprehensive
 1268 zoning commission already exists, it may be appointed as the
 1269 airport zoning commission.
 1270 Section 18. Section 333.06, Florida Statutes, is amended to
 1271 read:
 1272 333.06 Airport zoning requirements.-
 1273 (1) REASONABLENESS.-All airport zoning regulations adopted



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1274 under this chapter shall be reasonable and ~~none~~ shall not impose
1275 any requirement or restriction which is not reasonably necessary
1276 to effectuate the purposes of this chapter. In determining what
1277 regulations it may adopt, each political subdivision and joint
1278 airport zoning board shall consider, among other things, the
1279 character of the flying operations expected to be conducted at
1280 the airport, the nature of the terrain within the airport hazard
1281 area and runway protection clear zones, the character of the
1282 neighborhood, the uses to which the property to be zoned is put
1283 and adaptable, and the impact of any new use, activity, or
1284 construction on the airport's operating capability and capacity.

1285 (2) INDEPENDENT JUSTIFICATION.—The purpose of all airport
1286 zoning regulations adopted under this chapter is to provide both
1287 airspace protection and land uses use compatible with airport
1288 operations. Each aspect of this purpose requires independent
1289 justification in order to promote the public interest in safety,
1290 health, and general welfare. Specifically, construction in a
1291 runway protection clear zone which does not exceed airspace
1292 height restrictions is not conclusive evidence per se that such
1293 use, activity, or construction is compatible with airport
1294 operations.

1295 (3) NONCONFORMING USES.—No airport protection zoning
1296 regulations adopted under this chapter shall require the
1297 removal, lowering, or other change or alteration of any
1298 structure or vegetation free not conforming to the regulations
1299 when adopted or amended, or otherwise interfere with the
1300 continuance of any nonconforming use, except as provided in s.
1301 333.07(1) and (3).

1302 (4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED



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1303 LOCAL GOVERNMENTS.—An airport master plan shall be prepared by
1304 each public-use publicly owned and operated airport licensed by
1305 the department of ~~Transportation~~ under chapter 330. The
1306 authorized entity having responsibility for governing the
1307 operation of the airport, when either requesting from or
1308 submitting to a state or federal governmental agency with
1309 funding or approval jurisdiction a "finding of no significant
1310 impact," an environmental assessment, a site-selection study, an
1311 airport master plan, or any amendment to an airport master plan,
1312 shall submit simultaneously a copy of said request, submittal,
1313 assessment, study, plan, or amendments by certified mail to all
1314 affected local governments. For the purposes of this subsection,
1315 "affected local government" is defined as any city or county
1316 having jurisdiction over the airport and any city or county
1317 located within 2 miles of the boundaries of the land subject to
1318 the airport master plan.

1319 Section 19. Section 333.065, Florida Statutes, is repealed.

1320 Section 20. Section 333.07, Florida Statutes, is amended to
1321 read:

1322 333.07 Local government permitting of airspace obstructions
1323 Permits and variances.—

1324 (1) PERMITS.—

1325 (a) Any person proposing to erect, construct, or alter any
1326 structure, increase the height of any structure, permit the
1327 growth of any vegetation, or otherwise use his or her property
1328 in violation of the airport protection zoning regulations
1329 adopted under this chapter shall apply for a permit. A ~~Any~~
1330 airport zoning regulations adopted under this chapter may
1331 require that a permit be obtained before any new structure or



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1332 ~~use may be constructed or established and before any existing~~
1333 ~~use or structure may be substantially changed or substantially~~
1334 ~~altered or repaired. In any event, however, all such regulations~~
1335 ~~shall provide that before any nonconforming structure or tree~~
1336 ~~may be replaced, substantially altered or repaired, rebuilt,~~
1337 ~~allowed to grow higher, or replanted, a permit must be secured~~
1338 ~~from the administrative agency authorized to administer and~~
1339 ~~enforce the regulations, authorizing such replacement, change,~~
1340 ~~or repair. No permit may not shall be issued granted that would~~
1341 ~~allow the establishment or creation of an airport hazard or~~
1342 ~~would permit a nonconforming structure or vegetation tree or~~
1343 ~~nonconforming use to be made or become higher or to become a~~
1344 ~~greater hazard to air navigation than it was when the applicable~~
1345 ~~regulation was adopted or than it is when the application for a~~
1346 ~~permit is made.~~

1347 (b) Whenever the political subdivision or its
1348 administrative agency determines that a nonconforming use or
1349 nonconforming structure or vegetation tree has been abandoned or
1350 is more than 80 percent torn down, destroyed, deteriorated, or
1351 decayed, a no permit may not shall be granted that would allow
1352 the said structure or vegetation tree to exceed the applicable
1353 height limit or otherwise deviate from the zoning regulations.
1354 ~~and,~~ Whether an application is made for a permit under this
1355 subsection or not, the ~~said agency may by appropriate action,~~
1356 ~~compel the owner of the nonconforming structure or vegetation~~
1357 ~~may be required tree,~~ at his or her own expense, to lower,
1358 remove, reconstruct, alter, or equip such object as may be
1359 necessary to conform to the regulations. If the owner of the
1360 nonconforming structure or vegetation neglects or refuses tree



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1361 ~~shall neglect or refuse to comply with the such order for 10~~
1362 ~~days after notice thereof, the said agency may report the~~
1363 ~~violation to the political subdivision involved therein. The,~~
1364 ~~which subdivision, through its appropriate agency, may proceed~~
1365 ~~to have the object so lowered, removed, reconstructed, altered,~~
1366 ~~or equipped, and assess the cost and expense thereof upon the~~
1367 ~~object or the land where ~~whereon~~ it is or was located, and,~~
1368 ~~unless such an assessment is paid within 90 days from the~~
1369 ~~service of notice thereof on the owner or the owner's agent, of~~
1370 ~~such object or land, the sum shall be a lien on said land, and~~
1371 ~~shall bear interest thereafter at the rate of 6 percent per~~
1372 ~~annum until paid, and shall be collected in the same manner as~~
1373 ~~taxes on real property are collected by said political~~
1374 ~~subdivision, or, at the option of said political subdivision,~~
1375 ~~said lien may be enforced in the manner provided for enforcement~~
1376 ~~of liens by chapter 85.~~

1377 (c) ~~Except as provided herein, applications for permits~~
1378 ~~shall be granted, provided the matter applied for meets the~~
1379 ~~provisions of this chapter and the regulations adopted and in~~
1380 ~~force hereunder.~~

1381 (2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.-In
1382 determining whether to issue or deny a permit, the political
1383 subdivision or its administrative agency must consider the
1384 following, as applicable:

- 1385 (a) The safety of persons on the ground and in the air.
1386 (b) The safe and efficient use of navigable airspace.
1387 (c) The nature of the terrain and height of existing
1388 structures.
1389 (d) The construction or alteration of the proposed



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1390 structure on the state licensing standards for a public-use
1391 airport, contained in chapter 330 and chapter 14-60 of the
1392 Florida Administrative Code.

1393 (e) The character of existing and planned flight operations
1394 and developments at public-use airports.

1395 (f) Federal airways; visual flight rules, flyways and
1396 corridors; and instrument approaches as designated by the
1397 Federal Aviation Administration.

1398 (g) The construction or alteration of the proposed
1399 structure on the minimum descent altitude or the decision height
1400 at the affected airport.

1401 (h) The cumulative effects on navigable airspace of all
1402 existing structures, and all other known proposed structures in
1403 the area.

1404 (i) Requirements contained in s. 333.03(2) and (3).

1405 (j) Additional requirements adopted by the local
1406 jurisdiction pertinent to evaluation and protection of airspace
1407 and airport operations.

1408 ~~(2) VARIANCES.—~~

1409 ~~(a) Any person desiring to erect any structure, increase~~
1410 ~~the height of any structure, permit the growth of any tree, or~~
1411 ~~otherwise use his or her property in violation of the airport~~
1412 ~~zoning regulations adopted under this chapter or any land~~
1413 ~~development regulation adopted pursuant to the provisions of~~
1414 ~~chapter 163 pertaining to airport land use compatibility, may~~
1415 ~~apply to the board of adjustment for a variance from the zoning~~
1416 ~~regulations in question. At the time of filing the application,~~
1417 ~~the applicant shall forward to the department by certified mail,~~
1418 ~~return receipt requested, a copy of the application. The~~



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1419 ~~department shall have 45 days from receipt of the application to~~
1420 ~~comment and to provide its comments or waiver of that right to~~
1421 ~~the applicant and the board of adjustment. The department shall~~
1422 ~~include its explanation for any objections stated in its~~
1423 ~~comments. If the department fails to provide its comments within~~
1424 ~~45 days of receipt of the application, its right to comment is~~
1425 ~~waived. The board of adjustment may proceed with its~~
1426 ~~consideration of the application only upon the receipt of the~~
1427 ~~department's comments or waiver of that right as demonstrated by~~
1428 ~~the filing of a copy of the return receipt with the board.~~
1429 ~~Noncompliance with this section shall be grounds to appeal~~
1430 ~~pursuant to s. 333.08 and to apply for judicial relief pursuant~~
1431 ~~to s. 333.11. Such variances may only be allowed where a literal~~
1432 ~~application or enforcement of the regulations would result in~~
1433 ~~practical difficulty or unnecessary hardship and where the~~
1434 ~~relief granted would not be contrary to the public interest but~~
1435 ~~would do substantial justice and be in accordance with the~~
1436 ~~spirit of the regulations and this chapter. However, any~~
1437 ~~variance may be allowed subject to any reasonable conditions~~
1438 ~~that the board of adjustment may deem necessary to effectuate~~
1439 ~~the purposes of this chapter.~~

1440 ~~(b) The Department of Transportation shall have the~~
1441 ~~authority to appeal any variance granted under this chapter~~
1442 ~~pursuant to s. 333.08, and to apply for judicial relief pursuant~~
1443 ~~to s. 333.11.~~

1444 (3) OBSTRUCTION MARKING AND LIGHTING.—

1445 (a) In issuing a granting any permit or variance under this
1446 section, the political subdivision or its administrative agency
1447 or board of adjustment shall require the owner of the structure



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1448 or ~~vegetation tree in question~~ to install, operate, and maintain
1449 thereon, at his or her own expense, ~~such~~ marking and lighting in
1450 conformance with the specific standards established by the
1451 Federal Aviation Administration as may be necessary to indicate
1452 to aircraft pilots the presence of an obstruction.

1453 (b) Such marking and lighting shall conform to the specific
1454 standards established by rule by the department ~~of~~
1455 Transportation.

1456 (c) ~~Existing structures not in compliance on October 1,~~
1457 ~~1988, shall be required to comply whenever the existing marking~~
1458 ~~requires refurbishment, whenever the existing lighting requires~~
1459 ~~replacement, or within 5 years of October 1, 1988, whichever~~
1460 ~~occurs first.~~

1461 Section 21. Section 333.08, Florida Statutes, is repealed.

1462 Section 22. Section 333.09, Florida Statutes, is amended to
1463 read:

1464 333.09 Administration of airport zoning regulations.—

1465 (1) ADMINISTRATION AND ENFORCEMENT.—All airport zoning
1466 regulations adopted under this chapter shall provide for the
1467 administration and enforcement of such regulations by the
1468 political subdivisions or their by an administrative agency
1469 which may be an agency created by such regulations or any
1470 official, board, or other existing agency of the political
1471 subdivision adopting the regulations or of one of the political
1472 subdivisions which participated in the creation of the joint
1473 airport zoning board adopting the regulations, if satisfactory
1474 to that political subdivision, but in no case shall such
1475 administrative agency be or include any member of the board of
1476 adjustment. The duties of any administrative agency designated



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1477 pursuant to this chapter shall include that of hearing and
1478 deciding all permits under s. 333.07 ~~s. 333.07(1), deciding all~~
1479 ~~matters under s. 333.07(3),~~ as they pertain to such agency, and
1480 all other matters under this chapter applying to said agency,
1481 ~~but such agency shall not have or exercise any of the powers~~
1482 ~~herein delegated to the board of adjustment.~~

1483 (2) LOCAL GOVERNMENT PROCESS.—

1484 (a) Any political subdivision required to adopt airport
1485 zoning regulations under this chapter must provide a process to:

1486 1. Issue or deny permits consistent with s. 333.07,
1487 including requests for exceptions to airport zoning regulations.

1488 2. Notify the department of receipt of a complete permit
1489 application consistent with s. 333.025(4).

1490 3. Enforce any permit, order, requirement, decision, or
1491 determination made by the administrative agency with respect to
1492 the airport zoning regulations.

1493 (b) Where a zoning board or permitting body already exists
1494 within a political subdivision, the zoning board or permitting
1495 body may implement the permitting and appeals process.
1496 Otherwise, the political subdivision shall implement the
1497 permitting and appeals process in a manner consistent with its
1498 constitutional powers and areas of jurisdiction.

1499 (3) APPEALS.—

1500 (a) Any person, political subdivision or its administrative
1501 agency, or any joint airport zoning board, which contends that
1502 the decision made by a political subdivision or its
1503 administrative agency is an improper application of airport
1504 zoning regulations may use the process established for an
1505 appeal.



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1506 (b) All appeals taken under this section must be taken
1507 within a reasonable time, as provided by the political
1508 subdivision or its administrative agency, by filing with the
1509 entity from which appeal is taken a notice of appeal specifying
1510 the grounds for appeal.

1511 (c) An appeal stays all proceedings in the underlying
1512 action, unless the entity from which the appeal is taken
1513 certifies pursuant to the rules for appeal that by reason of the
1514 facts stated in the certificate, a stay would, in its opinion,
1515 cause imminent peril to life or property. In that case,
1516 proceedings may not be stayed except by an order of the
1517 political subdivision or its administrative agency following
1518 notice to the entity from which the appeal is taken and on good
1519 cause shown.

1520 (d) The political subdivision or its administrative agency
1521 must set a reasonable time for the hearing of appeals, give
1522 public notice and due notice to the parties in interest, and
1523 decide the same within a reasonable time. At the hearing, a
1524 party may appear in person, by agent, or by attorney.

1525 (e) The political subdivision or its administrative agency
1526 may, in conformity with the provisions of this chapter, reverse,
1527 affirm, or modify the underlying order, requirement, decision,
1528 or determination from which the appeal is taken.

1529 Section 23. Section 333.10, Florida Statutes, is repealed.

1530 Section 24. Section 333.11, Florida Statutes, is amended to
1531 read:

1532 333.11 Judicial review.-

1533 (1) Any person, ~~aggrieved, or taxpayer affected,~~ by any
1534 ~~decision of a board of adjustment, or any governing body of a~~



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1535 ~~political subdivision or its administrative agency, or the~~
1536 ~~Department of Transportation or any joint airport zoning board~~
1537 ~~affected by a decision of a political subdivision, or its of any~~
1538 ~~administrative agency hereunder,~~ may apply for judicial relief
1539 to the circuit court in the judicial circuit where the political
1540 subdivision board of adjustment is located within 30 days after
1541 rendition of the decision ~~by the board of adjustment.~~ Review
1542 shall be by petition for writ of certiorari, which shall be
1543 governed by the Florida Rules of Appellate Procedure.

1544 ~~(2) Upon presentation of such petition to the court, it may~~
1545 ~~allow a writ of certiorari, directed to the board of adjustment,~~
1546 ~~to review such decision of the board. The allowance of the writ~~
1547 ~~shall not stay the proceedings upon the decision appealed from,~~
1548 ~~but the court may, on application, on notice to the board, on~~
1549 ~~due hearing and due cause shown, grant a restraining order.~~

1550 ~~(3) The board of adjustment shall not be required to return~~
1551 ~~the original papers acted upon by it, but it shall be sufficient~~
1552 ~~to return certified or sworn copies thereof or of such portions~~
1553 ~~thereof as may be called for by the writ. The return shall~~
1554 ~~concisely set forth such other facts as may be pertinent and~~
1555 ~~material to show the grounds of the decision appealed from and~~
1556 ~~shall be verified.~~

1557 ~~(2)-(4)~~ The court shall have exclusive jurisdiction to
1558 affirm, modify, or set aside the decision brought up for review,
1559 ~~in whole or in part,~~ and if need be, to order further
1560 proceedings by the political subdivision or its administrative
1561 agency board of adjustment. The findings of fact by the
1562 political subdivision or its administrative agency board, if
1563 supported by substantial evidence, shall be accepted by the



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1564 court as conclusive. ~~An, and no~~ objection to a decision of the
1565 ~~political subdivision or its administrative agency may not board~~
1566 ~~shall~~ be considered by the court unless such objection was
1567 raised in the underlying proceeding shall have been urged before
1568 ~~the board, or, if it was not so urged, unless there were~~
1569 ~~reasonable grounds for failure to do so.~~

1570 ~~(3)(5) If in any case in which~~ airport zoning regulations
1571 ~~adopted under this chapter, although generally reasonable,~~ are
1572 held by a court to interfere with the use and enjoyment of a
1573 particular structure or parcel of land to such an extent, or to
1574 be so onerous in their application to such a structure or parcel
1575 of land, as to constitute a taking or deprivation of that
1576 property in violation of the State Constitution or the
1577 Constitution of the United States, such holding shall not affect
1578 the application of such regulations to other structures and
1579 parcels of land, or such regulations as are not involved in the
1580 particular decision.

1581 ~~(4)(6) No~~ Judicial appeal ~~shall be or~~ is not permitted
1582 under this section, ~~to any courts until the appellant has~~
1583 exhausted all its remedies through application for local
1584 government permits, exceptions, and appeals, as herein provided,
1585 ~~save and except an appeal from a decision of the board of~~
1586 ~~adjustment, the appeal herein provided being from such final~~
1587 ~~decision of such board only, the appellant being hereby required~~
1588 ~~to exhaust his or her remedies hereunder of application for~~
1589 ~~permits, exceptions and variances, and appeal to the board of~~
1590 ~~adjustment, and gaining a determination by said board, before~~
1591 ~~being permitted to appeal to the court hereunder.~~

1592 Section 25. Section 333.12, Florida Statutes, is amended to



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1593 read:

1594 333.12 Acquisition of air rights. ~~When in any case which~~
1595 ~~it is desired to remove, lower or otherwise terminate a~~
1596 nonconforming structure or use presents an air hazard and the
1597 structure cannot be removed, lowered, or otherwise terminated;
1598 or the approach protection necessary cannot, because of
1599 constitutional limitations, be provided by airport regulations
1600 under this chapter; or it appears advisable that the necessary
1601 approach protection be provided by acquisition of property
1602 rights rather than by airport zoning regulations, the political
1603 subdivision within which the property or nonconforming use is
1604 located, or the political subdivision owning or operating the
1605 airport or being served by it, may acquire, by purchase, grant,
1606 or condemnation in the manner provided by chapter 73, such air
1607 right, avigation navigation ~~avigation~~ easement conveying the airspace over
1608 another property for use by the airport, or other estate,
1609 portion or interest in the property or nonconforming structure
1610 or use or such interest in the air above such property,
1611 vegetation tree, structure, or use, in question, as may be
1612 necessary to effectuate the purposes of this chapter, and in so
1613 doing, if by condemnation, to have the right to take immediate
1614 possession of the property, interest in property, air right, or
1615 other right sought to be condemned, at the time, and in the
1616 manner and form, and as authorized by chapter 74. In the case of
1617 the purchase of any property, or any easement, or estate or
1618 interest therein or the acquisition of the same by the power of
1619 eminent domain, the political subdivision making such purchase
1620 or exercising such power shall in addition to the damages for
1621 the taking, injury, or destruction of property also pay the cost



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1622 of the removal and relocation of any structure or any public
1623 utility which is required to be moved to a new location.

1624 Section 26. Section 333.135, Florida Statutes, is created
1625 to read:

1626 333.135 Transition provisions.-

1627 (1) A provision of an airport zoning regulation in effect
1628 on July 1, 2015, that conflicts with this chapter must be
1629 amended to conform to the requirements of this chapter by July
1630 1, 2016.

1631 (2) By October 1, 2017, a political subdivision having an
1632 airport within its territorial limits, which has not adopted
1633 airport zoning regulations, must adopt airport zoning
1634 regulations which are consistent with this chapter.

1635 (3) For those political subdivisions that have not yet
1636 adopted airport zoning regulations pursuant to this chapter, the
1637 department shall administer the permitting process as provided
1638 in s. 333.025.

1639 Section 27. Section 333.14, Florida Statutes, is repealed.

1640 Section 28. Subsections (36) and (37) of section 334.03,
1641 Florida Statutes, are amended to read:

1642 334.03 Definitions.-When used in the Florida Transportation
1643 Code, the term:

1644 (36) "511" or "511 services" means all three-digit
1645 telecommunications dialing to access interactive voice response
1646 telephone traveler information services provided in the state to
1647 include, but not be limited to, the terms as defined by the
1648 Federal Communications Commission in FCC Order No. 00-256, July
1649 31, 2000.

1650 ~~(37) "Interactive voice response" means a software~~



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1651 ~~application that accepts a combination of voice telephone input~~
1652 ~~and touch-tone keypad selection and provides appropriate~~
1653 ~~responses in the form of voice, fax, callback, e-mail, and other~~
1654 ~~media-~~

1655 Section 29. Subsection (31) of section 334.044, Florida
1656 Statutes, is amended, and subsection (34) of that section is
1657 created, to read:

1658 334.044 Department; powers and duties.-The department shall
1659 have the following general powers and duties:

1660 (31) To provide oversight of traveler information systems
1661 ~~that may include the provision of interactive voice response~~
1662 ~~telephone systems accessible via the 511 services number as~~
1663 ~~assigned by the Federal Communications Commission for traveler~~
1664 ~~information services. The department shall ensure that uniform~~
1665 ~~standards and criteria for the collection and dissemination of~~
1666 ~~traveler information are applied using interactive voice~~
1667 ~~response systems.~~

1668 (34) The department may assume responsibilities of the
1669 United States Department of Transportation with respect to
1670 highway projects within the state under the National
1671 Environmental Policy Act of 1969 (42 U.S.C. s. 4321 et seq.) and
1672 with respect to related responsibilities for environmental
1673 review, consultation, or other action required under any federal
1674 environmental law pertaining to review or approval of a highway
1675 project within the state. The department may assume
1676 responsibilities under 23 U.S.C. s. 327 and enter into one or
1677 more agreements, including memoranda of understanding, with the
1678 United States Secretary of Transportation related to the federal
1679 surface transportation project delivery program for the delivery



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1680 of highway projects, as provided by 23 U.S.C. s. 327. The
1681 department may adopt rules to implement this subsection and may
1682 adopt relevant federal environmental standards as the standards
1683 for this state for a program described in this subsection.
1684 Sovereign immunity to civil suit in federal court is waived
1685 consistent with 23 U.S.C. s. 327 and limited to the compliance,
1686 discharge, or enforcement of a responsibility assumed by the
1687 department under this subsection.

1688 Section 30. Section 334.60, Florida Statutes, is amended to
1689 read:

1690 334.60 511 traveler information system.—The department is
1691 the state's lead agency for implementing 511 services and is the
1692 state's point of contact for coordinating all 511 services ~~with~~
1693 ~~telecommunications service providers.~~

1694 (1) The department shall:

1695 (a) ~~(1)~~ Implement and administer 511 services in the state;

1696 (b) ~~(2)~~ Coordinate with other transportation authorities in
1697 the state to provide multimodal traveler information through 511
1698 services and other means;

1699 (c) ~~(3)~~ Develop uniform standards and criteria for the
1700 collection and dissemination of traveler information using ~~the~~
1701 511 ~~services number or other interactive voice response systems;~~
1702 and

1703 (d) ~~(4)~~ Enter into joint participation agreements or
1704 contracts with highway authorities and public transit districts
1705 to share the costs of implementing and administering 511
1706 services in the state. The department may also enter into other
1707 agreements or contracts with private firms relating to the 511
1708 services to offset the costs of implementing and administering



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1709 511 services in the state.

1710 (2) The department shall adopt rules to administer the
1711 coordination of 511 traveler information ~~phone~~ services in the
1712 state.

1713 Section 31. Subsections (3) and (4) of section 335.065,
1714 Florida Statutes, are amended to read:

1715 335.065 Bicycle and pedestrian ways along state roads and
1716 transportation facilities.—

1717 (3) The department, in cooperation with the Department of
1718 Environmental Protection, shall establish a statewide integrated
1719 system of bicycle and pedestrian ways in such a manner as to
1720 take full advantage of any such ways which are maintained by any
1721 governmental entity. ~~The department may enter into a concession~~
1722 ~~agreement with a not-for-profit entity or private sector~~
1723 ~~business or entity for commercial sponsorship displays on~~
1724 ~~multiuse trails and related facilities and use any concession~~
1725 ~~agreement revenues for the maintenance of the multiuse trails~~
1726 ~~and related facilities. Commercial sponsorship displays are~~
1727 ~~subject to the requirements of the Highway Beautification Act of~~
1728 ~~1965 and all federal laws and agreements, when applicable. For~~
1729 ~~the purposes of this section, bicycle facilities may be~~
1730 ~~established as part of or separate from the actual roadway and~~
1731 ~~may utilize existing road rights-of-way or other rights-of-way~~
1732 ~~or easements acquired for public use.~~

1733 (a) ~~A concession agreement shall be administered by the~~
1734 ~~department and must include the requirements of this section.~~

1735 (b) ~~1. Signage or displays erected under this section shall~~
1736 ~~comply with s. 337.407 and chapter 479 and shall be limited as~~
1737 ~~follows:~~



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- 1738 a. ~~One large sign or display, not to exceed 16 square feet~~
1739 ~~in area, may be located at each trailhead or parking area.~~
- 1740 b. ~~One small sign or display, not to exceed 4 square feet~~
1741 ~~in area, may be located at each designated trail public access~~
1742 ~~point.~~
- 1743 ~~2. Before installation, each name or sponsorship display~~
1744 ~~must be approved by the department.~~
- 1745 3. ~~The department shall ensure that the size, color,~~
1746 ~~materials, construction, and location of all signs are~~
1747 ~~consistent with the management plan for the property and the~~
1748 ~~standards of the department, do not intrude on natural and~~
1749 ~~historic settings, and contain only a logo selected by the~~
1750 ~~sponsor and the following sponsorship wording:~~
- 1751 ~~...~~(Name of the sponsor)~~... proudly sponsors the costs~~
1752 ~~of maintaining the ...~~(Name of the greenway or
1753 ~~trail)....~~
- 1754
- 1755
- 1756 4. ~~All costs of a display, including development,~~
1757 ~~construction, installation, operation, maintenance, and removal~~
1758 ~~costs, shall be paid by the concessionaire.~~
- 1759 ~~(c) A concession agreement shall be for a minimum of 1~~
1760 ~~year, but may be for a longer period under a multiyear~~
1761 ~~agreement, and may be terminated for just cause by the~~
1762 ~~department upon 60 days' advance notice. Just cause for~~
1763 ~~termination of a concession agreement includes, but is not~~
1764 ~~limited to, violation of the terms of the concession agreement~~
1765 ~~or this section.~~
- 1766 (4)(a) ~~The department may use appropriated funds to support~~



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- 1767 ~~the establishment of a statewide system of interconnected~~
1768 ~~multiuse trails and to pay the costs of planning, land~~
1769 ~~acquisition, design, and construction of such trails and related~~
1770 ~~facilities. The department shall give funding priority to~~
1771 ~~projects that:~~
- 1772 ~~1. Are identified by the Florida Greenways and Trails~~
1773 ~~Council as a priority within the Florida Greenways and Trails~~
1774 ~~System under chapter 260.~~
- 1775 ~~2. Support the transportation needs of bicyclists and~~
1776 ~~pedestrians.~~
- 1777 ~~3. Have national, statewide, or regional importance.~~
- 1778 ~~4. Facilitate an interconnected system of trails by~~
1779 ~~completing gaps between existing trails.~~
- 1780 ~~(b) A project funded under this subsection shall:~~
- 1781 ~~1. Be included in the department's work program developed~~
1782 ~~in accordance with s. 339.135.~~
- 1783 ~~2. Be operated and maintained by an entity other than the~~
1784 ~~department upon completion of construction. The department is~~
1785 ~~not obligated to provide funds for the operation and maintenance~~
1786 ~~of the project.~~
- 1787 Section 32. Subsection (4) of section 338.165, Florida
1788 Statutes, is amended to read:
- 1789 338.165 Continuation of tolls.—
- 1790 (4) Notwithstanding any other law to the contrary, pursuant
1791 to s. 11, Art. VII of the State Constitution, and subject to the
1792 requirements of subsection (2), the Department of Transportation
1793 may request the Division of Bond Finance to issue bonds secured
1794 by toll revenues collected on the Alligator Alley, the Sunshine
1795 Skyway Bridge, the Beeline East Expressway, the Navarre Bridge,



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1796 and the Pinellas Bayway to fund transportation projects located
1797 within the county or counties in which the project is located
1798 and contained in the adopted work program of the department.

1799 Section 33. Subsection (5) is added to section 338.227,
1800 Florida Statutes, to read:

1801 338.227 Turnpike revenue bonds.—

1802 (5) Notwithstanding s. 215.82, bonds issued pursuant to
1803 this section are not required to be validated pursuant to
1804 chapter 75, but may be validated at the option of the Division
1805 of Bond Finance. Any complaint for such validation must be filed
1806 in the circuit court of the county where the seat of state
1807 government is situated. The notice required to be published by
1808 s. 75.06 must be published only in the county where the
1809 complaint is filed. The complaint and order of the circuit court
1810 shall be served only on the state attorney of the circuit in
1811 which the action is pending.

1812 Section 34. Paragraph (c) of subsection (3) of section
1813 338.231, Florida Statutes, and subsections (5) and (6) of that
1814 section, are amended to read:

1815 338.231 Turnpike tolls, fixing; pledge of tolls and other
1816 revenues.—The department shall at all times fix, adjust, charge,
1817 and collect such tolls and amounts for the use of the turnpike
1818 system as are required in order to provide a fund sufficient
1819 with other revenues of the turnpike system to pay the cost of
1820 maintaining, improving, repairing, and operating such turnpike
1821 system; to pay the principal of and interest on all bonds issued
1822 to finance or refinance any portion of the turnpike system as
1823 the same become due and payable; and to create reserves for all
1824 such purposes.



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1825 (3)

1826 (c) Notwithstanding any other provision of law to the
1827 contrary, any prepaid toll account of any kind which has
1828 remained inactive for 10 ~~3~~ years shall be presumed unclaimed and
1829 its disposition shall be handled by the Department of Financial
1830 Services in accordance with all applicable provisions of chapter
1831 717 relating to the disposition of unclaimed property, and the
1832 prepaid toll account shall be closed by the department.

1833 ~~(5) In each fiscal year while any of the bonds of the~~
1834 ~~Broward County Expressway Authority series 1984 and series 1986—~~
1835 ~~A remain outstanding, the department is authorized to pledge~~
1836 ~~revenues from the turnpike system to the payment of principal~~
1837 ~~and interest of such series of bonds and the operation and~~
1838 ~~maintenance expenses of the Sawgrass Expressway, to the extent~~
1839 ~~gross toll revenues of the Sawgrass Expressway are insufficient~~
1840 ~~to make such payments. The terms of an agreement relative to the~~
1841 ~~pledge of turnpike system revenue will be negotiated with the~~
1842 ~~parties of the 1984 and 1986 Broward County Expressway Authority~~
1843 ~~lease-purchase agreements, and subject to the covenants of those~~
1844 ~~agreements. The agreement must establish that the Sawgrass~~
1845 ~~Expressway is subject to the planning, management, and operating~~
1846 ~~control of the department limited only by the terms of the~~
1847 ~~lease-purchase agreements. The department shall provide for the~~
1848 ~~payment of operation and maintenance expenses of the Sawgrass~~
1849 ~~Expressway until such agreement is in effect. This pledge of~~
1850 ~~turnpike system revenues is subordinate to the debt service~~
1851 ~~requirements of any future issue of turnpike bonds, the payment~~
1852 ~~of turnpike system operation and maintenance expenses, and~~
1853 ~~subject to any subsequent resolution or trust indenture relating~~



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1854 ~~to the issuance of such turnpike bonds.~~

1855 ~~(5)(6)~~ The use and disposition of revenues pledged to bonds
1856 are subject to ss. 338.22-338.241 and such regulations as the
1857 resolution authorizing the issuance of the bonds or such trust
1858 agreement may provide.

1859 Section 35. Paragraph (c) of subsection (7) of section
1860 339.175, Florida Statutes, is amended to read:

1861 339.175 Metropolitan planning organization.-

1862 (7) LONG-RANGE TRANSPORTATION PLAN.-Each M.P.O. must
1863 develop a long-range transportation plan that addresses at least
1864 a 20-year planning horizon. The plan must include both long-
1865 range and short-range strategies and must comply with all other
1866 state and federal requirements. The prevailing principles to be
1867 considered in the long-range transportation plan are: preserving
1868 the existing transportation infrastructure; enhancing Florida's
1869 economic competitiveness; and improving travel choices to ensure
1870 mobility. The long-range transportation plan must be consistent,
1871 to the maximum extent feasible, with future land use elements
1872 and the goals, objectives, and policies of the approved local
1873 government comprehensive plans of the units of local government
1874 located within the jurisdiction of the M.P.O. Each M.P.O. is
1875 encouraged to consider strategies that integrate transportation
1876 and land use planning to provide for sustainable development and
1877 reduce greenhouse gas emissions. The approved long-range
1878 transportation plan must be considered by local governments in
1879 the development of the transportation elements in local
1880 government comprehensive plans and any amendments thereto. The
1881 long-range transportation plan must, at a minimum:

1882 (c) Assess capital investment and other measures necessary



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1883 to:

1884 1. Ensure the preservation of the existing metropolitan
1885 transportation system including requirements for the operation,
1886 resurfacing, restoration, and rehabilitation of major roadways
1887 and requirements for the operation, maintenance, modernization,
1888 and rehabilitation of public transportation facilities; and

1889 2. Make the most efficient use of existing transportation
1890 facilities to relieve vehicular congestion, improve safety, and
1891 maximize the mobility of people and goods. Such efforts shall
1892 include, but not be limited to, consideration of infrastructure
1893 and technological improvements necessary to accommodate advances
1894 in vehicle technology, such as autonomous vehicle technology and
1895 other developments.

1896
1897 In the development of its long-range transportation plan, each
1898 M.P.O. must provide the public, affected public agencies,
1899 representatives of transportation agency employees, freight
1900 shippers, providers of freight transportation services, private
1901 providers of transportation, representatives of users of public
1902 transit, and other interested parties with a reasonable
1903 opportunity to comment on the long-range transportation plan.
1904 The long-range transportation plan must be approved by the
1905 M.P.O.

1906 Section 36. Paragraph (c) is added to subsection (3) of
1907 section 339.64, Florida Statutes, and paragraph (a) of
1908 subsection (4) of that section is amended, to read:

1909 339.64 Strategic Intermodal System Plan.-

1910 (3)

1911 (c) The department also shall coordinate with federal,



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1912 regional, and local partners, as well as industry
1913 representatives, to consider infrastructure and technological
1914 improvements necessary to accommodate advances in vehicle
1915 technology, such as autonomous vehicle technology and other
1916 developments, in Strategic Intermodal System facilities.

1917 (4) The Strategic Intermodal System Plan shall include the
1918 following:

1919 (a) A needs assessment. Such assessment shall include, but
1920 not be limited to, consideration of infrastructure and
1921 technological improvements necessary to accommodate advances in
1922 vehicle technology, such as autonomous vehicle technology and
1923 other developments.

1924 Section 37. Section 339.81, Florida Statutes, is created to
1925 read:

1926 339.81 Florida Shared-Use Nonmotorized Trail Network.-

1927 (1) The Legislature finds that increasing demands continue
1928 to be placed on the state's transportation system by a growing
1929 economy, continued population growth, and increasing tourism.
1930 The Legislature also finds that significant challenges exist in
1931 providing additional capacity to the conventional transportation
1932 system and will require enhanced accommodation of alternative
1933 travel modes to meet the needs of residents and visitors. The
1934 Legislature further finds that improving bicyclist and
1935 pedestrian safety for both residents and visitors remains a high
1936 priority. Therefore, the Legislature declares that the
1937 development of a nonmotorized trail network will increase
1938 mobility and recreational alternatives for residents and
1939 visitors of this state, enhance economic prosperity, enrich
1940 quality of life, enhance safety, and reflect responsible



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1941 environmental stewardship. To that end, it is the intent of the
1942 Legislature that the department make use of its expertise in
1943 efficiently providing transportation projects to develop the
1944 Florida Shared-Use Nonmotorized Trail Network, consisting of a
1945 statewide network of nonmotorized trails which allows
1946 nonmotorized vehicles and pedestrians to access a variety of
1947 origins and destinations with limited exposure to motorized
1948 vehicles.

1949 (2) The Florida Shared-Use Nonmotorized Trail Network is
1950 created as a component of the Florida Greenways and Trails
1951 System established in chapter 260. The statewide network
1952 consists of multiuse trails or shared-use paths physically
1953 separated from motor vehicle traffic and constructed with
1954 asphalt, concrete, or another hard surface which, by virtue of
1955 design, location, extent of connectivity or potential
1956 connectivity, and allowable uses, provides nonmotorized
1957 transportation opportunities for bicyclists and pedestrians
1958 statewide between and within a wide range of points of origin
1959 and destinations, including, but not limited to, communities,
1960 conservation areas, state parks, beaches, and other natural or
1961 cultural attractions for a variety of trip purposes, including
1962 work, school, shopping, and other personal business, as well as
1963 social, recreational, and personal fitness purposes.

1964 (3) Network components do not include sidewalks, nature
1965 trails, loop trails wholly within a single park or natural area,
1966 or on-road facilities, such as bicycle lanes or routes other
1967 than:

1968 (a) On-road facilities that are no longer than one-half
1969 mile connecting two or more nonmotorized trails, if the



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1970 provision of a non-motorized trail without the use of the on-
1971 road facility is not feasible, and if such on-road facilities
1972 are signed and marked for nonmotorized use; or

1973 (b) On-road components of the Florida Keys Overseas
1974 Heritage Trail.

1975 (4) The planning, development, operation, and maintenance
1976 of the Florida Shared-Use Nonmotorized Trail Network is declared
1977 to be a public purpose, and the department, together with other
1978 agencies of this state and all counties, municipalities, and
1979 special districts of this state, may spend public funds for such
1980 purposes and accept gifts and grants of funds, property, or
1981 property rights from public or private sources to be used for
1982 such purposes.

1983 (5) The department shall include the Florida Shared-Use
1984 Nonmotorized Trail Network in its work program developed
1985 pursuant to s. 339.135. For purposes of funding and maintaining
1986 projects within the network, the department shall allocate in
1987 its program and resource plan a minimum of \$50 million annually,
1988 beginning in the 2015-2016 fiscal year.

1989 (6) The department may enter into a memorandum of agreement
1990 with a local government or other agency of the state to transfer
1991 maintenance responsibilities of an individual network component.
1992 The department may contract with a not-for-profit entity or
1993 private sector business or entity to provide maintenance
1994 services on an individual network component.

1995 (7) The department may adopt rules to aid in the
1996 development and maintenance of components of the network.

1997 Section 38. Section 339.82, Florida Statutes, is created to
1998 read:



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1999 339.82 Shared-Use Nonmotorized Trail Network Plan.—

2000 (1) The department shall develop a Shared-Use Nonmotorized
2001 Trail Network Plan in coordination with the Department of
2002 Environmental Protection, metropolitan planning organizations,
2003 affected local governments and public agencies, and the Florida
2004 Greenways and Trails Council. The plan must be consistent with
2005 the Florida Greenways and Trails Plan developed under s. 260.014
2006 and must be updated at least once every 5 years.

2007 (2) The Shared-Use Nonmotorized Trail Network Plan must
2008 include all of the following:

2009 (a) A needs assessment, including, but not limited to, a
2010 comprehensive inventory and analysis of existing trails that may
2011 be considered for inclusion in the Shared-Use Nonmotorized Trail
2012 Network.

2013 (b) A project prioritization process that includes
2014 assigning funding priority to projects that:

2015 1. Are identified by the Florida Greenways and Trails
2016 Council as a priority within the Florida Greenways and Trails
2017 System under chapter 260;

2018 2. Facilitate an interconnected network of trails by
2019 completing gaps between existing facilities; and

2020 3. Maximize use of federal, local, and private funding and
2021 support mechanisms, including, but not limited to, donation of
2022 funds, real property, and maintenance responsibilities.

2023 (c) A map illustrating existing and planned facilities and
2024 identifying critical gaps between facilities.

2025 (d) A finance plan based on reasonable projections of
2026 anticipated revenues, including both 5-year and 10-year cost-
2027 feasible components.



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2028 (e) Performance measures that include quantifiable
2029 increases in trail network access and connectivity.

2030 (f) A timeline for the completion of the base network using
2031 new and existing data from the department, the Department of
2032 Environmental Protection, and other sources.

2033 (g) A marketing plan prepared in consultation with the
2034 Florida Tourism Industry Marketing Corporation.

2035 Section 39. Section 339.83, Florida Statutes, is created to
2036 read:

2037 339.83 Sponsorship of Shared-Use Nonmotorized Trails.-

2038 (1) The department may enter into a concession agreement
2039 with a not-for-profit entity or private sector business or
2040 entity for commercial sponsorship signs, pavement markings, and
2041 exhibits on nonmotorized trails and related facilities
2042 constructed as part of the Shared-Use Nonmotorized Trail
2043 Network. The concession agreement may also provide for
2044 recognition of trail sponsors in any brochure, map, or website
2045 providing trail information. Trail websites may provide links to
2046 sponsors. Revenue from such agreements may be used for the
2047 maintenance of the nonmotorized trails and related facilities.

2048 (a) A concession agreement shall be administered by the
2049 department.

2050 (b)1. Signage, pavement markings, or exhibits erected
2051 pursuant to this section must comply with s. 337.407 and chapter
2052 479 and are limited as follows:

2053 a. One large sign, pavement marking, or exhibit, not to
2054 exceed 16 square feet in area, may be located at each trailhead
2055 or parking area.

2056 b. One small sign, pavement marking, or exhibit, not to



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2057 exceed 4 square feet in area, may be located at each designated
2058 trail public access point where parking is not provided.

2059 c. Pavement markings denoting specified distances must be
2060 located at least 1 mile apart.

2061 2. Before installation, each sign, pavement marking, or
2062 exhibit must be approved by the department.

2063 3. The department shall ensure that the size, color,
2064 materials, construction, and location of all signs, pavement
2065 markings, and exhibits are consistent with the management plan
2066 for the property and the standards of the department, do not
2067 intrude on natural and historic settings, and contain a logo
2068 selected by the sponsor and the following sponsorship wording:

2069 ...(Name of the sponsor)... proudly sponsors the costs
2070 of maintaining the ...(Name of the greenway or
2071 trail)....

2072
2073
2074 4. Exhibits may provide additional information and
2075 materials including, but not limited to, maps and brochures for
2076 trail user services related or proximate to the trail. Pavement
2077 markings may display mile marker information.

2078 5. The costs of a sign, pavement marking, or exhibit,
2079 including development, construction, installation, operation,
2080 maintenance, and removal costs, shall be paid by the
2081 concessionaire.

2082 (c) A concession agreement shall be for a minimum of 1
2083 year, but may be for a longer period under a multiyear
2084 agreement, and may be terminated for just cause by the
2085 department upon 60 days' advance notice. Just cause for



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2086 termination of a concession agreement includes, but is not
2087 limited to, violation of the terms of the concession agreement
2088 or this section.

2089 (2) Pursuant to s. 287.057, the department may contract for
2090 the provision of services related to the trail sponsorship
2091 program, including recruitment and qualification of businesses,
2092 review of applications, permit issuance, and fabrication,
2093 installation, and maintenance of signs, pavement markings, and
2094 exhibits. The department may reject all proposals and seek
2095 another request for proposals or otherwise perform the work. The
2096 contract may allow the contractor to retain a portion of the
2097 annual fees as compensation for its services.

2098 (3) This section does not create a proprietary or
2099 compensable interest in any sponsorship site or location for any
2100 permittee, and the department may terminate permits or change
2101 locations of sponsorship sites as it determines necessary for
2102 construction or improvement of facilities.

2103 (4) The department may adopt rules to establish
2104 requirements for qualification of businesses, qualification and
2105 location of sponsorship sites, and permit applications and
2106 processing. The department may adopt rules to establish other
2107 criteria necessary to implement this section and to provide for
2108 variances when necessary to serve the interest of the public or
2109 when required to ensure equitable treatment of program
2110 participants.

2111 Section 40. (1) The Office of Economic and Demographic
2112 Research shall evaluate and determine the economic benefits, as
2113 defined in s. 288.005(1), Florida Statutes, of the state's
2114 investment in the Department of Transportation's adopted work



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2115 program developed in accordance with s. 339.135(5), Florida
2116 Statutes, for fiscal year 2015-2016, including the following 4
2117 fiscal years. At a minimum, a separate return on investment
2118 shall be projected for each of the following areas:

- 2119 (a) Roads and highways;
- 2120 (b) Rails;
- 2121 (c) Public transit;
- 2122 (d) Aviation; and
- 2123 (e) Seaports.

2124
2125 The analysis is limited to the funding anticipated by the
2126 adopted work program, but may address the continuing economic
2127 impact for those transportation projects in the 5 years beyond
2128 the conclusion of the adopted work program. The analysis must
2129 also evaluate the number of jobs created, the increase or
2130 decrease in personal income, and the impact on gross domestic
2131 product from the direct, indirect, and induced effects on the
2132 state's investment in each area.

2133 (2) The Department of Transportation and each of its
2134 district offices shall provide the Office of Economic and
2135 Demographic Research full access to all data necessary to
2136 complete the analysis, including any confidential data.

2137 (3) The Office of Economic and Demographic Research shall
2138 submit the analysis to the President of the Senate and the
2139 Speaker of the House of Representatives by January 1, 2016.

2140 Section 41. Section 341.0532, Florida Statutes, is
2141 repealed.

2142 Section 42. The Division of Law Revision and Information is
2143 directed to create chapter 345, Florida Statutes, consisting of



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2144 ss. 345.0001-345.0014, Florida Statutes, to be entitled the
2145 "Northwest Florida Regional Transportation Finance Authority."

2146 Section 43. Section 345.0001, Florida Statutes, is created
2147 to read:

2148 345.0001 Short title.—This act may be cited as the
2149 "Northwest Florida Regional Transportation Finance Authority
2150 Act."

2151 Section 44. Section 345.0002, Florida Statutes, is created
2152 to read:

2153 345.0002 Definitions.—As used in this chapter, the term:

2154 (1) "Agency of the state" means the state and any
2155 department of, or any corporation, agency, or instrumentality
2156 created, designated, or established by, the state.

2157 (2) "Area served" means Escambia County. However, upon a
2158 contiguous county's consent to inclusion within the area served
2159 by the authority and with the agreement of the authority, the
2160 term shall also include the geographical area of such county
2161 contiguous to Escambia County.

2162 (3) "Authority" means the Northwest Florida Regional
2163 Transportation Finance Authority, a body politic and corporate,
2164 and an agency of the state, established under this chapter.

2165 (4) "Bonds" means the notes, bonds, refunding bonds, or
2166 other evidences of indebtedness or obligations, in temporary or
2167 definitive form, which the authority may issue under this
2168 chapter.

2169 (5) "Department" means the Department of Transportation.

2170 (6) "Division" means the Division of Bond Finance of the
2171 State Board of Administration.

2172 (7) "Federal agency" means the United States, the President



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2173 of the United States, and any department of, or any bureau,
2174 corporation, agency, or instrumentality created, designated, or
2175 established by, the United States Government.

2176 (8) "Members" means the governing body of the authority,
2177 and the term "member" means one of the individuals constituting
2178 such governing body.

2179 (9) "Regional system" or "system" means, generally, a
2180 modern system of roads, bridges, causeways, tunnels, and mass
2181 transit services within the area of the authority, with access
2182 limited or unlimited as the authority may determine, and the
2183 buildings and structures and appurtenances and facilities
2184 related to the system, including all approaches, streets, roads,
2185 bridges, and avenues of access for the system.

2186 (10) "Revenues" means the tolls, revenues, rates, fees,
2187 charges, receipts, rentals, contributions, and other income
2188 derived from or in connection with the operation or ownership of
2189 a regional system, including the proceeds of any use and
2190 occupancy insurance on any portion of the system, but excluding
2191 state funds available to the authority and any other municipal
2192 or county funds available to the authority under an agreement
2193 with a municipality or county.

2194 Section 45. Section 18. Section 345.0003, Florida Statutes,
2195 is created to read:

2196 345.0003 Regional transportation finance authority
2197 formation and membership.—

2198 (1) Escambia County, alone or together with any consenting
2199 contiguous county, may form a regional finance authority for the
2200 purposes of constructing, maintaining, and operating
2201 transportation projects in the northwest region of this state.



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2202 The authority shall be governed in accordance with this chapter.
2203 The area served by the authority may not be expanded beyond
2204 Escambia County without the approval of the county commission of
2205 each contiguous county that will be a part of the authority.

2206 (2) The governing body of the authority shall consist of a
2207 board of voting members as follows:

2208 (a) The county commission of each county in the area served
2209 by the authority shall appoint two members. Each member must be
2210 a resident of the county from which he or she is appointed and,
2211 if possible, must represent the business and civic interests of
2212 the community.

2213 (b) The Governor shall appoint an equal number of members
2214 to the board as those appointed by the county commissions. The
2215 members appointed by the Governor must be residents of the area
2216 served by the authority.

2217 (c) The district secretary of the department serving in the
2218 district that includes Escambia County.

2219 (3) The term of office of each member shall be for 4 years
2220 or until his or her successor is appointed and qualified.

2221 (4) A member may not hold an elected office during the term
2222 of his or her membership.

2223 (5) A vacancy occurring in the governing body before the
2224 expiration of the member's term shall be filled for the
2225 remainder of the unexpired term by the respective appointing
2226 authority in the same manner as the original appointment.

2227 (6) Before entering upon his or her official duties, each
2228 member must take and subscribe to an oath before an official
2229 authorized by law to administer oaths that he or she will
2230 honestly, faithfully, and impartially perform the duties of his



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2231 or her office as a member of the governing body of the authority
2232 and that he or she will not neglect any duties imposed on him or
2233 her by this chapter.

2234 (7) The Governor may remove from office a member of the
2235 authority for misconduct, malfeasance, misfeasance, or
2236 nonfeasance in office.

2237 (8) Members of the authority shall designate a chair from
2238 among the membership.

2239 (9) Members of the authority shall serve without
2240 compensation, but are entitled to reimbursement for per diem and
2241 other expenses in accordance with s. 112.061 while in
2242 performance of their official duties.

2243 (10) A majority of the members of the authority shall
2244 constitute a quorum, and resolutions enacted or adopted by a
2245 vote of a majority of the members present and voting at any
2246 meeting are effective without publication, posting, or any
2247 further action of the authority.

2248 Section 46. Section 345.0004, Florida Statutes, is created
2249 to read:

2250 345.0004 Powers and duties.—

2251 (1) The authority shall plan, develop, finance, construct,
2252 reconstruct, improve, own, operate, and maintain a regional
2253 system in the area served by the authority. The authority may
2254 not exercise these powers with respect to an existing system for
2255 transporting people and goods by any means that is owned by
2256 another entity without the consent of that entity. If the
2257 authority acquires, purchases, or inherits an existing entity,
2258 the authority shall inherit and assume all rights, assets,
2259 appropriations, privileges, and obligations of the existing



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2260 entity.
2261 (2) The authority may exercise all powers necessary,
2262 appurtenant, convenient, or incidental to the carrying out of
2263 the purposes of this section, including, but not limited to, the
2264 following rights and powers:
2265 (a) To sue and be sued, implead and be impleaded, and
2266 complain and defend in all courts in its own name.
2267 (b) To adopt and use a corporate seal.
2268 (c) To have the power of eminent domain, including the
2269 procedural powers granted under chapters 73 and 74.
2270 (d) To acquire, purchase, hold, lease as a lessee, and use
2271 any property, real, personal, or mixed, tangible or intangible,
2272 or any interest therein, necessary or desirable for carrying out
2273 the purposes of the authority.
2274 (e) To sell, convey, exchange, lease, or otherwise dispose
2275 of any real or personal property acquired by the authority,
2276 including air rights, which the authority and the department
2277 have determined is not needed for the construction, operation,
2278 and maintenance of the system.
2279 (f) To fix, alter, charge, establish, and collect rates,
2280 fees, rentals, and other charges for the use of any system owned
2281 or operated by the authority, which rates, fees, rentals, and
2282 other charges must be sufficient to comply with any covenants
2283 made with the holders of any bonds issued under this act. This
2284 right and power may be assigned or delegated by the authority to
2285 the department.
2286 (g) To borrow money; to make and issue negotiable notes,
2287 bonds, refunding bonds, and other evidences of indebtedness or
2288 obligations, in temporary or definitive form, to finance all or



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2289 part of the improvement of the authority's system and
2290 appurtenant facilities, including the approaches, streets,
2291 roads, bridges, and avenues of access for the system and for any
2292 other purpose authorized by this chapter, the bonds to mature no
2293 more than 30 years after the date of the issuance; to secure the
2294 payment of such bonds or any part thereof by a pledge of its
2295 revenues, rates, fees, rentals, or other charges, including
2296 municipal or county funds received by the authority under an
2297 agreement between the authority and a municipality or county;
2298 and, in general, to provide for the security of the bonds and
2299 the rights and remedies of the holders of the bonds. However,
2300 municipal or county funds may not be pledged for the
2301 construction of a project for which a toll is to be charged
2302 unless the anticipated tolls are reasonably estimated by the
2303 governing board of the municipality or county, on the date of
2304 its resolution pledging the funds, to be sufficient to cover the
2305 principal and interest of such obligations during the period
2306 when the pledge of funds is in effect.
2307 1. The authority shall reimburse a municipality or county
2308 for sums spent from municipal or county funds used for the
2309 payment of the bond obligations.
2310 2. If the authority elects to fund or refund bonds issued
2311 by the authority before the maturity of the bonds, the proceeds
2312 of the funding or refunding bonds, pending the prior redemption
2313 of the bonds to be funded or refunded, shall be invested in
2314 direct obligations of the United States, and the outstanding
2315 bonds may be funded or refunded by the issuance of bonds under
2316 this chapter.
2317 (h) To make contracts of every name and nature, including,



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2318 but not limited to, partnerships providing for participation in
2319 ownership and revenues, and to execute each instrument necessary
2320 or convenient for the conduct of its business.

2321 (i) Without limitation of the foregoing, to cooperate with,
2322 to accept grants from, and to enter into contracts or other
2323 transactions with any federal agency, the state, or any agency
2324 or any other public body of the state.

2325 (j) To employ an executive director, attorney, staff, and
2326 consultants. Upon the request of the authority, the department
2327 shall furnish the services of a department employee to act as
2328 the executive director of the authority.

2329 (k) To accept funds or other property from private
2330 donations.

2331 (l) To act and do things necessary or convenient for the
2332 conduct of its business and the general welfare of the
2333 authority, in order to carry out the powers granted to it by
2334 this act or any other law.

2335 (3) The authority may not pledge the credit or taxing power
2336 of the state or a political subdivision or agency of the state.
2337 Obligations of the authority may not be considered to be
2338 obligations of the state or of any other political subdivision
2339 or agency of the state. Except for the authority, the state or
2340 any political subdivision or agency of the state is not liable
2341 for the payment of the principal of or interest on such
2342 obligations.

2343 (4) The authority may not, other than by consent of the
2344 affected county or an affected municipality, enter into an
2345 agreement that would legally prohibit the construction of a road
2346 by the county or the municipality.



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2347 (5) The authority shall comply with the statutory
2348 requirements of general application which relate to the filing
2349 of a report or documentation required by law, including the
2350 requirements of ss. 189.015, 189.016, 189.051, and 189.08.

2351 Section 47. Section 345.0005, Florida Statutes, is created
2352 to read:

2353 345.0005 Bonds.—

2354 (1) Bonds may be issued on behalf of the authority pursuant
2355 to the State Bond Act in such principal amount as the authority
2356 determines is necessary to achieve its corporate purposes,
2357 including construction, reconstruction, improvement, extension,
2358 and repair of the regional system; the acquisition cost of real
2359 property; interest on bonds during construction and for a
2360 reasonable period thereafter; and establishment of reserves to
2361 secure bonds.

2362 (2) Bonds issued on behalf of the authority under
2363 subsection (1) must:

2364 (a) Be authorized by resolution of the members of the
2365 authority and bear such date or dates; mature at such time or
2366 times not exceeding 30 years after their respective dates; bear
2367 interest at a rate or rates not exceeding the maximum rate fixed
2368 by general law for authorities; be in such denominations; be in
2369 such form, either coupon or fully registered; carry such
2370 registration, exchangeability, and interchangeability
2371 privileges; be payable in such medium of payment and at such
2372 place or places; be subject to such terms of redemption; and be
2373 entitled to such priorities of lien on the revenues and other
2374 available moneys as such resolution or any resolution after the
2375 bonds' issuance provides.



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- 2376 (b) Be sold at public sale in the manner provided in the
2377 State Bond Act. Temporary bonds or interim certificates may be
2378 issued to the purchaser or purchasers of such bonds pending the
2379 preparation of definitive bonds and may contain such terms and
2380 conditions as determined by the authority.
- 2381 (3) A resolution that authorizes bonds may specify
2382 provisions that must be part of the contract with the holders of
2383 the bonds as to:
- 2384 (a) The pledging of all or any part of the revenues,
2385 available municipal or county funds, or other charges or
2386 receipts of the authority derived from the regional system.
- 2387 (b) The construction, reconstruction, improvement,
2388 extension, repair, maintenance, and operation of the system, or
2389 any part or parts of the system, and the duties and obligations
2390 of the authority with reference thereto.
- 2391 (c) Limitations on the purposes to which the proceeds of
2392 the bonds, then or thereafter issued, or of any loan or grant by
2393 any federal agency or the state or any political subdivision of
2394 the state may be applied.
- 2395 (d) The fixing, charging, establishing, revising,
2396 increasing, reducing, and collecting of tolls, rates, fees,
2397 rentals, or other charges for use of the services and facilities
2398 of the system or any part of the system.
- 2399 (e) The setting aside of reserves or sinking funds and the
2400 regulation and disposition of such reserves or sinking funds.
- 2401 (f) Limitations on the issuance of additional bonds.
- 2402 (g) The terms of any deed of trust or indenture securing
2403 the bonds, or under which the bonds may be issued.
- 2404 (h) Any other or additional matters, of like or different



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- 2405 character, which in any way affect the security or protection of
2406 the bonds.
- 2407 (4) The authority may enter into deeds of trust,
2408 indentures, or other agreements with banks or trust companies
2409 within or without the state, as security for such bonds, and
2410 may, under such agreements, assign and pledge any of the
2411 revenues and other available moneys, including any available
2412 municipal or county funds, under the terms of this chapter. The
2413 deed of trust, indenture, or other agreement may contain
2414 provisions that are customary in such instruments or that the
2415 authority may authorize, including, but without limitation,
2416 provisions that:
- 2417 (a) Pledge any part of the revenues or other moneys
2418 lawfully available.
- 2419 (b) Apply funds and safeguard funds on hand or on deposit.
- 2420 (c) Provide for the rights and remedies of the trustee and
2421 the holders of the bonds.
- 2422 (d) Provide for the terms of the bonds or for resolutions
2423 authorizing the issuance of the bonds.
- 2424 (e) Provide for any additional matters, of like or
2425 different character, which affect the security or protection of
2426 the bonds.
- 2427 (5) Bonds issued under this act are negotiable instruments
2428 and have the qualities and incidents of negotiable instruments
2429 under the law merchant and the negotiable instruments law of the
2430 state.
- 2431 (6) A resolution that authorizes the issuance of authority
2432 bonds and pledges the revenues of the system must require that
2433 revenues of the system be periodically deposited into



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2434 appropriate accounts in sufficient sums to pay the costs of
2435 operation and maintenance of the system for the current fiscal
2436 year as set forth in the annual budget of the authority and to
2437 reimburse the department for any unreimbursed costs of operation
2438 and maintenance of the system from prior fiscal years before
2439 revenues of the system are deposited into accounts for the
2440 payment of interest or principal owing or that may become owing
2441 on such bonds.

2442 (7) State funds may not be used or pledged to pay the
2443 principal of or interest on any authority bonds, and all such
2444 bonds must contain a statement on their face to this effect.

2445 Section 48. Section 345.0006, Florida Statutes, is created
2446 to read:

2447 345.0006 Remedies of bondholders.—

2448 (1) The rights and the remedies granted to authority
2449 bondholders under this chapter are in addition to and not in
2450 limitation of any rights and remedies lawfully granted to such
2451 bondholders by the resolution or indenture providing for the
2452 issuance of bonds, or by any deed of trust, indenture, or other
2453 agreement under which the bonds may be issued or secured. If the
2454 authority defaults in the payment of the principal or interest
2455 on the bonds issued under this chapter after such principal or
2456 interest becomes due, whether at maturity or upon call for
2457 redemption, as provided in the resolution or indenture, and such
2458 default continues for 30 days, or if the authority fails or
2459 refuses to comply with this chapter or any agreement made with,
2460 or for the benefit of, the holders of the bonds, the holders of
2461 25 percent in aggregate principal amount of the bonds then
2462 outstanding are entitled as of right to the appointment of a



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2463 trustee to represent such bondholders for the purposes of the
2464 default if the holders of 25 percent in aggregate principal
2465 amount of the bonds then outstanding first give written notice
2466 to the authority and to the department of their intention to
2467 appoint a trustee.

2468 (2) The trustee and a trustee under a deed of trust,
2469 indenture, or other agreement may, or upon the written request
2470 of the holders of 25 percent or such other percentages specified
2471 in any deed of trust, indenture, or other agreement, in
2472 principal amount of the bonds then outstanding, shall, in any
2473 court of competent jurisdiction, in its own name:

2474 (a) By mandamus or other suit, action, or proceeding at
2475 law, or in equity, enforce all rights of the bondholders,
2476 including the right to require the authority to fix, establish,
2477 maintain, collect, and charge rates, fees, rentals, and other
2478 charges, adequate to carry out any agreement as to, or pledge
2479 of, the revenues, and to require the authority to carry out any
2480 other covenants and agreements with or for the benefit of the
2481 bondholders, and to perform its and their duties under this
2482 chapter.

2483 (b) Bring suit upon the bonds.

2484 (c) By action or suit in equity, require the authority to
2485 account as if it were the trustee of an express trust for the
2486 bondholders.

2487 (d) By action or suit in equity, enjoin any acts or things
2488 that may be unlawful or in violation of the rights of the
2489 bondholders.

2490 (3) A trustee, if appointed under this section or acting
2491 under a deed of trust, indenture, or other agreement, and



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2492 regardless of whether all bonds have been declared due and
2493 payable, is entitled to the appointment of a receiver. The
2494 receiver may enter upon and take possession of the system or the
2495 facilities or any part or parts of the system, the revenues, and
2496 other pledged moneys, for and on behalf of and in the name of,
2497 the authority and the bondholders. The receiver may collect and
2498 receive revenues and other pledged moneys in the same manner as
2499 the authority. The receiver shall deposit such revenues and
2500 moneys in a separate account and apply all such revenues and
2501 moneys remaining after allowance for payment of all costs of
2502 operation and maintenance of the system in such manner as the
2503 court directs. In a suit, action, or proceeding by the trustee,
2504 the fees, counsel fees, and expenses of the trustee, and the
2505 receiver, if any, and all costs and disbursements allowed by the
2506 court must be a first charge on any revenues after payment of
2507 the costs of operation and maintenance of the system. The
2508 trustee also has all other powers necessary or appropriate for
2509 the exercise of any functions specifically described in this
2510 section or incident to the representation of the bondholders in
2511 the enforcement and protection of their rights.

2512 (4) A receiver appointed pursuant to this section to
2513 operate and maintain the system or a facility or a part of a
2514 facility may not sell, assign, mortgage, or otherwise dispose of
2515 any of the assets belonging to the authority. The powers of the
2516 receiver are limited to the operation and maintenance of the
2517 system or any facility or part of a facility and to the
2518 collection and application of revenues and other moneys due the
2519 authority, in the name and for and on behalf of the authority
2520 and the bondholders. A holder of bonds or a trustee does not



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2521 have the right in any suit, action, or proceeding, at law or in
2522 equity, to compel a receiver, or a receiver may not be
2523 authorized or a court may not direct a receiver, to sell,
2524 assign, mortgage, or otherwise dispose of any assets of whatever
2525 kind or character belonging to the authority.

2526 Section 49. Section 345.0007, Florida Statutes, is created
2527 to read:

2528 345.0007 Department to construct, operate, and maintain
2529 facilities.-

2530 (1) The department is the agent of the authority for the
2531 purpose of performing all phases of a project, including, but
2532 not limited to, constructing improvements and extensions to the
2533 system, with the exception of the transit facilities. The
2534 division and the authority shall provide to the department
2535 complete copies of the documents, agreements, resolutions,
2536 contracts, and instruments that relate to the project and shall
2537 request that the department perform the construction work,
2538 including the planning, surveying, design, and actual
2539 construction of the completion of, extensions of, and
2540 improvements to the system. After the issuance of bonds to
2541 finance construction of an improvement or addition to the
2542 system, the division and the authority shall transfer to the
2543 credit of an account of the department in the State Treasury the
2544 necessary funds for construction. The department shall proceed
2545 with construction and use the funds for the purpose authorized
2546 by law for construction of roads and bridges. The authority may
2547 alternatively, with the consent and approval of the department,
2548 elect to appoint a local agency certified by the department to
2549 administer federal aid projects in accordance with federal law



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2550 as the authority's agent for the purpose of performing each
2551 phase of a project.

2552 (2) Notwithstanding subsection (1), the department is the
2553 agent of the authority for the purpose of operating and
2554 maintaining the system, with the exception of transit
2555 facilities. The costs incurred by the department for operation
2556 and maintenance shall be reimbursed from revenues of the system.
2557 The appointment of the department as agent for the authority
2558 does not create an independent obligation on the part of the
2559 department to operate and maintain a system. The authority shall
2560 remain obligated as principal to operate and maintain its
2561 system, and the authority's bondholders do not have an
2562 independent right to compel the department to operate or
2563 maintain the authority's system.

2564 (3) The authority shall fix, alter, charge, establish, and
2565 collect tolls, rates, fees, rentals, and other charges for the
2566 authority's facilities, as otherwise provided in this chapter.

2567 Section 50. Section 345.0008, Florida Statutes, is created
2568 to read:

2569 345.0008 Department contributions to authority projects.-

2570 (1) Subject to appropriation by the Legislature, the
2571 department may, at the request of the authority, pay all or part
2572 of the cost of financial, engineering, or traffic feasibility
2573 studies or of the design, financing, acquisition, or
2574 construction of an authority project or portion of the system
2575 that is included in the 10-year Strategic Intermodal Plan.

2576 (a) Pursuant to chapter 216, the department shall include
2577 funding for such payments in its legislative budget request. The
2578 request for funding may be included in the 5-year Tentative Work



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2579 Program developed under s. 339.135; however, it must appear as a
2580 distinct funding item in the legislative budget request and must
2581 be supported by a financial feasibility test provided by the
2582 department.

2583 (b) Funding provided for authority projects shall appear in
2584 the General Appropriations Act as a distinct fixed capital
2585 outlay item and must clearly identify the related authority
2586 project.

2587 (c) The department may not make a budget request to fund
2588 the acquisition or construction of a proposed authority project
2589 unless the estimated net revenues of the proposed project will
2590 be sufficient to pay at least 50 percent of the annual debt
2591 service on the bonds associated with the project by the end of
2592 12 years of operation and at least 100 percent of the debt
2593 service on the bonds by the end of 30 years of operation.

2594 (2) The department may use its engineers and other
2595 personnel, including consulting engineers and traffic engineers,
2596 to conduct the feasibility studies authorized under subsection
2597 (1).

2598 (3) The department may participate in authority-funded
2599 projects that, at a minimum:

2600 (a) Serve national, statewide, or regional functions and
2601 function as part of an integrated regional transportation
2602 system.

2603 (b) Are identified in the capital improvements element of a
2604 comprehensive plan that has been determined to be in compliance
2605 with part II of chapter 163. Further, the project shall be in
2606 compliance with local government comprehensive plan policies
2607 relative to corridor management.



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2608 (c) Are consistent with the Strategic Intermodal System
 2609 Plan developed under s. 339.64.

2610 (d) Have a commitment for local, regional, or private
 2611 financial matching funds as a percentage of the overall project
 2612 cost.

2613 (4) Before approval, the department must determine that the
 2614 proposed project:

2615 (a) Is in the public's best interest;

2616 (b) Does not require state funding, unless the project is
 2617 on the State Highway System;

2618 (c) Has adequate safeguards in place to ensure that no
 2619 additional costs will be imposed on or service disruptions will
 2620 affect the traveling public and residents of this state if the
 2621 department cancels or defaults on the agreement; and

2622 (d) Has adequate safeguards in place to ensure that the
 2623 department and the authority have the opportunity to add
 2624 capacity to the proposed project and other transportation
 2625 facilities serving similar origins and destinations.

2626 (5) An obligation or expense incurred by the department
 2627 under this section is a part of the cost of the authority
 2628 project for which the obligation or expense was incurred. The
 2629 department may require that money contributed by the department
 2630 under this section be repaid from tolls of the project on which
 2631 the money was spent, other revenue of the authority, or other
 2632 sources of funds.

2633 (6) The department shall receive from the authority a share
 2634 of the authority's net revenues equal to the ratio of the
 2635 department's total contributions to the authority under this
 2636 section to the sum of: the department's total contributions



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2637 under this section; contributions by any local government to the
 2638 cost of revenue-producing authority projects; and the sale
 2639 proceeds of authority bonds after payment of costs of issuance.
 2640 For the purpose of this subsection, the net revenues of the
 2641 authority are determined by deducting from gross revenues the
 2642 payment of debt service, administrative expenses, operations and
 2643 maintenance expenses, and all reserves required to be
 2644 established under any resolution under which authority bonds are
 2645 issued.

2646 Section 51. Section 345.0009, Florida Statutes, is created
 2647 to read:

2648 345.0009 Acquisition of lands and property.-

2649 (1) For the purposes of this chapter, the authority may
 2650 acquire private or public property and property rights,
 2651 including rights of access, air, view, and light, by gift,
 2652 devise, purchase, condemnation by eminent domain proceedings, or
 2653 transfer from another political subdivision of the state, as the
 2654 authority may find necessary for any of the purposes of this
 2655 chapter, including, but not limited to, any lands reasonably
 2656 necessary for securing applicable permits, areas necessary for
 2657 management of access, borrow pits, drainage ditches, water
 2658 retention areas, rest areas, replacement access for landowners
 2659 whose access is impaired due to the construction of a facility,
 2660 and replacement rights-of-way for relocated rail and utility
 2661 facilities; for existing, proposed, or anticipated
 2662 transportation facilities on the system or in a transportation
 2663 corridor designated by the authority; or for the purposes of
 2664 screening, relocation, removal, or disposal of junkyards and
 2665 scrap metal processing facilities. Each authority shall also



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2666 have the power to condemn any material and property necessary
2667 for such purposes.

2668 (2) The authority shall exercise the right of eminent
2669 domain conferred under this section in the manner provided by
2670 law.

2671 (3) An authority that acquires property for a
2672 transportation facility or in a transportation corridor is not
2673 liable under chapter 376 or chapter 403 for preexisting soil or
2674 groundwater contamination due solely to its ownership. This
2675 section does not affect the rights or liabilities of any past or
2676 future owners of the acquired property or the liability of any
2677 governmental entity for the results of its actions which create
2678 or exacerbate a pollution source. The authority and the
2679 Department of Environmental Protection may enter into
2680 interagency agreements for the performance, funding, and
2681 reimbursement of the investigative and remedial acts necessary
2682 for property acquired by the authority.

2683 Section 52. Section 345.001, Florida Statutes, is created
2684 to read:

2685 345.001 Cooperation with other units, boards, agencies, and
2686 individuals.—A county, municipality, drainage district, road and
2687 bridge district, school district, or any other political
2688 subdivision, board, commission, or individual in, or of, the
2689 state may make and enter into a contract, lease, conveyance,
2690 partnership, or other agreement with the authority which
2691 complies with this chapter. The authority may make and enter
2692 into contracts, leases, conveyances, partnerships, and other
2693 agreements with any political subdivision, agency, or
2694 instrumentality of the state and any federal agency,



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2695 corporation, or individual to carry out the purposes of this
2696 chapter.

2697 Section 53. Section 345.0011, Florida Statutes, is created
2698 to read:

2699 345.0011 Covenant of the state.—The state pledges to, and
2700 agrees with, any person, firm, or corporation, or federal or
2701 state agency subscribing to or acquiring the bonds to be issued
2702 by the authority for the purposes of this chapter that the state
2703 will not limit or alter the rights vested by this chapter in the
2704 authority and the department until all bonds at any time issued,
2705 together with the interest thereon, are fully paid and
2706 discharged insofar as the rights vested in the authority and the
2707 department affect the rights of the holders of bonds issued
2708 under this chapter. The state further pledges to, and agrees
2709 with, the United States that if a federal agency constructs or
2710 contributes any funds for the completion, extension, or
2711 improvement of the system, or any parts of the system, the state
2712 will not alter or limit the rights and powers of the authority
2713 and the department in any manner that is inconsistent with the
2714 continued maintenance and operation of the system or the
2715 completion, extension, or improvement of the system, or that
2716 would be inconsistent with the due performance of any agreements
2717 between the authority and any such federal agency, and the
2718 authority and the department shall continue to have and may
2719 exercise all powers granted in this section, so long as the
2720 powers are necessary or desirable to carry out the purposes of
2721 this chapter and the purposes of the United States in the
2722 completion, extension, or improvement of the system, or any part
2723 of the system.



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2724 Section 54. Section 345.0012, Florida Statutes, is created
2725 to read:

2726 345.0012 Exemption from taxation.—The authority created
2727 under this chapter is for the benefit of the people of the
2728 state, for the increase of their commerce and prosperity, and
2729 for the improvement of their health and living conditions. The
2730 authority performs essential governmental functions under this
2731 chapter, therefore, the authority is not required to pay any
2732 taxes or assessments of any kind or nature upon any property
2733 acquired or used by it for such purposes, or upon any rates,
2734 fees, rentals, receipts, income, or charges received by it.
2735 Also, the bonds issued by the authority, their transfer and the
2736 income from their issuance, including any profits made on the
2737 sale of the bonds, shall be free from taxation by the state or
2738 by any political subdivision, taxing agency, or instrumentality
2739 of the state. The exemption granted by this section does not
2740 apply to any tax imposed by chapter 220 on interest, income, or
2741 profits on debt obligations owned by corporations.

2742 Section 55. Section 345.0013, Florida Statutes, is created
2743 to read:

2744 345.0013 Eligibility for investments and security.—Bonds or
2745 other obligations issued under this chapter are legal
2746 investments for banks, savings banks, trustees, executors,
2747 administrators, and all other fiduciaries, and for all state,
2748 municipal, and other public funds, and are also securities
2749 eligible for deposit as security for all state, municipal, or
2750 other public funds, notwithstanding any other law to the
2751 contrary.

2752 Section 56. Section 345.0014, Florida Statutes, is created



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2753 to read:

2754 345.0014 Applicability.—

2755 (1) The powers conferred by this chapter are in addition to
2756 the powers conferred by other laws and do not repeal any other
2757 general or special law or local ordinance, but supplement them,
2758 and provide a complete method for the exercise of the powers
2759 granted in this chapter. The extension and improvement of a
2760 system, and the issuance of bonds under this chapter to finance
2761 all or part of the cost of such extension or improvement, may be
2762 accomplished through compliance with this chapter without regard
2763 to or necessity for compliance with the limitations or
2764 restrictions contained in any other general, special, or local
2765 law, including, but not limited to, s. 215.821. Approval of any
2766 bonds issued under this act by the qualified electors or
2767 qualified electors who are freeholders in the state or in any
2768 political subdivision of the state is not required for the
2769 issuance of such bonds under this chapter.

2770 (2) This act does not repeal, rescind, or modify any other
2771 law relating to the State Board of Administration, the
2772 Department of Transportation, or the Division of Bond Finance of
2773 the State Board of Administration; however, this chapter
2774 supersedes any other law that is inconsistent with its
2775 provisions, including, but not limited to, s. 215.821.

2776 Section 57. (1) LEGISLATIVE FINDINGS AND INTENT.—The
2777 Legislature recognizes that the existing fuel tax structure used
2778 to derive revenues for the funding of transportation projects in
2779 this state will soon be inadequate to meet the state's needs. To
2780 address this emerging need, the Legislature directs the Center
2781 for Urban Transportation Research to establish an extensive



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2782 study on the impact of implementing a system that charges
2783 drivers based on the vehicle miles traveled as an alternative,
2784 sustainable source of transportation funding and to establish
2785 the framework for implementation of a pilot demonstration
2786 project. The Legislature recognizes that, over time, the current
2787 fuel tax structure has become less viable as the primary funding
2788 source for transportation projects. While the fuel tax has
2789 functioned as a true user fee for decades, significant increases
2790 in mandated vehicle fuel efficiency and the introduction of
2791 electric and hybrid vehicles have significantly eroded the
2792 revenues derived from this tax. The Legislature also recognizes
2793 that there are legitimate privacy concerns related to a tax
2794 mechanism that would charge users of the highway system on the
2795 basis of miles traveled. Other concerns include the cost of
2796 implementing such a system and institutional issues associated
2797 with revenue sharing. Therefore, it is the intent of the
2798 Legislature that this study and demonstration design will, at a
2799 minimum, address these issues. To accomplish this task, the
2800 Center for Urban Transportation Research in consultation with
2801 the Florida Transportation Commission shall establish a project
2802 advisory board to assist the center in analyzing this
2803 alternative funding concept and in developing specific elements
2804 of the pilot project that will demonstrate the feasibility of
2805 transitioning Florida to a transportation funding system based
2806 on vehicle miles traveled.

2807 (2) VEHICLE-MILES-TRAVELED STUDY.—The Center for Urban
2808 Transportation Research shall conduct a study on the viability
2809 of implementing a system in this state which charges drivers
2810 based on their vehicle miles traveled as an alternative to the



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2811 present fuel tax structure to fund transportation projects. The
2812 study will inventory previous research and findings from pilot
2813 projects being conducted in other states. The study will address
2814 at a minimum previous work conducted in these broad areas:
2815 assessment of technologies; behavioral and privacy concerns;
2816 equity impacts; and policy implications of a vehicle miles
2817 traveled road charging system. The effort will also quantify the
2818 current costs to collect traditional highway user fees. This
2819 study will synthesize findings of completed research and
2820 demonstrations in the area of vehicle-miles-traveled charges and
2821 analyze their applicability to Florida. The Center for Urban
2822 Transportation Research shall present the findings of this study
2823 phase to the Legislature no later than January 30, 2016.

2824 (3) VEHICLE-MILES-TRAVELED PILOT PROJECT DESIGN.—

2825 (a) In the course of the study, the Center for Urban
2826 Transportation Research in consultation with the Florida
2827 Transportation Commission shall establish the framework for a
2828 pilot project that will evaluate the feasibility of implementing
2829 a system that charges drivers based on their vehicle miles
2830 traveled.

2831 (b) In the design of the pilot project framework, the
2832 Center for Urban Transportation Research shall address at a
2833 minimum these elements: the geographic location for the pilot;
2834 special fleets or classes of vehicles; evaluation criteria for
2835 the demonstration; consumer choice in the method of reporting
2836 miles traveled; privacy options for participants in the pilot
2837 project; the recording of miles traveled with and without
2838 locational information; records retention and destruction; and
2839 cyber security.



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2840 (c) Contingent upon legislative appropriation, the Center
2841 for Urban Transportation Research may expend up to \$400,000 for
2842 the study and pilot project design.

2843 (d) The pilot project design shall be completed no later
2844 than December 31, 2016, and submitted in a report to the
2845 Legislature so that implementation of a pilot project can occur
2846 in 2017.

2847 Section 58. For the purpose of incorporating the amendment
2848 made by this act to section 333.01, Florida Statutes, in a
2849 reference thereto, subsection (6) of section 350.81, Florida
2850 Statutes, is reenacted to read:

2851 350.81 Communications services offered by governmental
2852 entities.—

2853 (6) To ensure the safe and secure transportation of
2854 passengers and freight through an airport facility, as defined
2855 in s. 159.27(17), an airport authority or other governmental
2856 entity that provides or is proposing to provide communications
2857 services only within the boundaries of its airport layout plan,
2858 as defined in s. 333.01(6), to subscribers which are integral
2859 and essential to the safe and secure transportation of
2860 passengers and freight through the airport facility, is exempt
2861 from this section. An airport authority or other governmental
2862 entity that provides or is proposing to provide shared-tenant
2863 service under s. 364.339, but not dial tone enabling subscribers
2864 to complete calls outside the airport layout plan, to one or
2865 more subscribers within its airport layout plan which are not
2866 integral and essential to the safe and secure transportation of
2867 passengers and freight through the airport facility is exempt
2868 from this section. An airport authority or other governmental



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2869 entity that provides or is proposing to provide communications
2870 services to one or more subscribers within its airport layout
2871 plan which are not integral and essential to the safe and secure
2872 transportation of passengers and freight through the airport
2873 facility, or to one or more subscribers outside its airport
2874 layout plan, is not exempt from this section. By way of example
2875 and not limitation, the integral, essential subscribers may
2876 include airlines and emergency service entities, and the
2877 nonintegral, nonessential subscribers may include retail shops,
2878 restaurants, hotels, or rental car companies.

2879 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

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.

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 decal¹¹ 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 IRP¹⁶ 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

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 vehicles¹⁹ 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 feet²⁷ 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/WeightEnforcement.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

²⁹ See the FHWA email, March 17, 2015. On file 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.

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/fag/>. 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 benefits³⁹ 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 subdivision⁴⁸ 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 area⁵⁰ 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

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.

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 curblines, 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 colored⁷⁷ 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 1980⁸³, 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 Greenway⁸⁸ 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

⁸⁵The 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)

⁸⁹St. Johns River-to-Sea Loop Trail Status Update, September 2011. ETM, Inc. http://www.etm-inc.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 bonds¹⁰⁵ 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.

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

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1 A bill to be entitled
 2 An act relating to transportation; amending s. 20.23,
 3 F.S.; deleting the requirement that the Secretary of
 4 Transportation appoint an inspector general pursuant
 5 to s. 20.055, F.S.; deleting the requirement that the
 6 district director for the Fort Myers Urban Office of
 7 the Department of Transportation be responsible for
 8 developing the 5-year Transportation Plan and other
 9 duties for specified counties; amending s. 215.82,
 10 F.S.; deleting a cross-reference; amending s.
 11 260.0144, F.S.; providing that certain commercial
 12 sponsorship may be displayed on state greenway and
 13 trail facilities not included within the Florida
 14 Shared-Use Nonmotorized Trail Network; deleting
 15 provisions relating to the authorization of sponsored
 16 state greenways and trails at specified facilities or
 17 property; amending s. 311.07, F.S.; increasing the
 18 minimum amount that shall be made available annually
 19 from the State Transportation Fund to fund the Florida
 20 Seaport Transportation and Economic Development
 21 Program; amending s. 311.09, F.S.; reducing the number
 22 of members of the Florida Seaport Transportation and
 23 Economic Development Council; removing Port Citrus
 24 from the council membership; increasing the amount per
 25 year the department must include in its annual
 26 legislative budget request for the Florida Seaport
 27 Transportation and Economic Development Program;
 28 deleting obsolete language; amending s. 316.003, F.S.;
 29 defining and redefining terms; amending s. 316.0895,

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30 F.S.; providing that provisions prohibiting a driver
 31 from following certain vehicles within a certain
 32 distance do not apply to truck tractor-semitrailer
 33 combinations under certain conditions; providing for
 34 financial responsibility; amending s. 316.130, F.S.;
 35 revising traffic regulations relating to pedestrians
 36 crossing roadways; amending s. 316.303, F.S.;
 37 providing exceptions to the prohibition of certain
 38 television-type receiving equipment and certain
 39 electronic displays in vehicles; amending s. 316.515,
 40 F.S.; extending the allowable length of certain
 41 semitrailers authorized to operate on public roads
 42 under certain conditions; authorizing the Department
 43 of Transportation to permit truck tractor-semitrailer
 44 combinations where the total number of overwidth
 45 deliveries of manufactured buildings may be reduced by
 46 the transport of multiple sections or single units on
 47 an overlength trailer of no more than a specified
 48 length under certain circumstances; amending s.
 49 316.545, F.S.; providing a specified penalty for
 50 commercial motor vehicles that obtain temporary
 51 registration permits entering the state at, or
 52 operating on designated routes to, a port-of-entry
 53 location; amending s. 333.01, F.S.; defining and
 54 redefining terms; amending s. 333.025, F.S.; revising
 55 requirements relating to securing a permit for the
 56 proposed construction or alteration of structures that
 57 would exceed specified federal obstruction standards;
 58 requiring such permits only within an airport hazard

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59 area if the proposed construction is within a set
 60 radius of a certain airport reference point; providing
 61 that existing, planned, and proposed facilities at
 62 public-use airports contained in certain plans or
 63 documents will be protected from structures that
 64 exceed federal obstruction standards; providing that a
 65 permit is not required when political subdivisions
 66 have adopted adequate airport protection zoning
 67 regulations and have established a permitting process,
 68 subject to certain requirements; providing for a
 69 review period by the department to run concurrent with
 70 such permitting process, subject to certain
 71 requirements and exemptions; specifying certain
 72 factors the department shall consider in determining
 73 whether to issue or deny a permit; directing the
 74 department to require an owner of a permitted
 75 obstruction or vegetation to install, operate, and
 76 maintain marking and lighting subject to certain
 77 requirements; prohibiting a permit from being approved
 78 solely on the basis that a proposed structure will not
 79 exceed specified federal obstruction standards;
 80 providing certain administrative review for the denial
 81 of a permit; amending s. 333.03, F.S.; revising the
 82 requirements relating to the adoption of airport
 83 protection zoning regulations by certain political
 84 subdivisions; revising the requirements of such
 85 adopted airport protection zoning regulations;
 86 providing that the department is available to assist
 87 political subdivisions with regard to federal

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88 obstruction standards; revising requirements relating
 89 to airport land use compatibility zoning regulations
 90 that address, at a minimum, landfill locations and
 91 noise contours; requiring adoption of airport zoning
 92 regulations that restrict substantial modifications to
 93 existing incompatible uses within runway protection
 94 zones; requiring that updates and amendments to local
 95 airport zoning codes, rules, and regulations be filed
 96 with the department within a certain time after
 97 adoption; revising requirements relating to
 98 educational structures or sites; providing that a
 99 governing body operating a public-use airport may
 100 establish more restrictive airport protection zoning
 101 regulations for certain purposes; amending s. 333.04,
 102 F.S.; revising provisions relating to comprehensive
 103 plan or policy regulations, including airport
 104 protection zoning regulations under certain
 105 circumstances; amending s. 333.05, F.S.; revising
 106 provisions relating to the procedure for adoption,
 107 amendment, or deletion of airport zoning regulations;
 108 revising provisions relating to airport zoning
 109 commissions; amending s. 333.06, F.S.; revising
 110 provisions relating to airport zoning requirements,
 111 and airport master plans that are prepared by certain
 112 public-use airports; repealing s. 333.065, F.S.,
 113 relating to guidelines regarding land use near
 114 airports; amending s. 333.07, F.S.; revising
 115 provisions relating to permits for use of structures
 116 or vegetation in violation of airport protection

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117 zoning regulations; specifying factors a political
 118 subdivision or its administrative agency must consider
 119 when determining whether to issue or deny a permit;
 120 deleting provisions relating to applying for a
 121 variance from zoning regulations; revising provisions
 122 relating to obstruction marking and lighting
 123 requirements when a political subdivision or its
 124 administrative agency issues a permit; repealing s.
 125 333.08, F.S., relating to appeals in regard to airport
 126 zoning regulations; amending s. 333.09, F.S.;
 127 requiring all airport zoning regulations to provide
 128 for the administration and enforcement of such
 129 regulations by the affected political subdivisions or
 130 an administrative agency created by the subdivisions;
 131 requiring a political subdivision that must adopt
 132 airport zoning regulations to provide a permitting
 133 process subject to certain requirements and
 134 exceptions; providing for an appeals process for
 135 decisions in the administration of airport zoning
 136 regulations, subject to certain requirements;
 137 repealing s. 333.10, F.S., relating to boards of
 138 adjustment provided for by all airport zoning
 139 regulations; amending s. 333.11, F.S.; revising
 140 provisions relating to judicial review for decisions
 141 made by any governing body of a political subdivision,
 142 joint airport zoning board, or administrative agency;
 143 requiring the appellant to exhaust all its remedies
 144 through application for local government permits,
 145 exceptions, and appeals before judicial appeal is

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146 permitted; amending s. 333.12, F.S.; revising
 147 provisions relating to the acquisition of air rights;
 148 providing that a certain political subdivision may
 149 acquire air right, avigation easement, other estate,
 150 or interest in a nonconforming structure or use that
 151 presents an air hazard and cannot be removed, lowered,
 152 or otherwise terminated, subject to certain
 153 requirements; creating s. 333.135, F.S.; requiring
 154 that certain airport zoning regulations be amended to
 155 conform by a certain date; requiring certain political
 156 subdivisions to adopt airport zoning regulations by a
 157 certain date; directing the department to administer
 158 the permitting process for local governments that have
 159 not adopted airport protection zoning regulations;
 160 repealing s. 333.14, F.S., relating to a short title;
 161 amending s. 334.03, F.S.; redefining the term "511" or
 162 "511 services"; deleting the term "interactive voice
 163 response"; amending s. 334.044, F.S.; removing the
 164 provision of interactive voice response telephone
 165 systems accessible via the 511 number that may be
 166 included in traveler information systems; removing a
 167 requirement that applied uniform standards and
 168 criteria for collection and dissemination of traveler
 169 information using interactive voice response systems;
 170 authorizing the department to assume certain
 171 responsibilities under the National Environmental
 172 Policy Act with respect to highway projects within the
 173 state and certain related responsibilities relating to
 174 review or approval of a highway project; authorizing

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175 the department to enter into certain agreements
 176 related to the federal surface transportation project
 177 delivery program under certain federal law;
 178 authorizing the department to adopt implementing
 179 rules; authorizing the department to adopt certain
 180 relevant federal environmental standards; providing a
 181 limited waiver of sovereign immunity to civil suit in
 182 federal court consistent with certain federal law;
 183 amending s. 334.60, F.S.; revising provisions relating
 184 to the 511 traveler information system; amending s.
 185 335.065, F.S.; deleting provisions relating to certain
 186 commercial sponsorship displays on multiuse trails and
 187 related facilities; deleting provisions relating to
 188 funding a statewide system of interconnected multiuse
 189 trails; creating s. 335.21, F.S.; requiring the
 190 governing body of any independent special district
 191 created to regulate the operation of public vehicles
 192 on public highways to consist of a certain number of
 193 members; providing appointment requirements for such
 194 members; providing exceptions; amending s. 338.165,
 195 F.S.; removing an option to issue certain bonds
 196 secured by toll revenues collected on the Beeline-East
 197 Expressway and the Navarre Bridge; amending s.
 198 338.227, F.S.; providing that bonds issued are not
 199 required to be validated pursuant to ch. 75, F.S., but
 200 may be validated at the option of the Division of Bond
 201 Finance; providing filing, notice, and service
 202 requirements relating to complaints for such
 203 validation; amending s. 338.231, F.S.; increasing the

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204 number of years before an inactive prepaid toll
 205 account shall be presumed unclaimed; deleting
 206 provisions relating to using the revenues from the
 207 turnpike system to pay the principal and interest of a
 208 specified series of bonds and certain expenses of the
 209 Sawgrass Expressway; amending s. 339.175, F.S.;
 210 requiring certain long-range transportation plans to
 211 include assessment of capital investment and other
 212 measures necessary to make the most efficient use of
 213 existing transportation facilities to improve safety;
 214 requiring the assessments to include consideration of
 215 infrastructure and technological improvements
 216 necessary to accommodate advances in vehicle
 217 technology; amending s. 339.64, F.S.; requiring the
 218 Department of Transportation to coordinate with
 219 certain partners and industry representatives to
 220 consider infrastructure and technological improvements
 221 necessary to accommodate advances in vehicle
 222 technology in Strategic Intermodal System facilities;
 223 requiring the Strategic Intermodal System Plan to
 224 include a needs assessment regarding such
 225 infrastructure and technological improvements;
 226 creating s. 339.81, F.S.; creating the Florida Shared-
 227 Use Nonmotorized Trail Network; specifying the
 228 composition, purpose, and requirements of the network;
 229 authorizing the department certain powers related to
 230 the planning, development, operation, and maintenance
 231 of the network; creating s. 339.82, F.S.; directing
 232 the department to develop a Shared-Use Nonmotorized

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233 Trail Network Plan, subject to certain requirements;
 234 creating s. 339.83, F.S.; creating a trail sponsorship
 235 program, subject to certain requirements and
 236 restrictions; directing the Office of Economic and
 237 Demographic Research to evaluate and determine the
 238 economic benefits of the state's investment in the
 239 Department of Transportation's adopted work program
 240 for a certain timeframe, subject to certain
 241 requirements; directing the Department of
 242 Transportation and each of its district offices to
 243 provide the Office of Economic and Demographic
 244 Research full access to certain data; requiring the
 245 Office of Economic and Demographic Research to submit
 246 the analysis to the Legislature by a certain date;
 247 repealing s. 341.0532, F.S., relating to statewide
 248 transportation corridors; providing a directive to the
 249 Division of Law Revision and Information; creating s.
 250 345.0001, F.S.; providing a short title; creating s.
 251 345.0002, F.S.; defining terms; creating s. 345.0003,
 252 F.S.; authorizing certain counties to form the
 253 Northwest Florida Regional Transportation Finance
 254 Authority to construct, maintain, or operate
 255 transportation projects in a given region of the
 256 state; specifying procedural requirements; creating s.
 257 345.0004, F.S.; specifying the powers and duties of
 258 the authority, subject to certain restrictions;
 259 requiring that the authority comply with certain
 260 reporting and documentation requirements; creating s.
 261 345.0005, F.S.; authorizing the issuing of bonds on

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262 behalf of the authority under the State Bond Act and
 263 by the authority itself; specifying requirements and
 264 restrictions for such bonds under certain
 265 circumstances; creating s. 345.0006, F.S.; providing
 266 rights and remedies of bondholders; creating s.
 267 345.0007, F.S.; designating the Department of
 268 Transportation as the agent of the authority for
 269 specified purposes; authorizing the administration and
 270 management of projects by the department; limiting the
 271 powers of the department as an agent; establishing the
 272 fiscal responsibilities of the authority; creating s.
 273 345.0008, F.S.; authorizing the department to provide
 274 for or commit its resources for the authority project
 275 or system, if approved by the Legislature, subject to
 276 legislative budget request procedures and prohibitions
 277 and appropriation procedures; authorizing the payment
 278 of expenses incurred by the department on behalf of
 279 the authority; requiring the department to receive a
 280 share of the revenue from the authority; providing
 281 calculations for disbursement of revenues; creating s.
 282 345.0009, F.S.; authorizing the authority to acquire
 283 private or public property and property rights for a
 284 project or plan; establishing the rights and
 285 liabilities and remedial actions relating to property
 286 acquired for a transportation project or corridor;
 287 creating s. 345.001, F.S.; authorizing contracts
 288 between governmental entities and the authority;
 289 creating s. 345.0011, F.S.; pledging that the state
 290 will not limit or alter the vested rights of the

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291 authority or the department with regard to any issued
 292 bonds or other rights relating to the bonds if such
 293 vested rights affect the rights of bondholders;
 294 creating s. 345.0012, F.S.; exempting the authority
 295 from certain taxes and assessments; providing
 296 exceptions; creating s. 345.0013, F.S.; providing that
 297 bonds or obligations issued under this chapter are
 298 legal investments for specified entities; creating s.
 299 345.0014, F.S.; providing applicability; providing
 300 legislative findings and intent relating to
 301 transportation funding; directing the Center for Urban
 302 Transportation Research to conduct a study on
 303 implementing a system in this state which charges
 304 drivers based on their vehicle miles traveled as an
 305 alternative to the present fuel tax structure to fund
 306 transportation projects; specifying requirements of
 307 the study; requiring that the findings of the study be
 308 presented to the Legislature by a certain date;
 309 directing the center, in consultation with the Florida
 310 Transportation Commission, to establish the framework
 311 for a pilot project that will evaluate the feasibility
 312 of implementing a system that charges drivers based on
 313 their vehicle miles traveled; specifying requirements
 314 for the design of the pilot project framework;
 315 authorizing the center to expend up to a certain
 316 amount for the study and pilot project design
 317 contingent upon legislative appropriation; requiring
 318 that the pilot project design be completed by a
 319 certain date and submitted in a report to the

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320 Legislature; reenacting s. 350.81(6), F.S., relating
 321 to the definition of the term "airport layout plan,"
 322 to incorporate the amendment made to s. 333.01, F.S.,
 323 in a reference thereto; providing an effective date.
 324

325 Be It Enacted by the Legislature of the State of Florida:
 326

327 Section 1. Paragraph (d) of subsection (3) and paragraph
 328 (d) of subsection (4) of section 20.23, Florida Statutes, are
 329 amended to read:

330 20.23 Department of Transportation.—There is created a
 331 Department of Transportation which shall be a decentralized
 332 agency.

333 (3)

334 ~~(d) The secretary shall appoint an inspector general~~
 335 ~~pursuant to s. 20.055 who shall be directly responsible to the~~
 336 ~~secretary and shall serve at the pleasure of the secretary.~~

337 (4)

338 ~~(d) The district director for the Fort Myers Urban Office~~
 339 ~~of the Department of Transportation is responsible for~~
 340 ~~developing the 5-year Transportation Plan for Charlotte,~~
 341 ~~Collier, DeSoto, Glades, Hendry, and Lee Counties. The Fort~~
 342 ~~Myers Urban Office also is responsible for providing policy,~~
 343 ~~direction, local government coordination, and planning for those~~
 344 ~~counties.~~

345 Section 2. Subsection (2) of section 215.82, Florida
 346 Statutes, is amended to read:

347 215.82 Validation; when required.—

348 (2) Any bonds issued pursuant to this act which are

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349 validated shall be validated in the manner provided by chapter
 350 75. In actions to validate bonds to be issued in the name of the
 351 State Board of Education under s. 9(a) and (d), Art. XII of the
 352 State Constitution and bonds to be issued pursuant to chapter
 353 259, the Land Conservation Act of 1972, the complaint shall be
 354 filed in the circuit court of the county where the seat of state
 355 government is situated, the notice required to be published by
 356 s. 75.06 shall be published only in the county where the
 357 complaint is filed, and the complaint and order of the circuit
 358 court shall be served only on the state attorney of the circuit
 359 in which the action is pending. In any action to validate bonds
 360 issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1),
 361 Art. XII of the State Constitution or issued pursuant to s.
 362 215.605 ~~or s. 338.227~~, the complaint shall be filed in the
 363 circuit court of the county where the seat of state government
 364 is situated, the notice required to be published by s. 75.06
 365 shall be published in a newspaper of general circulation in the
 366 county where the complaint is filed and in two other newspapers
 367 of general circulation in the state, and the complaint and order
 368 of the circuit court shall be served only on the state attorney
 369 of the circuit in which the action is pending; provided,
 370 however, that if publication of notice pursuant to this section
 371 would require publication in more newspapers than would
 372 publication pursuant to s. 75.06, such publication shall be made
 373 pursuant to s. 75.06.

374 Section 3. Section 260.0144, Florida Statutes, is amended
 375 to read:

376 260.0144 Sponsorship of state greenways and trails.—The
 377 department may enter into a concession agreement with a not-for-

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378 profit entity or private sector business or entity for
 379 commercial sponsorship to be displayed on state greenway and
 380 trail facilities not included within the Florida Shared-Use
 381 Nonmotorized Trail Network established in chapter 339 ~~or~~
 382 ~~property specified in this section~~. The department may establish
 383 the cost for entering into a concession agreement.
 384 (1) A concession agreement shall be administered by the
 385 department and must include the requirements found in this
 386 section.
 387 (2) (a) Space for a commercial sponsorship display may be
 388 provided through a concession agreement on certain state-owned
 389 greenway or trail facilities or property.
 390 (b) Signage or displays erected under this section shall
 391 comply with the provisions of s. 337.407 and chapter 479, and
 392 shall be limited as follows:
 393 1. One large sign or display, not to exceed 16 square feet
 394 in area, may be located at each trailhead or parking area.
 395 2. One small sign or display, not to exceed 4 square feet
 396 in area, may be located at each designated trail public access
 397 point.
 398 (c) Before installation, each name or sponsorship display
 399 must be approved by the department.
 400 (d) The department shall ensure that the size, color,
 401 materials, construction, and location of all signs are
 402 consistent with the management plan for the property and the
 403 standards of the department, do not intrude on natural and
 404 historic settings, and contain only a logo selected by the
 405 sponsor and the following sponsorship wording:
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407 ... (Name of the sponsor) ... proudly sponsors the costs
 408 of maintaining the ... (Name of the greenway or
 409 trail) ...

411 ~~(e) Sponsored state greenways and trails are authorized at
 412 the following facilities or property:~~

- 413 ~~1. Florida Keys Overseas Heritage Trail.~~
- 414 ~~2. Blackwater Heritage Trail.~~
- 415 ~~3. Tallahassee-St. Marks Historic Railroad State Trail.~~
- 416 ~~4. Nature Coast State Trail.~~
- 417 ~~5. Withlacoochee State Trail.~~
- 418 ~~6. General James A. Van Fleet State Trail.~~
- 419 ~~7. Palatka Lake Butler State Trail.~~

420 ~~(e)(f)~~ The department may enter into commercial sponsorship
 421 agreements for other state greenways or trails as authorized in
 422 this section. A qualified entity that desires to enter into a
 423 commercial sponsorship agreement shall apply to the department
 424 on forms adopted by department rule.

425 ~~(f)(g)~~ All costs of a display, including development,
 426 construction, installation, operation, maintenance, and removal
 427 costs, shall be paid by the concessionaire.

428 (3) A concession agreement shall be for a minimum of 1
 429 year, but may be for a longer period under a multiyear
 430 agreement, and may be terminated for just cause by the
 431 department upon 60 days' advance notice. Just cause for
 432 termination of a concession agreement includes, but is not
 433 limited to, violation of the terms of the concession agreement
 434 or any provision of this section.

435 (4) Commercial sponsorship pursuant to a concession

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436 agreement is for public relations or advertising purposes of the
 437 not-for-profit entity or private sector business or entity, and
 438 may not be construed by that not-for-profit entity or private
 439 sector business or entity as having a relationship to any other
 440 actions of the department.

441 (5) This section does not create a proprietary or
 442 compensable interest in any sign, display site, or location.

443 (6) Proceeds from concession agreements shall be
 444 distributed as follows:

445 (a) Eighty-five percent shall be deposited into the
 446 appropriate department trust fund that is the source of funding
 447 for management and operation of state greenway and trail
 448 facilities and properties.

449 (b) Fifteen percent shall be deposited into the State
 450 Transportation Trust Fund for use in the Traffic and Bicycle
 451 Safety Education Program and the Safe Paths to School Program
 452 administered by the Department of Transportation.

453 (7) The department may adopt rules to administer this
 454 section.

455 Section 4. Subsection (2) of section 311.07, Florida
 456 Statutes, is amended to read:

457 311.07 Florida seaport transportation and economic
 458 development funding.—

459 (2) A minimum of \$25 ~~\$15~~ million per year shall be made
 460 available from the State Transportation Trust Fund to fund the
 461 Florida Seaport Transportation and Economic Development Program.
 462 The Florida Seaport Transportation and Economic Development
 463 Council created in s. 311.09 shall develop guidelines for
 464 project funding. Council staff, the Department of

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465 Transportation, and the Department of Economic Opportunity shall
 466 work in cooperation to review projects and allocate funds in
 467 accordance with the schedule required for the Department of
 468 Transportation to include these projects in the tentative work
 469 program developed pursuant to s. 339.135(4).

470 Section 5. Subsections (1), (9), and (12) of section
 471 311.09, Florida Statutes, are amended to read:

472 311.09 Florida Seaport Transportation and Economic
 473 Development Council.—

474 (1) The Florida Seaport Transportation and Economic
 475 Development Council is created within the Department of
 476 Transportation. The council consists of the following 16 ~~17~~
 477 members: the port director, or the port director's designee, of
 478 each of the ports of Jacksonville, Port Canaveral, ~~Port Citrus,~~
 479 Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,
 480 St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key
 481 West, and Fernandina; the secretary of the Department of
 482 Transportation or his or her designee; and the director of the
 483 Department of Economic Opportunity or his or her designee.

484 (9) The Department of Transportation shall include at least
 485 \$25 ~~no less than \$15~~ million per year in its annual legislative
 486 budget request for the Florida Seaport Transportation and
 487 Economic Development Program funded under s. 311.07. Such budget
 488 shall include funding for projects approved by the council which
 489 have been determined by each agency to be consistent. The
 490 department shall include the specific approved Florida Seaport
 491 Transportation and Economic Development Program projects to be
 492 funded under s. 311.07 during the ensuing fiscal year in the
 493 tentative work program developed pursuant to s. 339.135(4). The

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494 total amount of funding to be allocated to Florida Seaport
 495 Transportation and Economic Development Program projects under
 496 s. 311.07 during the successive 4 fiscal years shall also be
 497 included in the tentative work program developed pursuant to s.
 498 339.135(4). The council may submit to the department a list of
 499 approved projects that could be made production-ready within the
 500 next 2 years. The list shall be submitted by the department as
 501 part of the needs and project list prepared pursuant to s.
 502 339.135(2)(b). However, the department shall, upon written
 503 request of the Florida Seaport Transportation and Economic
 504 Development Council, submit work program amendments pursuant to
 505 s. 339.135(7) to the Governor within 10 days after the later of
 506 the date the request is received by the department or the
 507 effective date of the amendment, termination, or closure of the
 508 applicable funding agreement between the department and the
 509 affected seaport, as required to release the funds from the
 510 existing commitment. Notwithstanding s. 339.135(7)(c), any work
 511 program amendment to transfer prior year funds from one approved
 512 seaport project to another seaport project is subject to the
 513 procedures in s. 339.135(7)(d). Notwithstanding any provision of
 514 law to the contrary, the department may transfer unexpended
 515 budget between the seaport projects as identified in the
 516 approved work program amendments.

517 ~~(12) Until July 1, 2014, Citrus County may apply for a~~
 518 ~~grant through the Florida Seaport Transportation and Economic~~
 519 ~~Development Council to perform a feasibility study regarding the~~
 520 ~~establishment of a port in Citrus County. The council shall~~
 521 ~~evaluate such application pursuant to subsections (5) (8) and,~~
 522 ~~if approved, the Department of Transportation shall include the~~

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523 ~~feasibility study in its budget request pursuant to subsection~~
 524 ~~(9). If the study determines that a port in Citrus County is not~~
 525 ~~feasible, the membership of Port Citrus on the council shall~~
 526 ~~terminate.~~

527 Section 6. Subsections (6), (47), and present subsection
 528 (90) of section 316.003, Florida Statutes, are amended, present
 529 subsections (91), (92), and (93) of that section are
 530 redesignated as subsections (93), (95), and (96), respectively,
 531 and new subsections (90), (92), and (94) are added to that
 532 section, to read:

533 316.003 Definitions.—The following words and phrases, when
 534 used in this chapter, shall have the meanings respectively
 535 ascribed to them in this section, except where the context
 536 otherwise requires:

537 (6) CROSSWALK.—

538 (a) Unmarked crosswalk.—An unmarked part of the roadway at
 539 an intersection used by pedestrians for crossing the roadway
 540 ~~That part of a roadway at an intersection included within the~~
 541 ~~connections of the lateral lines of the sidewalks on opposite~~
 542 ~~sides of the highway, measured from the curbs or, in the absence~~
 543 ~~of curbs, from the edges of the traversable roadway.~~

544 (b) Marked crosswalk.—Pavement marking lines on the roadway
 545 surface, which may include contrasting pavement texture, style,
 546 or colored portions of the roadway at an intersection used by
 547 pedestrians for crossing the roadway ~~Any portion of a roadway at~~
 548 ~~an intersection or elsewhere distinctly indicated for pedestrian~~
 549 ~~crossing by lines or other markings on the surface.~~

550 (c) Midblock crosswalk.—A location between intersections
 551 where the roadway surface is marked by pavement marking lines,

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552 which may include contrasting pavement texture, style or colored
 553 portion of the roadway at a signalized or unsignalized crosswalk
 554 used for pedestrian roadway crossings and may include a
 555 pedestrian refuge island.

556 (47) SIDEWALK.—That portion of a street ~~between the~~
 557 ~~curbline, or the lateral line, of a roadway and the adjacent~~
 558 ~~property lines,~~ intended for use by pedestrians, adjacent to the
 559 roadway between the curb or edge of the roadway and the property
 560 line.

561 (90) AUTONOMOUS TECHNOLOGY.—Technology installed on a motor
 562 vehicle which has the capability to drive the vehicle on which
 563 the technology is installed without the active control of or
 564 monitoring by a human operator.

565 (91)~~(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with
 566 autonomous technology. ~~The term "autonomous technology" means~~
 567 ~~technology installed on a motor vehicle that has the capability~~
 568 ~~to drive the vehicle on which the technology is installed~~
 569 ~~without the active control or monitoring by a human operator.~~
 570 The term excludes a motor vehicle enabled with active safety
 571 systems or driver assistance systems, including, without
 572 limitation, a system to provide electronic blind spot
 573 assistance, crash avoidance, emergency braking, parking
 574 assistance, adaptive cruise control, lane keep assistance, lane
 575 departure warning, or traffic jam and queuing assistant, unless
 576 any such system alone or in combination with other systems
 577 enables the vehicle on which the technology is installed to
 578 drive without the active control or monitoring by a human
 579 operator.

580 (92) DRIVER-ASSISTIVE TRUCK PLATOONING TECHNOLOGY.—Vehicle

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581 automation technology that integrates sensor array, wireless
 582 communications, vehicle controls, and specialized software to
 583 synchronize acceleration and braking between up to two truck
 584 tractor-semitrailer combinations, while leaving each vehicle's
 585 steering control and systems command in the control of the
 586 vehicle's driver.

587 (94) PORT-OF-ENTRY.-A designated location that allows
 588 drivers of commercial motor vehicles to purchase temporary
 589 registration permits necessary to operate legally within the
 590 state. The locations and the designated routes to such locations
 591 shall be determined by the Department of Transportation.

592 Section 7. Subsection (2) of section 316.0895, Florida
 593 Statutes, is amended to read:

594 316.0895 Following too closely.-

595 (2) It is unlawful for the driver of any motor truck, motor
 596 truck drawing another vehicle, or vehicle towing another vehicle
 597 or trailer, when traveling upon a roadway outside of a business
 598 or residence district, to follow within 300 feet of another
 599 motor truck, motor truck drawing another vehicle, or vehicle
 600 towing another vehicle or trailer. The provisions of this
 601 subsection shall not be construed to prevent overtaking and
 602 passing nor shall the same apply upon any lane specially
 603 designated for use by motor trucks or other slow-moving
 604 vehicles. This subsection does not apply to two truck tractor-
 605 semitrailer combinations equipped and connected with driver-
 606 assistive truck-platooning technology, as defined in s. 316.003,
 607 and operating on a multilane limited access facility, if the
 608 owner or operator complies with the financial responsibility
 609 requirement of s. 316.86.

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610 Section 8. Paragraphs (b) and (c) of subsection (7) of
 611 section 316.130, Florida Statutes, are amended to read:

612 316.130 Pedestrians; traffic regulations.-

613 (7)

614 (b) The driver of a vehicle at any crosswalk location where
 615 the approach is not controlled by a traffic signal or stop sign
 616 must ~~signage so indicates shall~~ stop and remain stopped to allow
 617 a pedestrian to cross a roadway when the pedestrian is in the
 618 crosswalk or steps into the crosswalk and is upon the half of
 619 the roadway upon which the vehicle is traveling or turning, or
 620 when the pedestrian is approaching so closely from the opposite
 621 half of the roadway as to be in danger. Any pedestrian crossing
 622 a roadway at a point where a pedestrian tunnel or overhead
 623 pedestrian crossing has been provided must yield the right-of-
 624 way to all vehicles upon the roadway.

625 ~~(c) When traffic control signals are not in place or in~~
 626 ~~operation and there is no signage indicating otherwise, the~~
 627 ~~driver of a vehicle shall yield the right-of-way, slowing down~~
 628 ~~or stopping if need be to so yield, to a pedestrian crossing the~~
 629 ~~roadway within a crosswalk when the pedestrian is upon the half~~
 630 ~~of the roadway upon which the vehicle is traveling or when the~~
 631 ~~pedestrian is approaching so closely from the opposite half of~~
 632 ~~the roadway as to be in danger. Any pedestrian crossing a~~
 633 ~~roadway at a point where a pedestrian tunnel or overhead~~
 634 ~~pedestrian crossing has been provided shall yield the right-of-~~
 635 ~~way to all vehicles upon the roadway.~~

636 Section 9. Subsections (1) and (3) of section 316.303,
 637 Florida Statutes, are amended to read:

638 316.303 Television receivers.-

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639 (1) No motor vehicle operated on the highways of this state
 640 shall be equipped with television-type receiving equipment so
 641 located that the viewer or screen is visible from the driver's
 642 seat, unless the vehicle is equipped with autonomous technology,
 643 as defined in s. 316.003(90), and is being operated in
 644 autonomous mode, as provided in s. 316.85(2); or unless the
 645 vehicle is equipped and operating with driver-assistive truck-
 646 platooning technology, as defined in s. 316.003(92).

647 (3) This section does not prohibit the use of an electronic
 648 display used in conjunction with a vehicle navigation system; or
 649 an electronic display used by an operator of a vehicle equipped
 650 with autonomous technology, as defined in s. 316.003(90), while
 651 the vehicle is being operated in autonomous mode, as provided in
 652 s. 316.85(2); or an electronic display used by the operator of a
 653 vehicle equipped and operating with driver-assistive truck
 654 platooning technology, as defined in s. 316.003(92).

655 Section 10. Paragraph (b) of subsection (3) and subsection
 656 (14) of section 316.515, Florida Statutes, are amended to read:
 657 316.515 Maximum width, height, length.—

658 (3) LENGTH LIMITATION.—Except as otherwise provided in this
 659 section, length limitations apply solely to a semitrailer or
 660 trailer, and not to a truck tractor or to the overall length of
 661 a combination of vehicles. No combination of commercial motor
 662 vehicles coupled together and operating on the public roads may
 663 consist of more than one truck tractor and two trailing units.
 664 Unless otherwise specifically provided for in this section, a
 665 combination of vehicles not qualifying as commercial motor
 666 vehicles may consist of no more than two units coupled together;
 667 such nonqualifying combination of vehicles may not exceed a

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668 total length of 65 feet, inclusive of the load carried thereon,
 669 but exclusive of safety and energy conservation devices approved
 670 by the department for use on vehicles using public roads.
 671 Notwithstanding any other provision of this section, a truck
 672 tractor-semitrailer combination engaged in the transportation of
 673 automobiles or boats may transport motor vehicles or boats on
 674 part of the power unit; and, except as may otherwise be mandated
 675 under federal law, an automobile or boat transporter semitrailer
 676 may not exceed 50 feet in length, exclusive of the load;
 677 however, the load may extend up to an additional 6 feet beyond
 678 the rear of the trailer. The 50-foot length limitation does not
 679 apply to non-stinger-steered automobile or boat transporters
 680 that are 65 feet or less in overall length, exclusive of the
 681 load carried thereon, or to stinger-steered automobile or boat
 682 transporters that are 75 feet or less in overall length,
 683 exclusive of the load carried thereon. For purposes of this
 684 subsection, a "stinger-steered automobile or boat transporter"
 685 is an automobile or boat transporter configured as a semitrailer
 686 combination wherein the fifth wheel is located on a drop frame
 687 located behind and below the rearmost axle of the power unit.
 688 Notwithstanding paragraphs (a) and (b), any straight truck or
 689 truck tractor-semitrailer combination engaged in the
 690 transportation of horticultural trees may allow the load to
 691 extend up to an additional 10 feet beyond the rear of the
 692 vehicle, provided said trees are resting against a retaining bar
 693 mounted above the truck bed so that the root balls of the trees
 694 rest on the floor and to the front of the truck bed and the tops
 695 of the trees extend up over and to the rear of the truck bed,
 696 and provided the overhanging portion of the load is covered with

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697 protective fabric.

698 (b) Semitrailers.—

699 1. A semitrailer operating in a truck tractor-semitrailer
700 combination may not exceed 48 feet in extreme overall outside
701 dimension, measured from the front of the unit to the rear of
702 the unit and the load carried thereon, exclusive of safety and
703 energy conservation devices approved by the department for use
704 on vehicles using public roads, unless it complies with
705 subparagraph 2. A semitrailer which exceeds 48 feet in length
706 and is used to transport divisible loads may operate in this
707 state only if issued a permit under s. 316.550 and if such
708 trailer meets the requirements of this chapter relating to
709 vehicle equipment and safety. Except for highways on the tandem
710 trailer truck highway network, public roads deemed unsafe for
711 longer semitrailer vehicles or those roads on which such longer
712 vehicles are determined not to be in the interest of public
713 convenience shall, in conformance with s. 316.006, be restricted
714 by the Department of Transportation or by the local authority to
715 use by semitrailers not exceeding a length of 48 feet, inclusive
716 of the load carried thereon but exclusive of safety and energy
717 conservation devices approved by the department for use on
718 vehicles using public roads. Truck tractor-semitrailer
719 combinations shall be afforded reasonable access to terminals;
720 facilities for food, fuel, repairs, and rest; and points of
721 loading and unloading.

722 2. A semitrailer which is more than 48 feet but not more
723 than 57 ~~53~~ feet in extreme overall outside dimension, as
724 measured pursuant to subparagraph 1., may operate on public
725 roads, except roads on the State Highway System which are

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726 restricted by the Department of Transportation or other roads
727 restricted by local authorities, if:

728 a. The distance between the kingpin or other peg that locks
729 into the fifth wheel of a truck tractor and the center of the
730 rear axle or rear group of axles does not exceed 41 feet, or, in
731 the case of a semitrailer used exclusively or primarily to
732 transport vehicles in connection with motorsports competition
733 events, the distance does not exceed 46 feet from the kingpin to
734 the center of the rear axles; and

735 b. It is equipped with a substantial rear-end underride
736 protection device meeting the requirements of 49 C.F.R. s.
737 393.86, "Rear End Protection."

738 (14) MANUFACTURED BUILDINGS.—The Department of
739 Transportation may, in its discretion and upon application and
740 good cause shown therefor that the same is not contrary to the
741 public interest, issue a special permit for truck tractor-
742 semitrailer combinations where the total number of overwidth
743 deliveries of manufactured buildings, as defined in s.
744 553.36(13), may be reduced by permitting the use of multiple
745 sections or single units on an overlength trailer of no more
746 than 80 ~~54~~ feet.

747 Section 11. Paragraph (b) of subsection (2) of section
748 316.545, Florida Statutes, is amended to read:

749 316.545 Weight and load unlawful; special fuel and motor
750 fuel tax enforcement; inspection; penalty; review.—

751 (2)

752 (b) The officer or inspector shall inspect the license
753 plate or registration certificate of the commercial vehicle, as
754 defined in s. 316.003(66), to determine if its gross weight is

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755 in compliance with the declared gross vehicle weight. If its
 756 gross weight exceeds the declared weight, the penalty shall be 5
 757 cents per pound on the difference between such weights. In those
 758 cases when the commercial vehicle, as defined in s. 316.003(66),
 759 is being operated over the highways of the state with an expired
 760 registration or with no registration from this or any other
 761 jurisdiction or is not registered under the applicable
 762 provisions of chapter 320, the penalty herein shall apply on the
 763 basis of 5 cents per pound on that scaled weight which exceeds
 764 35,000 pounds on laden truck tractor-semitrailer combinations or
 765 tandem trailer truck combinations, 10,000 pounds on laden
 766 straight trucks or straight truck-trailer combinations, or
 767 10,000 pounds on any unladen commercial motor vehicle. A
 768 commercial motor vehicle entering the state at a designated
 769 port-of-entry location, as defined in s. 316.003(94), or
 770 operating on designated routes to a port-of-entry location,
 771 which obtains a temporary registration permit shall be assessed
 772 a penalty limited to the difference between its gross weight and
 773 the declared gross vehicle weight at 5 cents per pound. If the
 774 license plate or registration has not been expired for more than
 775 90 days, the penalty imposed under this paragraph may not exceed
 776 \$1,000. In the case of special mobile equipment as defined in s.
 777 316.003(48), which qualifies for the license tax provided for in
 778 s. 320.08(5)(b), being operated on the highways of the state
 779 with an expired registration or otherwise not properly
 780 registered under the applicable provisions of chapter 320, a
 781 penalty of \$75 shall apply in addition to any other penalty
 782 which may apply in accordance with this chapter. A vehicle found
 783 in violation of this section may be detained until the owner or

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784 operator produces evidence that the vehicle has been properly
 785 registered. Any costs incurred by the retention of the vehicle
 786 shall be the sole responsibility of the owner. A person who has
 787 been assessed a penalty pursuant to this paragraph for failure
 788 to have a valid vehicle registration certificate pursuant to the
 789 provisions of chapter 320 is not subject to the delinquent fee
 790 authorized in s. 320.07 if such person obtains a valid
 791 registration certificate within 10 working days after such
 792 penalty was assessed.

793 Section 12. Section 333.01, Florida Statutes, is amended to
 794 read:

795 333.01 Definitions.—For the purpose of this chapter, the
 796 following words, terms, and phrases shall have the following
 797 meanings herein given, unless otherwise specifically defined, or
 798 unless another intention clearly appears, or the context
 799 otherwise requires:

800 (1) "Aeronautical study" means a Federal Aviation
 801 Administration review conducted pursuant to 14 C.F.R. part 77,
 802 concerning the effect of proposed construction or alteration on
 803 the use of air navigation facilities or navigable airspace by
 804 aircraft. "Aeronautics" means transportation by aircraft, the
 805 operation, construction, repair, or maintenance of aircraft,
 806 aircraft power plants and accessories, including the repair,
 807 packing, and maintenance of parachutes; the design,
 808 establishment, construction, extension, operation, improvement,
 809 repair, or maintenance of airports, restricted landing areas, or
 810 other air navigation facilities, and air instruction.

811 (2) "Airport" means any area of land or water designed and
 812 set aside for the landing and taking off of aircraft and

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813 utilized or to be utilized in the interest of the public for
814 such purpose.

815 (3) "Airport hazard" means any obstruction that exceeds
816 ~~structure or tree or use of land which would exceed~~ the federal
817 obstruction standards as contained in 14 C.F.R. ss. 77.15,
818 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and~~
819 ~~77.29~~ and which obstructs the airspace required for the flight
820 of aircraft in taking off, maneuvering, or landing, or that is
821 otherwise hazardous to such taking off, maneuvering, or landing
822 of aircraft and for which no person has ~~previously~~ obtained a
823 permit ~~or variance~~ pursuant to s. 333.025 or s. 333.07.

824 (4) "Airport hazard area" means any area of land or water
825 upon which an airport hazard might be established ~~if not~~
826 ~~prevented as provided in this chapter.~~

827 (5) "Airport land use compatibility zoning" means airport
828 zoning regulations governing ~~restricting~~ the use of land
829 adjacent to or in the immediate vicinity of airports in the
830 manner provided ~~enumerated~~ in ss. 333.03(2) ~~s. 333.03(2) to~~
831 ~~activities and (3) purposes compatible with the continuation of~~
832 ~~normal airport operations including landing and takeoff of~~
833 ~~aircraft in order to promote public health, safety, and general~~
834 ~~welfare.~~

835 (6) "Airport layout plan" means a scaled ~~detailed, scale~~
836 ~~engineering drawing or set of drawings in either paper or~~
837 ~~electronic form of the existing, including pertinent dimensions,~~
838 ~~of an airport's current and planned airport facilities which~~
839 provides a graphic representation of the existing and long-term
840 development plan for the airport and demonstrates the
841 preservation and continuity of safety, utility, and efficiency

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842 ~~of the airport, their locations, and runway usage.~~

843 (7) "Airport master plan" means a comprehensive plan for an
844 airport that describes the immediate and long-term development
845 plans to meet future aviation demand.

846 (8) "Airport protection zoning" means airport zoning
847 regulations governing airport hazards in the manner provided in
848 s. 333.03.

849 (9) "Department" means the Department of Transportation as
850 created by s. 20.23.

851 (10) "Educational facility" means any structure, land, or
852 use thereof that includes a public or private kindergarten
853 through grade 12 school, charter school, magnet school, college
854 campus, or university campus. Space used for educational
855 purposes within a multitenant building may not be treated as an
856 educational facility for the purpose of this chapter.

857 (11) "Landfill" has the same meaning as in s. 403.703.

858 (12)~~(7)~~ "Obstruction" means any object of natural growth,
859 terrain, or permanent or temporary construction or alteration,
860 including equipment or materials used and any permanent or
861 temporary apparatus, or alteration of any permanent or temporary
862 existing structure by a change in its height, including existing
863 or proposed appurtenances, or lateral dimensions, including
864 equipment or material used therein, which exceeds existing or
865 proposed manmade object or object of natural growth or terrain
866 that violates the standards contained in 14 C.F.R. ss. 77.15,
867 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25, 77.28, and~~
868 ~~77.29.~~

869 (13)~~(8)~~ "Person" means any individual, firm, copartnership,
870 corporation, company, association, joint-stock association, or

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871 body politic, and includes any trustee, receiver, assignee, or
872 other similar representative thereof.

873 ~~(14)(9)~~ "Political subdivision" means the local government
874 of any county, city, town, village, or other subdivision or
875 agency thereof, or any district or special district, port
876 commission, port authority, or other such agency authorized to
877 establish or operate airports in the state.

878 (15) "Public-use airport" means an airport, publicly or
879 privately owned and licensed by the state, which is open for use
880 by the public.

881 ~~(16)(10)~~ "Runway protection ~~clear~~ zone" or "RPZ" means an
882 area at ground level beyond the a runway end which is intended
883 to enhance the safety and protection of people and property on
884 the ground clear zone as defined in 14 C.F.R. s. 151.9(b).

885 ~~(17)(11)~~ "Structure" means any object, constructed,
886 erected, altered, or installed by humans, including, but without
887 limitation ~~thereof~~, buildings, towers, smokestacks, utility
888 poles, power generation equipment, and overhead transmission
889 lines.

890 (18) "Substantial modification" means any repair,
891 reconstruction, rehabilitation, or improvement of a structure
892 when the actual cost of the repair, reconstruction,
893 rehabilitation, or improvement of the structure equals or
894 exceeds 50 percent of the market value of the structure.

895 ~~(12) "Tree" includes any plant of the vegetable kingdom.~~

896 Section 13. Section 333.025, Florida Statutes, is amended
897 to read:

898 333.025 Permit required for structures exceeding federal
899 obstruction standards.-

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900 (1) A person proposing the construction or alteration ~~in~~
901 ~~order to prevent the erection~~ of structures hazardous ~~dangerous~~
902 to air navigation, subject to the provisions of subsections (2),
903 (3), and (4), must ~~each person shall~~ secure from the department
904 ~~of Transportation~~ a permit for the proposed construction or
905 ~~erection, alteration, or modification~~ of any structure the
906 result of which would exceed the federal obstruction standards
907 as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and
908 77.23 77.21, 77.23, 77.25, 77.28, and 77.29. However, permits
909 from the department ~~of Transportation~~ will be required only
910 within an airport hazard area where federal obstruction
911 standards are exceeded and if the proposed construction is
912 within a 10-nautical-mile radius of the airport reference point,
913 located at the approximate geometric ~~geographical~~ center of all
914 useable runways of public-use airports or a publicly owned or
915 operated airport, a military airport, or an airport licensed by
916 the state for public use.

917 (2) Existing, planned, and proposed Affected airports will
918 ~~be considered as having these facilities at public-use airports~~
919 contained in an ~~which are shown on the~~ airport master plan, on
920 ~~or~~ an airport layout plan submitted to the Federal Aviation
921 Administration Airport District Office, or in comparable
922 military documents, ~~and will be so protected from structures~~
923 that exceed federal obstruction standards. Planned or proposed
924 public-use airports which are the subject of a notice or
925 proposal submitted to the Federal Aviation Administration or to
926 the Department of Transportation shall also be protected.

927 (3) Permit requirements of subsection (1) do ~~shall~~ not
928 apply to structures ~~projects~~ which received construction permits

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929 from the Federal Communications Commission for structures
 930 exceeding federal obstruction standards prior to May 20, 1975,
 931 ~~provided such structures now exist~~; nor does subsection (1)
 932 ~~shall it~~ apply to previously approved structures now existing,
 933 or any necessary replacement or repairs to such existing
 934 structures, so long as the height and location is unchanged.

935 (4) When political subdivisions have adopted adequate
 936 airport airspace protection zoning regulations in compliance
 937 with s. 333.03, and such regulations are on file with the
 938 department of Transportation, and have established a permitting
 939 process in compliance with s. 333.09(2), a permit for such
 940 structure shall not be required from the department of
 941 Transportation. To evaluate technical consistency with this
 942 section, there is a 15-day department review period concurrent
 943 with the permitting process prescribed by s. 333.09. Upon
 944 receipt of a complete permit application, the local government
 945 shall forward to the department's Aviation Office by certified
 946 mail, return receipt requested, or by delivery service that
 947 provides a receipt evidencing delivery, a copy of the
 948 application. Cranes, construction equipment, and other temporary
 949 structures, in use or in place for a period not to exceed 18
 950 consecutive months, are exempt from this requirement, unless
 951 requested by the department's Aviation Office.

952 (5) The department of Transportation shall, within 30 days
 953 of the receipt of an application for a permit, issue or deny a
 954 permit for the construction or erection, alteration, or
 955 ~~modification~~ of any structure the result of which would exceed
 956 federal obstruction standards as contained in 14 C.F.R. ss.
 957 77.15, 77.17, 77.19, 77.21, and 77.23 ~~77.21, 77.23, 77.25,~~

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958 ~~77.28, and 77.29.~~ The department shall review permit
 959 applications in conformity with s. 120.60.

960 (6) In determining whether to issue or deny a permit, the
 961 department shall consider:

962 (a) The safety of persons on the ground and in the air ~~The~~
 963 ~~nature of the terrain and height of existing structures.~~

964 (b) The safe and efficient use of navigable airspace ~~Public~~
 965 ~~and private interests and investments.~~

966 (c) The nature of the terrain and height of existing
 967 structures ~~The character of flying operations and planned~~
 968 ~~developments of airports.~~

969 (d) Whether the construction of the proposed structure
 970 would impact the state licensing standards for a public-use
 971 airport, contained in chapter 330 and chapter 14-60, Florida
 972 Administrative Code ~~Federal airways as designated by the Federal~~
 973 ~~Aviation Administration.~~

974 (e) The character of existing and planned flight operations
 975 and developments at public-use airports ~~Whether the construction~~
 976 ~~of the proposed structure would cause an increase in the minimum~~
 977 ~~descent altitude or the decision height at the affected airport.~~

978 (f) Federal airways; visual flight rules, flyways and
 979 corridors; and instrument approaches as designated by the
 980 Federal Aviation Administration ~~Technological advances.~~

981 (g) Whether the construction of the proposed structure
 982 would cause an increase in the minimum descent altitude or the
 983 decision height at the affected airport ~~The safety of persons on~~
 984 ~~the ground and in the air.~~

985 (h) The cumulative effects on navigable airspace of all
 986 existing structures and all other known and proposed structures

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987 ~~in the area~~ Land use density.

988 ~~(i) The safe and efficient use of navigable airspace.~~

989 ~~(j) The cumulative effects on navigable airspace of all~~
 990 ~~existing structures, proposed structures identified in the~~
 991 ~~applicable jurisdictions' comprehensive plans, and all other~~
 992 ~~known proposed structures in the area.~~

993 (7) When issuing a permit under this section, the
 994 ~~department of Transportation shall, as a specific condition of~~
 995 ~~such permit,~~ require the owner ~~obstruction marking and lighting~~
 996 ~~of the permitted structure or vegetation to install, operate,~~
 997 ~~and maintain thereon, at his or her own expense, marking and~~
 998 ~~lighting in conformance with the specific standards established~~
 999 ~~by the Federal Aviation Administration structure as provided in~~
 1000 ~~s. 333.07(3)(b).~~

1001 (8) The department ~~may~~ of Transportation shall not approve
 1002 a permit for the construction or alteration ~~erection~~ of a
 1003 structure unless the applicant submits both documentation
 1004 showing compliance with the federal requirement for notification
 1005 of proposed construction or alteration and a valid aeronautical
 1006 study evaluation, and no permit shall be approved solely on the
 1007 basis that such proposed structure will not exceed federal
 1008 obstruction standards as contained in 14 C.F.R. ss. 77.15,
 1009 77.17, 77.19, 77.21, or 77.23 ~~77.21, 77.23, 77.25, 77.28, or~~
 1010 ~~77.29,~~ or any other federal aviation regulation.

1011 (9) The denial of a permit under this section is subject to
 1012 the administrative review provisions of chapter 120.

1013 Section 14. Section 333.03, Florida Statutes, is amended to
 1014 read:

1015 333.03 Requirement ~~Power~~ to adopt airport zoning

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1016 ~~regulations.~~

1017 (1) (a) Every ~~In order to prevent the creation or~~
 1018 ~~establishment of airport hazards,~~ every political subdivision
 1019 having an airport hazard area within its territorial limits
 1020 shall, ~~by October 1, 1977,~~ adopt, administer, and enforce, ~~under~~
 1021 ~~the police power and~~ in the manner and upon the conditions
 1022 ~~hereinafter prescribed in this section,~~ airport protection
 1023 zoning regulations for ~~such~~ airport hazards ~~hazard~~ area.

1024 (b) Where an airport is owned or controlled by a political
 1025 subdivision and an any airport hazard area ~~appertaining to such~~
 1026 ~~airport~~ is located wholly or partly outside the territorial
 1027 limits of the ~~said~~ political subdivision, the political
 1028 subdivision owning or controlling the airport and any ~~the~~
 1029 political subdivision within which the airport hazard area is
 1030 located, must ~~shall~~ either:

1031 1. By interlocal agreement, ~~in accordance with the~~
 1032 ~~provisions of chapter 163,~~ adopt, administer, and enforce a set
 1033 of airport protection zoning regulations applicable to the
 1034 airport hazard area ~~in question;~~ or

1035 2. By ordinance, regulation, or resolution duly adopted,
 1036 create a joint airport zoning board, which must ~~board shall have~~
 1037 ~~the same power to~~ adopt, administer, and enforce a set of
 1038 airport protection zoning regulations applicable to the airport
 1039 hazard area in each ~~question as that vested in paragraph (a) in~~
 1040 ~~the~~ political subdivision in ~~within~~ which the airport hazard
 1041 ~~such~~ area is located. Each such joint airport zoning board shall
 1042 have as members two representatives appointed by each
 1043 participating political subdivision ~~participating in its~~
 1044 ~~creation~~ and, in addition, a chair elected by a majority of the

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1045 members so appointed. ~~The However, the~~ airport manager or
 1046 representative of each airport in managers of the affected
 1047 participating political subdivisions shall serve on the board in
 1048 a nonvoting capacity.

1049 (c) Airport protection zoning regulations adopted under
 1050 paragraph (a) must shall, at as a minimum, require:

1051 1. A permit variance for the ~~erection, construction or~~
 1052 ~~alteration, or modification~~ of any structure that which would
 1053 cause the structure to exceed the federal obstruction standards
 1054 as contained in 14 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and
 1055 77.23, 77.21, 77.23, 77.25, 77.28, and 77.29;

1056 2. Obstruction marking and lighting for structures
 1057 exceeding the federal obstruction standards as contained in 14
 1058 C.F.R. ss. 77.15, 77.17, 77.19, 77.21, and 77.23, as specified
 1059 in s. 333.07(3).~~7~~

1060 3. Documentation showing compliance with the federal
 1061 requirement for notification of proposed construction or
 1062 alteration and a valid aeronautical study evaluation submitted
 1063 by each person applying for a permit. variance~~7~~

1064 4. Consideration of the criteria in s. 333.025(6), when
 1065 determining whether to issue or deny a permit. variance~~7~~ and

1066 5. That a permit may not no variance shall be approved
 1067 solely on the basis that the such proposed structure will not
 1068 exceed federal obstruction standards as contained in 14 C.F.R.
 1069 ss. 77.15, 77.17, 77.19, 77.21, or 77.23 77.21, 77.23, 77.25,
 1070 77.28, or 77.29, or any other federal aviation regulation.

1071 (d) The department is available to provide assistance to
 1072 political subdivisions with regard to federal obstruction
 1073 standards shall issue copies of the federal obstruction

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1074 standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25,
 1075 77.28, and 77.29 to each political subdivision having airport
 1076 hazard areas and, in cooperation with political subdivisions,
 1077 shall issue appropriate airport zoning maps depicting within
 1078 ~~each county the maximum allowable height of any structure or~~
 1079 ~~tree. Material distributed pursuant to this subsection shall be~~
 1080 ~~at no cost to authorized recipients.~~

1081 (2) In the manner provided in subsection (1), ~~interim~~
 1082 airport land use compatibility zoning regulations must shall be
 1083 adopted, administered, and enforced. Airport land-use
 1084 compatibility zoning When political subdivisions have adopted
 1085 land development regulations must, at a minimum, in accordance
 1086 with the provisions of chapter 163 which address the use of land
 1087 in the manner consistent with the provisions herein, adoption of
 1088 airport land use compatibility regulations pursuant to this
 1089 subsection shall not be required. Interim airport land use
 1090 compatibility zoning regulations shall consider the following:

1091 (a) Prohibiting any new and restricting any existing
 1092 ~~Whether sanitary landfills are located~~ within the following
 1093 areas:

1094 1. Within 10,000 feet from the nearest point of any runway
 1095 used or planned to be used by turbine turbojet or turboprop
 1096 aircraft.

1097 2. Within 5,000 feet from the nearest point of any runway
 1098 used only by nonturbine piston-type aircraft.

1099 3. Outside the perimeters defined in subparagraphs 1. and
 1100 2., but still within the lateral limits of the civil airport
 1101 imaginary surfaces defined in 14 C.F.R. part 77.19 77.25. Case-
 1102 by-case review of such landfills is advised.

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1103 (b) ~~Where~~ Whether any landfill is located and constructed
 1104 so that it attracts or sustains hazardous bird movements from
 1105 feeding, water, or roosting areas into, or across, the runways
 1106 or approach and departure patterns of aircraft, ~~The political~~
 1107 ~~subdivision shall request from the airport authority or other~~
 1108 ~~governing body operating the airport a report on such bird~~
 1109 ~~feeding or roosting areas that at the time of the request are~~
 1110 ~~known to the airport. In preparing its report, the authority, or~~
 1111 ~~other governing body, shall consider whether the landfill~~
 1112 operator will be required to incorporate bird management
 1113 techniques or other practices to minimize bird hazards to
 1114 airborne aircraft. ~~The airport authority or other governing body~~
 1115 ~~shall respond to the political subdivision no later than 30 days~~
 1116 ~~after receipt of such request.~~

1117 (c) Where an airport authority or other governing body
 1118 operating a ~~publicly owned~~, public-use airport has conducted a
 1119 noise study in accordance with the provisions of 14 C.F.R. part
 1120 150, or where the public-use airport owner has established noise
 1121 contours pursuant to another public study approved by the
 1122 Federal Aviation Administration, incompatible uses, as
 1123 established in 14 C.F.R. part 150, appendix A noise study, or as
 1124 a part of an alternative FAA-approved public study, may not be
 1125 permitted within the noise contours established by that study,
 1126 except where such use is specifically contemplated by such study
 1127 with appropriate mitigation or similar techniques described in
 1128 the study neither residential construction nor any educational
 1129 facility as defined in chapter 1013, with the exception of
 1130 aviation school facilities, shall be permitted within the area
 1131 contiguous to the airport defined by an outer noise contour that

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1132 ~~is considered incompatible with that type of construction by 14~~
 1133 ~~C.F.R. part 150, Appendix A or an equivalent noise level as~~
 1134 ~~established by other types of noise studies.~~

1135 (d) Where an airport authority or other governing body
 1136 operating a ~~publicly owned~~, public-use airport has not conducted
 1137 a noise study, neither residential construction nor any
 1138 educational facility ~~as defined in chapter 1013~~, with the
 1139 exception of aviation school facilities, shall be permitted
 1140 within an area contiguous to the airport measuring one-half the
 1141 length of the longest runway on either side of and at the end of
 1142 each runway centerline.

1143 (3) In the manner provided in subsection (1), airport
 1144 zoning regulations ~~shall be adopted~~ which restrict new
 1145 incompatible uses, ~~activities~~, or substantial modifications to
 1146 existing incompatible uses construction within runway protection
 1147 clear zones shall be adopted, ~~including uses, activities, or~~
 1148 ~~construction in runway clear zones which are incompatible with~~
 1149 ~~normal airport operations or endanger public health, safety, and~~
 1150 ~~welfare by resulting in congregations of people, emissions of~~
 1151 ~~light or smoke, or attraction of birds. Such regulations shall~~
 1152 ~~prohibit the construction of an educational facility of a public~~
 1153 ~~or private school at either end of a runway of a publicly owned,~~
 1154 ~~public-use airport within an area which extends 5 miles in a~~
 1155 ~~direct line along the centerline of the runway, and which has a~~
 1156 ~~width measuring one-half the length of the runway. Exceptions~~
 1157 ~~approving construction of an educational facility within the~~
 1158 ~~delineated area shall only be granted when the political~~
 1159 ~~subdivision administering the zoning regulations makes specific~~
 1160 ~~findings detailing how the public policy reasons for allowing~~

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1161 the construction outweigh health and safety concerns prohibiting
1162 such a location.

1163 ~~(4) The procedures outlined in subsections (1), (2), and~~
1164 ~~(3) for the adoption of such regulations are supplemental to any~~
1165 ~~existing procedures utilized by political subdivisions in the~~
1166 ~~adoption of such regulations.~~

1167 (4)(5) The department of Transportation shall provide
1168 technical assistance to any political subdivision requesting
1169 assistance in the preparation of an airport zoning regulation
1170 code. A copy of all local airport zoning codes, rules, and
1171 regulations, and amendments and proposed and granted permits
1172 variances thereto, shall be filed with the department. All
1173 updates and amendments to local airport zoning codes, rules, and
1174 regulations must be filed with the department within 30 days
1175 after adoption.

1176 (5)(6) Nothing in Subsection (2) and or subsection (3) may
1177 not shall be construed to require the removal, alteration, sound
1178 conditioning, or other change, or to interfere with the
1179 continued use or adjacent expansion of any educational structure
1180 or site in existence on July 1, 1993, or be construed to
1181 prohibit the construction of any new structure for which a site
1182 has been determined as provided in former s. 235.19, as of July
1183 1, 1993.

1184 (6) This section may not preclude an airport authority,
1185 local government, or other governing body operating a public-use
1186 airport from establishing airport protection zoning regulations
1187 more restrictive than herein prescribed in order to protect the
1188 safety and welfare of the public in the air and on the ground.

1189 Section 15. Section 333.04, Florida Statutes, is amended to

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1190 read:

1191 333.04 Comprehensive zoning regulations; most stringent to
1192 prevail where conflicts occur.—

1193 (1) INCORPORATION.—In the event that a political
1194 subdivision has adopted, or hereafter adopts, a comprehensive
1195 plan or policy zoning ordinance regulating, among other things,
1196 the height of buildings, structures, and natural objects, and
1197 uses of property, any airport zoning regulations applicable to
1198 the same area or portion thereof may be incorporated in and made
1199 a part of such comprehensive plans or policies zoning
1200 regulations, and be administered and enforced in connection
1201 therewith.

1202 (2) CONFLICT.—In the event of conflict between any airport
1203 zoning regulations adopted under this chapter and any other
1204 regulations applicable to the same area, whether the conflict be
1205 with respect to the height of structures or vegetation trees,
1206 the use of land, or any other matter, and whether such
1207 regulations were adopted by the political subdivision which
1208 adopted the airport zoning regulations or by some other
1209 political subdivision, the more stringent limitation or
1210 requirement shall govern and prevail.

1211 Section 16. Section 333.05, Florida Statutes, is amended to
1212 read:

1213 333.05 Procedure for adoption of zoning regulations.—

1214 (1) NOTICE AND HEARING.—~~No~~ Airport zoning regulations may
1215 not shall be adopted, amended, or deleted changed under this
1216 chapter except by action of the legislative body of the
1217 political subdivision ~~in question~~, or the joint board provided
1218 in s. 333.03(1)(b) by the political subdivisions bodies therein

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1219 provided and set forth, after a public hearing in relation
 1220 thereto, at which parties in interest and citizens shall have an
 1221 opportunity to be heard. Notice of the hearing shall be
 1222 published at least once a week for 2 consecutive weeks in an
 1223 official paper, or a paper of general circulation, in the
 1224 political subdivision or subdivisions ~~where in which are located~~
 1225 the airport zoning regulations are areas to be adopted, amended,
 1226 or deleted zoned.

1227 (2) AIRPORT ZONING COMMISSION.—Prior to the initial zoning
 1228 of any airport area under this chapter the political subdivision
 1229 or joint airport zoning board which is to adopt, administer, and
 1230 enforce the regulations shall appoint a commission, to be known
 1231 as the airport zoning commission, to recommend the boundaries of
 1232 the various zones to be established and the regulations to be
 1233 adopted therefor. Such commission shall make a preliminary
 1234 report and hold public hearings thereon before submitting its
 1235 final report, and the legislative body of the political
 1236 subdivision or the joint airport zoning board shall not hold its
 1237 public hearings or take any action until it has received the
 1238 final report of such commission, and at least 15 days shall
 1239 elapse between the receipt of the final report of the commission
 1240 and the hearing to be held by the latter board. Where a planning
 1241 city plan commission, airport commission, or comprehensive
 1242 zoning commission already exists, it may be appointed as the
 1243 airport zoning commission.

1244 Section 17. Section 333.06, Florida Statutes, is amended to
 1245 read:

1246 333.06 Airport zoning requirements.—

1247 (1) REASONABLENESS.—All airport zoning regulations adopted

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1248 under this chapter shall be reasonable and ~~none~~ shall not impose
 1249 any requirement or restriction which is not reasonably necessary
 1250 to effectuate the purposes of this chapter. In determining what
 1251 regulations it may adopt, each political subdivision and joint
 1252 airport zoning board shall consider, among other things, the
 1253 character of the flying operations expected to be conducted at
 1254 the airport, the nature of the terrain within the airport hazard
 1255 area and runway protection clear zones, the character of the
 1256 neighborhood, the uses to which the property to be zoned is put
 1257 and adaptable, and the impact of any new use, activity, or
 1258 construction on the airport's operating capability and capacity.

1259 (2) INDEPENDENT JUSTIFICATION.—The purpose of all airport
 1260 zoning regulations adopted under this chapter is to provide both
 1261 airspace protection and land uses use compatible with airport
 1262 operations. Each aspect of this purpose requires independent
 1263 justification in order to promote the public interest in safety,
 1264 health, and general welfare. Specifically, construction in a
 1265 runway protection clear zone which does not exceed airspace
 1266 height restrictions is not conclusive evidence per se that such
 1267 use, activity, or construction is compatible with airport
 1268 operations.

1269 (3) NONCONFORMING USES.—No airport protection zoning
 1270 regulations adopted under this chapter shall require the
 1271 removal, lowering, or other change or alteration of any
 1272 structure or vegetation tree not conforming to the regulations
 1273 when adopted or amended, or otherwise interfere with the
 1274 continuance of any nonconforming use, except as provided in s.
 1275 333.07(1) and (3).

1276 (4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED

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1277 LOCAL GOVERNMENTS.—An airport master plan shall be prepared by
 1278 each ~~public-use publicly owned and operated~~ airport licensed by
 1279 the department of ~~Transportation~~ under chapter 330. The
 1280 authorized entity having responsibility for governing the
 1281 operation of the airport, when either requesting from or
 1282 submitting to a state or federal governmental agency with
 1283 funding or approval jurisdiction a “finding of no significant
 1284 impact,” an environmental assessment, a site-selection study, an
 1285 airport master plan, or any amendment to an airport master plan,
 1286 shall submit simultaneously a copy of said request, submittal,
 1287 assessment, study, plan, or amendments by certified mail to all
 1288 affected local governments. For the purposes of this subsection,
 1289 “affected local government” is defined as any city or county
 1290 having jurisdiction over the airport and any city or county
 1291 located within 2 miles of the boundaries of the land subject to
 1292 the airport master plan.

1293 Section 18. Section 333.065, Florida Statutes, is repealed.

1294 Section 19. Section 333.07, Florida Statutes, is amended to
 1295 read:

1296 333.07 Local government permitting of airspace obstructions
 1297 Permits and variances.—

1298 (1) PERMITS.—

1299 (a) Any person proposing to erect, construct, or alter any
 1300 structure, increase the height of any structure, permit the
 1301 growth of any vegetation, or otherwise use his or her property
 1302 in violation of the airport protection zoning regulations
 1303 adopted under this chapter shall apply for a permit. A ~~Any~~
 1304 airport zoning regulations adopted under this chapter may
 1305 require that a permit be obtained before any new structure or

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1306 ~~use may be constructed or established and before any existing~~
 1307 ~~use or structure may be substantially changed or substantially~~
 1308 ~~altered or repaired. In any event, however, all such regulations~~
 1309 ~~shall provide that before any nonconforming structure or tree~~
 1310 ~~may be replaced, substantially altered or repaired, rebuilt,~~
 1311 ~~allowed to grow higher, or replanted, a permit must be secured~~
 1312 ~~from the administrative agency authorized to administer and~~
 1313 ~~enforce the regulations, authorizing such replacement, change,~~
 1314 ~~or repair. No permit may not shall be issued granted that would~~
 1315 allow the establishment or creation of an airport hazard or
 1316 would permit a nonconforming structure or vegetation tree or
 1317 nonconforming use to be made or become higher or to become a
 1318 greater hazard to air navigation than it was when the applicable
 1319 regulation was adopted or than it is when the application for a
 1320 permit is made.

1321 (b) Whenever the political subdivision or its
 1322 administrative agency determines that a nonconforming use or
 1323 nonconforming structure or vegetation tree has been abandoned or
 1324 is more than 80 percent torn down, destroyed, deteriorated, or
 1325 decayed, ~~a no~~ permit may not shall be granted that would allow
 1326 the said structure or vegetation tree to exceed the applicable
 1327 height limit or otherwise deviate from the zoning regulations. ~~r~~
 1328 ~~and~~, Whether an application is made for a permit under this
 1329 subsection or not, the ~~said agency may by appropriate action,~~
 1330 ~~compel the owner of the nonconforming structure or vegetation~~
 1331 may be required tree, at his or her own expense, to lower,
 1332 remove, reconstruct, alter, or equip such object as may be
 1333 necessary to conform to the regulations. If the owner of the
 1334 nonconforming structure or vegetation neglects or refuses tree

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1335 ~~shall neglect or refuse to comply with the such~~ order for 10
 1336 days after notice thereof, the said agency may report the
 1337 violation to the political subdivision involved therein. ~~The,~~
 1338 ~~which~~ subdivision, through its appropriate agency, may proceed
 1339 to have the object so lowered, removed, reconstructed, altered,
 1340 or equipped, and assess the cost and expense thereof upon the
 1341 object or the land ~~where whereon~~ it is or was located, ~~and,~~
 1342 ~~unless such an assessment is paid within 90 days from the~~
 1343 ~~service of notice thereof on the owner or the owner's agent, of~~
 1344 ~~such object or land, the sum shall be a lien on said land, and~~
 1345 ~~shall bear interest thereafter at the rate of 6 percent per~~
 1346 ~~annum until paid, and shall be collected in the same manner as~~
 1347 ~~taxes on real property are collected by said political~~
 1348 ~~subdivision, or, at the option of said political subdivision,~~
 1349 ~~said lien may be enforced in the manner provided for enforcement~~
 1350 ~~of liens by chapter 85.~~

1351 ~~(e) Except as provided herein, applications for permits~~
 1352 ~~shall be granted, provided the matter applied for meets the~~
 1353 ~~provisions of this chapter and the regulations adopted and in~~
 1354 ~~force hereunder.~~

1355 (2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.—In
 1356 determining whether to issue or deny a permit, the political
 1357 subdivision or its administrative agency must consider the
 1358 following, as applicable:

1359 (a) The safety of persons on the ground and in the air.

1360 (b) The safe and efficient use of navigable airspace.

1361 (c) The nature of the terrain and height of existing
 1362 structures.

1363 (d) The construction or alteration of the proposed

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1364 structure on the state licensing standards for a public-use
 1365 airport, contained in chapter 330 and chapter 14-60 of the
 1366 Florida Administrative Code.

1367 (e) The character of existing and planned flight operations
 1368 and developments at public-use airports.

1369 (f) Federal airways; visual flight rules, flyways and
 1370 corridors; and instrument approaches as designated by the
 1371 Federal Aviation Administration.

1372 (g) The construction or alteration of the proposed
 1373 structure on the minimum descent altitude or the decision height
 1374 at the affected airport.

1375 (h) The cumulative effects on navigable airspace of all
 1376 existing structures, and all other known proposed structures in
 1377 the area.

1378 (i) Requirements contained in s. 333.03(2) and (3).

1379 (j) Additional requirements adopted by the local
 1380 jurisdiction pertinent to evaluation and protection of airspace
 1381 and airport operations.

1382 ~~(2) VARIANCES.—~~

1383 ~~(a) Any person desiring to erect any structure, increase~~
 1384 ~~the height of any structure, permit the growth of any tree, or~~
 1385 ~~otherwise use his or her property in violation of the airport~~
 1386 ~~zoning regulations adopted under this chapter or any land~~
 1387 ~~development regulation adopted pursuant to the provisions of~~
 1388 ~~chapter 163 pertaining to airport land use compatibility, may~~
 1389 ~~apply to the board of adjustment for a variance from the zoning~~
 1390 ~~regulations in question. At the time of filing the application,~~
 1391 ~~the applicant shall forward to the department by certified mail,~~
 1392 ~~return receipt requested, a copy of the application. The~~

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1393 department shall have 45 days from receipt of the application to
 1394 comment and to provide its comments or waiver of that right to
 1395 the applicant and the board of adjustment. The department shall
 1396 include its explanation for any objections stated in its
 1397 comments. If the department fails to provide its comments within
 1398 45 days of receipt of the application, its right to comment is
 1399 waived. The board of adjustment may proceed with its
 1400 consideration of the application only upon the receipt of the
 1401 department's comments or waiver of that right as demonstrated by
 1402 the filing of a copy of the return receipt with the board.
 1403 Noncompliance with this section shall be grounds to appeal
 1404 pursuant to s. 333.08 and to apply for judicial relief pursuant
 1405 to s. 333.11. Such variances may only be allowed where a literal
 1406 application or enforcement of the regulations would result in
 1407 practical difficulty or unnecessary hardship and where the
 1408 relief granted would not be contrary to the public interest but
 1409 would do substantial justice and be in accordance with the
 1410 spirit of the regulations and this chapter. However, any
 1411 variance may be allowed subject to any reasonable conditions
 1412 that the board of adjustment may deem necessary to effectuate
 1413 the purposes of this chapter.

1414 (b) The Department of Transportation shall have the
 1415 authority to appeal any variance granted under this chapter
 1416 pursuant to s. 333.08, and to apply for judicial relief pursuant
 1417 to s. 333.11.

1418 (3) OBSTRUCTION MARKING AND LIGHTING.—

1419 (a) In issuing a granting any permit or variance under this
 1420 section, the political subdivision or its administrative agency
 1421 or board of adjustment shall require the owner of the structure

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1422 or vegetation tree in question to install, operate, and maintain
 1423 thereon, at his or her own expense, ~~such~~ marking and lighting in
 1424 conformance with the specific standards established by the
 1425 Federal Aviation Administration as may be necessary to indicate
 1426 to aircraft pilots the presence of an obstruction.

1427 (b) Such marking and lighting shall conform to the specific
 1428 standards established by rule by the department of
 1429 Transportation.

1430 (c) ~~Existing structures not in compliance on October 1,~~
 1431 ~~1988, shall be required to comply whenever the existing marking~~
 1432 ~~requires refurbishment, whenever the existing lighting requires~~
 1433 ~~replacement, or within 5 years of October 1, 1988, whichever~~
 1434 ~~occurs first.~~

1435 Section 20. Section 333.08, Florida Statutes, is repealed.
 1436 Section 21. Section 333.09, Florida Statutes, is amended to
 1437 read:

1438 333.09 Administration of airport zoning regulations.—

1439 (1) ADMINISTRATION AND ENFORCEMENT.—All airport zoning
 1440 regulations adopted under this chapter shall provide for the
 1441 administration and enforcement of such regulations by the
 1442 political subdivisions or their ~~by an~~ administrative agency
 1443 which may be an agency created by such regulations or any
 1444 official, board, or other existing agency of the political
 1445 subdivision adopting the regulations or of one of the political
 1446 subdivisions which participated in the creation of the joint
 1447 airport zoning board adopting the regulations, ~~if satisfactory~~
 1448 ~~to that political subdivision, but in no case shall such~~
 1449 ~~administrative agency be or include any member of the board of~~
 1450 ~~adjustment.~~ The duties of any administrative agency designated

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1451 pursuant to this chapter shall include that of hearing and
 1452 deciding all permits under s. 333.07 ~~s. 333.07(1)~~, ~~deciding all~~
 1453 ~~matters under s. 333.07(3)~~, as they pertain to such agency, and
 1454 all other matters under this chapter applying to said agency,
 1455 ~~but such agency shall not have or exercise any of the powers~~
 1456 ~~herein delegated to the board of adjustment.~~

1457 (2) LOCAL GOVERNMENT PROCESS.—

1458 (a) Any political subdivision required to adopt airport
 1459 zoning regulations under this chapter must provide a process to:

- 1460 1. Issue or deny permits consistent with s. 333.07,
 1461 including requests for exceptions to airport zoning regulations.
 1462 2. Notify the department of receipt of a complete permit
 1463 application consistent with s. 333.025(4).

1464 3. Enforce any permit, order, requirement, decision, or
 1465 determination made by the administrative agency with respect to
 1466 the airport zoning regulations.

1467 (b) Where a zoning board or permitting body already exists
 1468 within a political subdivision, the zoning board or permitting
 1469 body may implement the permitting and appeals process.

1470 Otherwise, the political subdivision shall implement the
 1471 permitting and appeals process in a manner consistent with its
 1472 constitutional powers and areas of jurisdiction.

1473 (3) APPEALS.—

1474 (a) Any person, political subdivision or its administrative
 1475 agency, or any joint airport zoning board, which contends that
 1476 the decision made by a political subdivision or its
 1477 administrative agency is an improper application of airport
 1478 zoning regulations may use the process established for an
 1479 appeal.

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1480 (b) All appeals taken under this section must be taken
 1481 within a reasonable time, as provided by the political
 1482 subdivision or its administrative agency, by filing with the
 1483 entity from which appeal is taken a notice of appeal specifying
 1484 the grounds for appeal.

1485 (c) An appeal stays all proceedings in the underlying
 1486 action, unless the entity from which the appeal is taken
 1487 certifies pursuant to the rules for appeal that by reason of the
 1488 facts stated in the certificate, a stay would, in its opinion,
 1489 cause imminent peril to life or property. In that case,
 1490 proceedings may not be stayed except by an order of the
 1491 political subdivision or its administrative agency following
 1492 notice to the entity from which the appeal is taken and on good
 1493 cause shown.

1494 (d) The political subdivision or its administrative agency
 1495 must set a reasonable time for the hearing of appeals, give
 1496 public notice and due notice to the parties in interest, and
 1497 decide the same within a reasonable time. At the hearing, a
 1498 party may appear in person, by agent, or by attorney.

1499 (e) The political subdivision or its administrative agency
 1500 may, in conformity with the provisions of this chapter, reverse,
 1501 affirm, or modify the underlying order, requirement, decision,
 1502 or determination from which the appeal is taken.

1503 Section 22. Section 333.10, Florida Statutes, is repealed.

1504 Section 23. Section 333.11, Florida Statutes, is amended to
 1505 read:

1506 333.11 Judicial review.—

1507 (1) Any person, ~~aggrieved, or taxpayer-affected, by any~~
 1508 decision of a board of adjustment, or any governing body of a

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 1509 political subdivision or its administrative agency, or the
 1510 ~~Department of Transportation or any joint airport zoning board~~
 1511 ~~affected by a decision of a political subdivision, or its of any~~
 1512 ~~administrative agency hereunder~~, may apply for judicial relief
 1513 to the circuit court in the judicial circuit where the political
 1514 subdivision board of adjustment is located within 30 days after
 1515 rendition of the decision ~~by the board of adjustment~~. Review
 1516 shall be by petition for writ of certiorari, which shall be
 1517 governed by the Florida Rules of Appellate Procedure.

1518 ~~(2) Upon presentation of such petition to the court, it may~~
 1519 ~~allow a writ of certiorari, directed to the board of adjustment,~~
 1520 ~~to review such decision of the board. The allowance of the writ~~
 1521 ~~shall not stay the proceedings upon the decision appealed from,~~
 1522 ~~but the court may, on application, on notice to the board, on~~
 1523 ~~due hearing and due cause shown, grant a restraining order.~~

1524 ~~(3) The board of adjustment shall not be required to return~~
 1525 ~~the original papers acted upon by it, but it shall be sufficient~~
 1526 ~~to return certified or sworn copies thereof or of such portions~~
 1527 ~~thereof as may be called for by the writ. The return shall~~
 1528 ~~concisely set forth such other facts as may be pertinent and~~
 1529 ~~material to show the grounds of the decision appealed from and~~
 1530 ~~shall be verified.~~

1531 ~~(2)(4)~~ The court shall have exclusive jurisdiction to
 1532 affirm, modify, or set aside the decision brought up for review,
 1533 ~~in whole or in part~~, and if need be, to order further
 1534 proceedings by the political subdivision or its administrative
 1535 agency board of adjustment. The findings of fact by the
 1536 political subdivision or its administrative agency board, if
 1537 supported by substantial evidence, shall be accepted by the

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 1538 court as conclusive. An, ~~and no~~ objection to a decision of the
 1539 political subdivision or its administrative agency may not ~~board~~
 1540 ~~shall~~ be considered by the court unless such objection was
 1541 raised in the underlying proceeding ~~shall have been urged before~~
 1542 ~~the board, or, if it was not so urged, unless there were~~
 1543 ~~reasonable grounds for failure to do so.~~

1544 ~~(3)(5) If In any case in which~~ airport zoning regulations
 1545 adopted under this chapter, ~~although generally reasonable~~, are
 1546 held by a court to interfere with the use and enjoyment of a
 1547 particular structure or parcel of land to such an extent, or to
 1548 be so onerous in their application to such a structure or parcel
 1549 of land, as to constitute a taking or deprivation of that
 1550 property in violation of the State Constitution or the
 1551 Constitution of the United States, such holding shall not affect
 1552 the application of such regulations to other structures and
 1553 parcels of land, or such regulations as are not involved in the
 1554 particular decision.

1555 ~~(4)(6) No~~ Judicial appeal shall be ~~or~~ is not permitted
 1556 under this section, to any courts until the appellant has
 1557 exhausted all its remedies through application for local
 1558 government permits, exceptions, and appeals, as herein provided,
 1559 ~~save and except an appeal from a decision of the board of~~
 1560 ~~adjustment, the appeal herein provided being from such final~~
 1561 ~~decision of such board only, the appellant being hereby required~~
 1562 ~~to exhaust his or her remedies hereunder of application for~~
 1563 ~~permits, exceptions and variances, and appeal to the board of~~
 1564 ~~adjustment, and gaining a determination by said board, before~~
 1565 ~~being permitted to appeal to the court hereunder.~~

1566 Section 24. Section 333.12, Florida Statutes, is amended to

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1567 read:

1568 333.12 Acquisition of air rights.—~~When In any case which~~
 1569 ~~it is desired to remove, lower or otherwise terminate a~~
 1570 ~~nonconforming structure or use presents an air hazard and the~~
 1571 ~~structure cannot be removed, lowered, or otherwise terminated;~~
 1572 or the approach protection necessary cannot, because of
 1573 constitutional limitations, be provided by airport regulations
 1574 under this chapter; or it appears advisable that the necessary
 1575 approach protection be provided by acquisition of property
 1576 rights rather than by airport zoning regulations, the political
 1577 subdivision within which the property or nonconforming use is
 1578 located, or the political subdivision owning or operating the
 1579 airport or being served by it, may acquire, by purchase, grant,
 1580 or condemnation in the manner provided by chapter 73, such air
 1581 right, avigation ~~navigation~~ easement conveying the airspace over
 1582 another property for use by the airport, or other estate,
 1583 portion or interest in the property or nonconforming structure
 1584 or use or such interest in the air above such property,
 1585 vegetation ~~tree~~, structure, or use, in question, as may be
 1586 necessary to effectuate the purposes of this chapter, and in so
 1587 doing, if by condemnation, to have the right to take immediate
 1588 possession of the property, interest in property, air right, or
 1589 other right sought to be condemned, at the time, and in the
 1590 manner and form, and as authorized by chapter 74. In the case of
 1591 the purchase of any property, ~~or any~~ easement, or estate or
 1592 interest therein or the acquisition of the same by the power of
 1593 eminent domain, the political subdivision making such purchase
 1594 or exercising such power shall in addition to the damages for
 1595 the taking, injury, or destruction of property also pay the cost

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1596 of the removal and relocation of any structure or any public
 1597 utility which is required to be moved to a new location.

1598 Section 25. Section 333.135, Florida Statutes, is created
 1599 to read:

1600 333.135 Transition provisions.—

1601 (1) A provision of an airport zoning regulation in effect
 1602 on July 1, 2015, that conflicts with this chapter must be
 1603 amended to conform to the requirements of this chapter by July
 1604 1, 2016.

1605 (2) By October 1, 2017, a political subdivision having an
 1606 airport within its territorial limits, which has not adopted
 1607 airport zoning regulations, must adopt airport zoning
 1608 regulations which are consistent with this chapter.

1609 (3) For those political subdivisions that have not yet
 1610 adopted airport zoning regulations pursuant to this chapter, the
 1611 department shall administer the permitting process as provided
 1612 in s. 333.025.

1613 Section 26. Section 333.14, Florida Statutes, is repealed.

1614 Section 27. Subsections (36) and (37) of section 334.03,
 1615 Florida Statutes, are amended to read:

1616 334.03 Definitions.—When used in the Florida Transportation
 1617 Code, the term:

1618 (36) "511" or "511 services" means all three-digit
 1619 telecommunications dialing to access interactive voice response
 1620 telephone traveler information services provided in the state to
 1621 include, but not be limited to, the terms as defined by the
 1622 Federal Communications Commission in FCC Order No. 00-256, July
 1623 31, 2000.

1624 ~~(37) "Interactive voice response" means a software~~

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1625 ~~application that accepts a combination of voice telephone input~~
 1626 ~~and touch-tone keypad selection and provides appropriate~~
 1627 ~~responses in the form of voice, fax, callback, e-mail, and other~~
 1628 ~~media.~~

1629 Section 28. Subsection (31) of section 334.044, Florida
 1630 Statutes, is amended, and subsection (34) of that section is
 1631 created, to read:

1632 334.044 Department; powers and duties.—The department shall
 1633 have the following general powers and duties:

1634 (31) To provide oversight of traveler information systems
 1635 ~~that may include the provision of interactive voice response~~
 1636 ~~telephone systems accessible via the 511 services number as~~
 1637 assigned by the Federal Communications Commission for traveler
 1638 information services. The department shall ensure that uniform
 1639 standards and criteria for the collection and dissemination of
 1640 traveler information are applied ~~using interactive voice~~
 1641 ~~response systems.~~

1642 (34) The department may assume responsibilities of the
 1643 United States Department of Transportation with respect to
 1644 highway projects within the state under the National
 1645 Environmental Policy Act of 1969 (42 U.S.C. s. 4321 et seq.) and
 1646 with respect to related responsibilities for environmental
 1647 review, consultation, or other action required under any federal
 1648 environmental law pertaining to review or approval of a highway
 1649 project within the state. The department may assume
 1650 responsibilities under 23 U.S.C. s. 327 and enter into one or
 1651 more agreements, including memoranda of understanding, with the
 1652 United States Secretary of Transportation related to the federal
 1653 surface transportation project delivery program for the delivery

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1654 of highway projects, as provided by 23 U.S.C. s. 327. The
 1655 department may adopt rules to implement this subsection and may
 1656 adopt relevant federal environmental standards as the standards
 1657 for this state for a program described in this subsection.
 1658 Sovereign immunity to civil suit in federal court is waived
 1659 consistent with 23 U.S.C. s. 327 and limited to the compliance,
 1660 discharge, or enforcement of a responsibility assumed by the
 1661 department under this subsection.

1662 Section 29. Section 334.60, Florida Statutes, is amended to
 1663 read:

1664 334.60 511 traveler information system.—The department is
 1665 the state's lead agency for implementing 511 services and is the
 1666 state's point of contact for coordinating all 511 services ~~with~~
 1667 ~~telecommunications service providers.~~

1668 (1) The department shall:

1669 (a)(1) Implement and administer 511 services in the state;

1670 (b)(2) Coordinate with other transportation authorities in
 1671 the state to provide multimodal traveler information through 511
 1672 services and other means;

1673 (c)(3) Develop uniform standards and criteria for the
 1674 collection and dissemination of traveler information using ~~the~~
 1675 511 services number or other interactive voice response systems;
 1676 and

1677 (d)(4) Enter into joint participation agreements or
 1678 contracts with highway authorities and public transit districts
 1679 to share the costs of implementing and administering 511
 1680 services in the state. The department may also enter into other
 1681 agreements or contracts with private firms relating to the 511
 1682 services to offset the costs of implementing and administering

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1683 511 services in the state.

1684 (2) The department shall adopt rules to administer the
1685 coordination of 511 traveler information phone services in the
1686 state.

1687 Section 30. Subsections (3) and (4) of section 335.065,
1688 Florida Statutes, are amended to read:

1689 335.065 Bicycle and pedestrian ways along state roads and
1690 transportation facilities.—

1691 (3) The department, in cooperation with the Department of
1692 Environmental Protection, shall establish a statewide integrated
1693 system of bicycle and pedestrian ways in such a manner as to
1694 take full advantage of any such ways which are maintained by any
1695 governmental entity. ~~The department may enter into a concession~~
1696 ~~agreement with a not-for-profit entity or private sector~~
1697 ~~business or entity for commercial sponsorship displays on~~
1698 ~~multiuse trails and related facilities and use any concession~~
1699 ~~agreement revenues for the maintenance of the multiuse trails~~
1700 ~~and related facilities. Commercial sponsorship displays are~~
1701 ~~subject to the requirements of the Highway Beautification Act of~~
1702 ~~1965 and all federal laws and agreements, when applicable. For~~
1703 ~~the purposes of this section, bicycle facilities may be~~
1704 ~~established as part of or separate from the actual roadway and~~
1705 ~~may utilize existing road rights-of-way or other rights-of-way~~
1706 ~~or easements acquired for public use.~~

1707 ~~(a) A concession agreement shall be administered by the~~
1708 ~~department and must include the requirements of this section.~~

1709 ~~(b)1. Signage or displays erected under this section shall~~
1710 ~~comply with s. 337.407 and chapter 479 and shall be limited as~~
1711 ~~follows:~~

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1712 ~~a. One large sign or display, not to exceed 16 square feet~~
1713 ~~in area, may be located at each trailhead or parking area.~~

1714 ~~b. One small sign or display, not to exceed 4 square feet~~
1715 ~~in area, may be located at each designated trail public access~~
1716 ~~point.~~

1717 ~~2. Before installation, each name or sponsorship display~~
1718 ~~must be approved by the department.~~

1719 ~~3. The department shall ensure that the size, color,~~
1720 ~~materials, construction, and location of all signs are~~
1721 ~~consistent with the management plan for the property and the~~
1722 ~~standards of the department, do not intrude on natural and~~
1723 ~~historic settings, and contain only a logo selected by the~~
1724 ~~sponsor and the following sponsorship wording:~~

1725
1726 ~~...(Name of the sponsor)... proudly sponsors the costs~~
1727 ~~of maintaining the ...(Name of the greenway or~~
1728 ~~trail)....~~

1729
1730 ~~4. All costs of a display, including development,~~
1731 ~~construction, installation, operation, maintenance, and removal~~
1732 ~~costs, shall be paid by the concessionaire.~~

1733 ~~(c) A concession agreement shall be for a minimum of 1~~
1734 ~~year, but may be for a longer period under a multiyear~~
1735 ~~agreement, and may be terminated for just cause by the~~
1736 ~~department upon 60 days' advance notice. Just cause for~~
1737 ~~termination of a concession agreement includes, but is not~~
1738 ~~limited to, violation of the terms of the concession agreement~~
1739 ~~or this section.~~

1740 ~~(4)(a) The department may use appropriated funds to support~~

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1741 ~~the establishment of a statewide system of interconnected~~
 1742 ~~multiuse trails and to pay the costs of planning, land~~
 1743 ~~acquisition, design, and construction of such trails and related~~
 1744 ~~facilities. The department shall give funding priority to~~
 1745 ~~projects that:~~

1746 ~~1. Are identified by the Florida Greenways and Trails~~
 1747 ~~Council as a priority within the Florida Greenways and Trails~~
 1748 ~~System under chapter 260.~~

1749 ~~2. Support the transportation needs of bicyclists and~~
 1750 ~~pedestrians.~~

1751 ~~3. Have national, statewide, or regional importance.~~

1752 ~~4. Facilitate an interconnected system of trails by~~
 1753 ~~completing gaps between existing trails.~~

1754 ~~(b) A project funded under this subsection shall:~~

1755 ~~1. Be included in the department's work program developed~~
 1756 ~~in accordance with s. 339.135.~~

1757 ~~2. Be operated and maintained by an entity other than the~~
 1758 ~~department upon completion of construction. The department is~~
 1759 ~~not obligated to provide funds for the operation and maintenance~~
 1760 ~~of the project.~~

1761 Section 31. Section 335.21, Florida Statutes, is created to
 1762 read:

1763 335.21 Governing bodies of independent special districts
 1764 regulating the operation of public vehicles on public highways.-
 1765 Notwithstanding any provision of local law, the membership of
 1766 the governing body of any independent special district created
 1767 for the purpose of regulating the operation of public vehicles
 1768 upon the public highways under the jurisdiction of any such
 1769 independent special district shall consist of seven members.

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1770 Four members shall be appointed by the Governor, one member
 1771 shall be appointed by the governing body of the largest
 1772 municipality situated within the jurisdiction of the independent
 1773 special district, and two members shall be appointed by the
 1774 governing body of the county in which the independent special
 1775 district has jurisdiction. All appointees must be residents of
 1776 the county in which the independent special district has
 1777 jurisdiction. This section does not apply to any entity
 1778 authorized under s. 163.567 or under chapter 343, chapter 348,
 1779 or chapter 349.

1780 Section 32. Subsection (4) of section 338.165, Florida
 1781 Statutes, is amended to read:

1782 338.165 Continuation of tolls.-

1783 (4) Notwithstanding any other law to the contrary, pursuant
 1784 to s. 11, Art. VII of the State Constitution, and subject to the
 1785 requirements of subsection (2), the Department of Transportation
 1786 may request the Division of Bond Finance to issue bonds secured
 1787 by toll revenues collected on the Alligator Alley, the Sunshine
 1788 Skyway Bridge, ~~the Beeline East Expressway, the Navarre Bridge,~~
 1789 ~~and the Pinellas Bayway~~ to fund transportation projects located
 1790 within the county or counties in which the project is located
 1791 and contained in the adopted work program of the department.

1792 Section 33. Subsection (5) is added to section 338.227,
 1793 Florida Statutes, to read:

1794 338.227 Turnpike revenue bonds.-

1795 (5) Notwithstanding s. 215.82, bonds issued pursuant to
 1796 this section are not required to be validated pursuant to
 1797 chapter 75, but may be validated at the option of the Division
 1798 of Bond Finance. Any complaint for such validation must be filed

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1799 in the circuit court of the county where the seat of state
 1800 government is situated. The notice required to be published by
 1801 s. 75.06 must be published only in the county where the
 1802 complaint is filed. The complaint and order of the circuit court
 1803 shall be served only on the state attorney of the circuit in
 1804 which the action is pending.

1805 Section 34. Paragraph (c) of subsection (3) of section
 1806 338.231, Florida Statutes, and subsections (5) and (6) of that
 1807 section, are amended to read:

1808 338.231 Turnpike tolls, fixing; pledge of tolls and other
 1809 revenues.—The department shall at all times fix, adjust, charge,
 1810 and collect such tolls and amounts for the use of the turnpike
 1811 system as are required in order to provide a fund sufficient
 1812 with other revenues of the turnpike system to pay the cost of
 1813 maintaining, improving, repairing, and operating such turnpike
 1814 system; to pay the principal of and interest on all bonds issued
 1815 to finance or refinance any portion of the turnpike system as
 1816 the same become due and payable; and to create reserves for all
 1817 such purposes.

1818 (3)

1819 (c) Notwithstanding any other provision of law to the
 1820 contrary, any prepaid toll account of any kind which has
 1821 remained inactive for 10 3 years shall be presumed unclaimed and
 1822 its disposition shall be handled by the Department of Financial
 1823 Services in accordance with all applicable provisions of chapter
 1824 717 relating to the disposition of unclaimed property, and the
 1825 prepaid toll account shall be closed by the department.

1826 ~~(5) In each fiscal year while any of the bonds of the~~
 1827 ~~Broward County Expressway Authority series 1984 and series 1986—~~

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1828 ~~A remain outstanding, the department is authorized to pledge~~
 1829 ~~revenues from the turnpike system to the payment of principal~~
 1830 ~~and interest of such series of bonds and the operation and~~
 1831 ~~maintenance expenses of the Sawgrass Expressway, to the extent~~
 1832 ~~gross toll revenues of the Sawgrass Expressway are insufficient~~
 1833 ~~to make such payments. The terms of an agreement relative to the~~
 1834 ~~pledge of turnpike system revenue will be negotiated with the~~
 1835 ~~parties of the 1984 and 1986 Broward County Expressway Authority~~
 1836 ~~lease-purchase agreements, and subject to the covenants of those~~
 1837 ~~agreements. The agreement must establish that the Sawgrass~~
 1838 ~~Expressway is subject to the planning, management, and operating~~
 1839 ~~control of the department limited only by the terms of the~~
 1840 ~~lease purchase agreements. The department shall provide for the~~
 1841 ~~payment of operation and maintenance expenses of the Sawgrass~~
 1842 ~~Expressway until such agreement is in effect. This pledge of~~
 1843 ~~turnpike system revenues is subordinate to the debt service~~
 1844 ~~requirements of any future issue of turnpike bonds, the payment~~
 1845 ~~of turnpike system operation and maintenance expenses, and~~
 1846 ~~subject to any subsequent resolution or trust indenture relating~~
 1847 ~~to the issuance of such turnpike bonds.~~

1848 (5)(6) The use and disposition of revenues pledged to bonds
 1849 are subject to ss. 338.22-338.241 and such regulations as the
 1850 resolution authorizing the issuance of the bonds or such trust
 1851 agreement may provide.

1852 Section 35. Paragraph (c) of subsection (7) of section
 1853 339.175, Florida Statutes, is amended to read:

1854 339.175 Metropolitan planning organization.—

1855 (7) LONG-RANGE TRANSPORTATION PLAN.—Each M.P.O. must
 1856 develop a long-range transportation plan that addresses at least

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1857 a 20-year planning horizon. The plan must include both long-
 1858 range and short-range strategies and must comply with all other
 1859 state and federal requirements. The prevailing principles to be
 1860 considered in the long-range transportation plan are: preserving
 1861 the existing transportation infrastructure; enhancing Florida's
 1862 economic competitiveness; and improving travel choices to ensure
 1863 mobility. The long-range transportation plan must be consistent,
 1864 to the maximum extent feasible, with future land use elements
 1865 and the goals, objectives, and policies of the approved local
 1866 government comprehensive plans of the units of local government
 1867 located within the jurisdiction of the M.P.O. Each M.P.O. is
 1868 encouraged to consider strategies that integrate transportation
 1869 and land use planning to provide for sustainable development and
 1870 reduce greenhouse gas emissions. The approved long-range
 1871 transportation plan must be considered by local governments in
 1872 the development of the transportation elements in local
 1873 government comprehensive plans and any amendments thereto. The
 1874 long-range transportation plan must, at a minimum:

1875 (c) Assess capital investment and other measures necessary
 1876 to:

1877 1. Ensure the preservation of the existing metropolitan
 1878 transportation system including requirements for the operation,
 1879 resurfacing, restoration, and rehabilitation of major roadways
 1880 and requirements for the operation, maintenance, modernization,
 1881 and rehabilitation of public transportation facilities; and

1882 2. Make the most efficient use of existing transportation
 1883 facilities to relieve vehicular congestion, improve safety, and
 1884 maximize the mobility of people and goods. Such efforts shall
 1885 include, but not be limited to, consideration of infrastructure

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1886 and technological improvements necessary to accommodate advances
 1887 in vehicle technology, such as autonomous vehicle technology and
 1888 other developments.
 1889

1890 In the development of its long-range transportation plan, each
 1891 M.P.O. must provide the public, affected public agencies,
 1892 representatives of transportation agency employees, freight
 1893 shippers, providers of freight transportation services, private
 1894 providers of transportation, representatives of users of public
 1895 transit, and other interested parties with a reasonable
 1896 opportunity to comment on the long-range transportation plan.
 1897 The long-range transportation plan must be approved by the
 1898 M.P.O.

1899 Section 36. Paragraph (c) is added to subsection (3) of
 1900 section 339.64, Florida Statutes, and paragraph (a) of
 1901 subsection (4) of that section is amended, to read:

1902 339.64 Strategic Intermodal System Plan.—

1903 (3)

1904 (c) The department also shall coordinate with federal,
 1905 regional, and local partners, as well as industry
 1906 representatives, to consider infrastructure and technological
 1907 improvements necessary to accommodate advances in vehicle
 1908 technology, such as autonomous vehicle technology and other
 1909 developments, in Strategic Intermodal System facilities.

1910 (4) The Strategic Intermodal System Plan shall include the
 1911 following:

1912 (a) A needs assessment. Such assessment shall include, but
 1913 not be limited to, consideration of infrastructure and
 1914 technological improvements necessary to accommodate advances in

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1915 vehicle technology, such as autonomous vehicle technology and
 1916 other developments.

1917 Section 37. Section 339.81, Florida Statutes, is created to
 1918 read:

1919 339.81 Florida Shared-Use Nonmotorized Trail Network.—

1920 (1) The Florida Shared-Use Nonmotorized Trail Network is
 1921 created as a component of the Florida Greenways and Trails
 1922 System established in chapter 260. The network consists of
 1923 multiuse trails or shared-use paths physically separated from
 1924 motor vehicle traffic and constructed with asphalt, concrete, or
 1925 another hard surface which, by virtue of design, location,
 1926 extent of connectivity or potential connectivity, and allowable
 1927 uses, provide nonmotorized transportation opportunities for
 1928 bicyclists and pedestrians between and within a wide range of
 1929 points of origin and destinations, including, but not limited
 1930 to, communities, conservation areas, state parks, beaches, and
 1931 other natural or cultural attractions for a variety of trip
 1932 purposes, including work, school, shopping, and other personal
 1933 business, as well as social, recreational, and personal fitness
 1934 purposes.

1935 (2) Network components do not include sidewalks, nature
 1936 trails, loop trails wholly within a single park or natural area,
 1937 or on-road facilities, such as bicycle lanes or routes other
 1938 than:

1939 (a) On-road facilities that are no greater than one-half
 1940 mile in length connecting two or more nonmotorized trails, if
 1941 the provision of non-road facilities is unfeasible and if such
 1942 on-road facilities are signed and marked for nonmotorized use;
 1943 or

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1944 (b) On-road components of the Florida Keys Overseas
 1945 Heritage Trail.

1946 (3) The department shall include a project to be
 1947 constructed as part of the Shared-Use Nonmotorized Trail Network
 1948 in its work program developed pursuant to s. 339.135.

1949 (4) The planning, development, operation, and maintenance
 1950 of the Shared-Use Nonmotorized Trail Network is declared to be a
 1951 public purpose, and the department, together with other agencies
 1952 of this state and all counties, municipalities, and special
 1953 districts of this state, may spend public funds for such
 1954 purposes and may accept gifts and grants of funds, property, or
 1955 property rights from public or private sources to be used for
 1956 such purposes.

1957 (5) The department may enter into a memorandum of agreement
 1958 with a local government or other agency of the state to transfer
 1959 maintenance responsibilities of an individual network component.
 1960 The department may contract with a not-for-profit entity or
 1961 private sector business or entity to provide maintenance
 1962 services on an individual network component.

1963 (6) The department may adopt rules to aid in the
 1964 development and maintenance of components of the network.

1965 Section 38. Section 339.82, Florida Statutes, is created to
 1966 read:

1967 339.82 Shared-Use Nonmotorized Trail Network Plan.—

1968 (1) The department shall develop a Shared-Use Nonmotorized
 1969 Trail Network Plan in coordination with the Department of
 1970 Environmental Protection, metropolitan planning organizations,
 1971 affected local governments and public agencies, and the Florida
 1972 Greenways and Trails Council. The plan must be consistent with

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1973 the Florida Greenways and Trails Plan developed under s. 260.014
 1974 and must be updated at least once every 5 years.

1975 (2) The Shared-Use Nonmotorized Trail Network Plan must
 1976 include all of the following:

1977 (a) A needs assessment, including, but not limited to, a
 1978 comprehensive inventory and analysis of existing trails that may
 1979 be considered for inclusion in the Shared-Use Nonmotorized Trail
 1980 Network.

1981 (b) A project prioritization process that includes
 1982 assigning funding priority to projects that:

1983 1. Are identified by the Florida Greenways and Trails
 1984 Council as a priority within the Florida Greenways and Trails
 1985 System under chapter 260;

1986 2. Facilitate an interconnected network of trails by
 1987 completing gaps between existing facilities; and

1988 3. Maximize use of federal, local, and private funding and
 1989 support mechanisms, including, but not limited to, donation of
 1990 funds, real property, and maintenance responsibilities.

1991 (c) A map illustrating existing and planned facilities and
 1992 identifying critical gaps between facilities.

1993 (d) A finance plan based on reasonable projections of
 1994 anticipated revenues, including both 5-year and 10-year cost-
 1995 feasible components.

1996 (e) Performance measures that include quantifiable
 1997 increases in trail network access and connectivity.

1998 (f) A timeline for the completion of the base network using
 1999 new and existing data from the department, the Department of
 2000 Environmental Protection, and other sources.

2001 (g) A marketing plan prepared in consultation with the

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2002 Florida Tourism Industry Marketing Corporation.

2003 Section 39. Section 339.83, Florida Statutes, is created to
 2004 read:

2005 339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

2006 (1) The department may enter into a concession agreement
 2007 with a not-for-profit entity or private sector business or
 2008 entity for commercial sponsorship signs, pavement markings, and
 2009 exhibits on nonmotorized trails and related facilities
 2010 constructed as part of the Shared-Use Nonmotorized Trail
 2011 Network. The concession agreement may also provide for
 2012 recognition of trail sponsors in any brochure, map, or website
 2013 providing trail information. Trail websites may provide links to
 2014 sponsors. Revenue from such agreements may be used for the
 2015 maintenance of the nonmotorized trails and related facilities.

2016 (a) A concession agreement shall be administered by the
 2017 department.

2018 (b)1. Signage, pavement markings, or exhibits erected
 2019 pursuant to this section must comply with s. 337.407 and chapter
 2020 479 and are limited as follows:

2021 a. One large sign, pavement marking, or exhibit, not to
 2022 exceed 16 square feet in area, may be located at each trailhead
 2023 or parking area.

2024 b. One small sign, pavement marking, or exhibit, not to
 2025 exceed 4 square feet in area, may be located at each designated
 2026 trail public access point where parking is not provided.

2027 c. Pavement markings denoting specified distances must be
 2028 located at least 1 mile apart.

2029 2. Before installation, each sign, pavement marking, or
 2030 exhibit must be approved by the department.

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2031 3. The department shall ensure that the size, color,
 2032 materials, construction, and location of all signs, pavement
 2033 markings, and exhibits are consistent with the management plan
 2034 for the property and the standards of the department, do not
 2035 intrude on natural and historic settings, and contain a logo
 2036 selected by the sponsor and the following sponsorship wording:

2037 ...(Name of the sponsor)... proudly sponsors the costs
 2038 of maintaining the ...(Name of the greenway or
 2039 trail)....
 2040

2041 4. Exhibits may provide additional information and
 2042 materials including, but not limited to, maps and brochures for
 2043 trail user services related or proximate to the trail. Pavement
 2044 markings may display mile marker information.

2045 5. The costs of a sign, pavement marking, or exhibit,
 2046 including development, construction, installation, operation,
 2047 maintenance, and removal costs, shall be paid by the
 2048 concessionaire.

2049 (c) A concession agreement shall be for a minimum of 1
 2050 year, but may be for a longer period under a multiyear
 2051 agreement, and may be terminated for just cause by the
 2052 department upon 60 days' advance notice. Just cause for
 2053 termination of a concession agreement includes, but is not
 2054 limited to, violation of the terms of the concession agreement
 2055 or this section.

2056 (2) Pursuant to s. 287.057, the department may contract for
 2057 the provision of services related to the trail sponsorship
 2058 program, including recruitment and qualification of businesses,
 2059

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2060 review of applications, permit issuance, and fabrication,
 2061 installation, and maintenance of signs, pavement markings, and
 2062 exhibits. The department may reject all proposals and seek
 2063 another request for proposals or otherwise perform the work. The
 2064 contract may allow the contractor to retain a portion of the
 2065 annual fees as compensation for its services.

2066 (3) This section does not create a proprietary or
 2067 compensable interest in any sponsorship site or location for any
 2068 permittee, and the department may terminate permits or change
 2069 locations of sponsorship sites as it determines necessary for
 2070 construction or improvement of facilities.

2071 (4) The department may adopt rules to establish
 2072 requirements for qualification of businesses, qualification and
 2073 location of sponsorship sites, and permit applications and
 2074 processing. The department may adopt rules to establish other
 2075 criteria necessary to implement this section and to provide for
 2076 variances when necessary to serve the interest of the public or
 2077 when required to ensure equitable treatment of program
 2078 participants.

2079 Section 40. (1) The Office of Economic and Demographic
 2080 Research shall evaluate and determine the economic benefits, as
 2081 defined in s. 288.005(1), Florida Statutes, of the state's
 2082 investment in the Department of Transportation's adopted work
 2083 program developed in accordance with s. 339.135(5), Florida
 2084 Statutes, for fiscal year 2015-2016, including the following 4
 2085 fiscal years. At a minimum, a separate return on investment
 2086 shall be projected for each of the following areas:

2087 (a) Roads and highways;

2088 (b) Rails;

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2089 (c) Public transit;
 2090 (d) Aviation; and
 2091 (e) Seaports.

2092
 2093 The analysis is limited to the funding anticipated by the
 2094 adopted work program, but may address the continuing economic
 2095 impact for those transportation projects in the 5 years beyond
 2096 the conclusion of the adopted work program. The analysis must
 2097 also evaluate the number of jobs created, the increase or
 2098 decrease in personal income, and the impact on gross domestic
 2099 product from the direct, indirect, and induced effects on the
 2100 state's investment in each area.

2101 (2) The Department of Transportation and each of its
 2102 district offices shall provide the Office of Economic and
 2103 Demographic Research full access to all data necessary to
 2104 complete the analysis, including any confidential data.

2105 (3) The Office of Economic and Demographic Research shall
 2106 submit the analysis to the President of the Senate and the
 2107 Speaker of the House of Representatives by January 1, 2016.

2108 Section 41. Section 341.0532, Florida Statutes, is
 2109 repealed.

2110 Section 42. The Division of Law Revision and Information is
 2111 directed to create chapter 345, Florida Statutes, consisting of
 2112 ss. 345.0001-345.0014, Florida Statutes, to be entitled the
 2113 "Northwest Florida Regional Transportation Finance Authority."

2114 Section 43. Section 345.0001, Florida Statutes, is created
 2115 to read:

2116 345.0001 Short title.—This act may be cited as the
 2117 "Northwest Florida Regional Transportation Finance Authority

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2118 Act."

2119 Section 44. Section 345.0002, Florida Statutes, is created
 2120 to read:

2121 345.0002 Definitions.—As used in this chapter, the term:

2122 (1) "Agency of the state" means the state and any
 2123 department of, or any corporation, agency, or instrumentality
 2124 created, designated, or established by, the state.

2125 (2) "Area served" means Escambia County. However, upon a
 2126 contiguous county's consent to inclusion within the area served
 2127 by the authority and with the agreement of the authority, the
 2128 term shall also include the geographical area of such county
 2129 contiguous to Escambia County.

2130 (3) "Authority" means the Northwest Florida Regional
 2131 Transportation Finance Authority, a body politic and corporate,
 2132 and an agency of the state, established under this chapter.

2133 (4) "Bonds" means the notes, bonds, refunding bonds, or
 2134 other evidences of indebtedness or obligations, in temporary or
 2135 definitive form, which the authority may issue under this
 2136 chapter.

2137 (5) "Department" means the Department of Transportation.

2138 (6) "Division" means the Division of Bond Finance of the
 2139 State Board of Administration.

2140 (7) "Federal agency" means the United States, the President
 2141 of the United States, and any department of, or any bureau,
 2142 corporation, agency, or instrumentality created, designated, or
 2143 established by, the United States Government.

2144 (8) "Members" means the governing body of the authority,
 2145 and the term "member" means one of the individuals constituting
 2146 such governing body.

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2147 (9) "Regional system" or "system" means, generally, a
 2148 modern system of roads, bridges, causeways, tunnels, and mass
 2149 transit services within the area of the authority, with access
 2150 limited or unlimited as the authority may determine, and the
 2151 buildings and structures and appurtenances and facilities
 2152 related to the system, including all approaches, streets, roads,
 2153 bridges, and avenues of access for the system.

2154 (10) "Revenues" means the tolls, revenues, rates, fees,
 2155 charges, receipts, rentals, contributions, and other income
 2156 derived from or in connection with the operation or ownership of
 2157 a regional system, including the proceeds of any use and
 2158 occupancy insurance on any portion of the system, but excluding
 2159 state funds available to the authority and any other municipal
 2160 or county funds available to the authority under an agreement
 2161 with a municipality or county.

2162 Section 45. Section 18. Section 345.0003, Florida Statutes,
 2163 is created to read:

2164 345.0003 Regional transportation finance authority
 2165 formation and membership.-

2166 (1) Escambia County, alone or together with any consenting
 2167 contiguous county, may form a regional finance authority for the
 2168 purposes of constructing, maintaining, and operating
 2169 transportation projects in the northwest region of this state.
 2170 The authority shall be governed in accordance with this chapter.
 2171 The area served by the authority may not be expanded beyond
 2172 Escambia County without the approval of the county commission of
 2173 each contiguous county that will be a part of the authority.

2174 (2) The governing body of the authority shall consist of a
 2175 board of voting members as follows:

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2176 (a) The county commission of each county in the area served
 2177 by the authority shall appoint two members. Each member must be
 2178 a resident of the county from which he or she is appointed and,
 2179 if possible, must represent the business and civic interests of
 2180 the community.

2181 (b) The Governor shall appoint an equal number of members
 2182 to the board as those appointed by the county commissions. The
 2183 members appointed by the Governor must be residents of the area
 2184 served by the authority.

2185 (c) The district secretary of the department serving in the
 2186 district that includes Escambia County.

2187 (3) The term of office of each member shall be for 4 years
 2188 or until his or her successor is appointed and qualified.

2189 (4) A member may not hold an elected office during the term
 2190 of his or her membership.

2191 (5) A vacancy occurring in the governing body before the
 2192 expiration of the member's term shall be filled for the
 2193 remainder of the unexpired term by the respective appointing
 2194 authority in the same manner as the original appointment.

2195 (6) Before entering upon his or her official duties, each
 2196 member must take and subscribe to an oath before an official
 2197 authorized by law to administer oaths that he or she will
 2198 honestly, faithfully, and impartially perform the duties of his
 2199 or her office as a member of the governing body of the authority
 2200 and that he or she will not neglect any duties imposed on him or
 2201 her by this chapter.

2202 (7) The Governor may remove from office a member of the
 2203 authority for misconduct, malfeasance, misfeasance, or
 2204 nonfeasance in office.

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2205 (8) Members of the authority shall designate a chair from
 2206 among the membership.

2207 (9) Members of the authority shall serve without
 2208 compensation, but are entitled to reimbursement for per diem and
 2209 other expenses in accordance with s. 112.061 while in
 2210 performance of their official duties.

2211 (10) A majority of the members of the authority shall
 2212 constitute a quorum, and resolutions enacted or adopted by a
 2213 vote of a majority of the members present and voting at any
 2214 meeting are effective without publication, posting, or any
 2215 further action of the authority.

2216 Section 46. Section 345.0004, Florida Statutes, is created
 2217 to read:

2218 345.0004 Powers and duties.—

2219 (1) The authority shall plan, develop, finance, construct,
 2220 reconstruct, improve, own, operate, and maintain a regional
 2221 system in the area served by the authority. The authority may
 2222 not exercise these powers with respect to an existing system for
 2223 transporting people and goods by any means that is owned by
 2224 another entity without the consent of that entity. If the
 2225 authority acquires, purchases, or inherits an existing entity,
 2226 the authority shall inherit and assume all rights, assets,
 2227 appropriations, privileges, and obligations of the existing
 2228 entity.

2229 (2) The authority may exercise all powers necessary,
 2230 appurtenant, convenient, or incidental to the carrying out of
 2231 the purposes of this section, including, but not limited to, the
 2232 following rights and powers:

2233 (a) To sue and be sued, implead and be impleaded, and

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2234 complain and defend in all courts in its own name.

2235 (b) To adopt and use a corporate seal.

2236 (c) To have the power of eminent domain, including the
 2237 procedural powers granted under chapters 73 and 74.

2238 (d) To acquire, purchase, hold, lease as a lessee, and use
 2239 any property, real, personal, or mixed, tangible or intangible,
 2240 or any interest therein, necessary or desirable for carrying out
 2241 the purposes of the authority.

2242 (e) To sell, convey, exchange, lease, or otherwise dispose
 2243 of any real or personal property acquired by the authority,
 2244 including air rights, which the authority and the department
 2245 have determined is not needed for the construction, operation,
 2246 and maintenance of the system.

2247 (f) To fix, alter, charge, establish, and collect rates,
 2248 fees, rentals, and other charges for the use of any system owned
 2249 or operated by the authority, which rates, fees, rentals, and
 2250 other charges must be sufficient to comply with any covenants
 2251 made with the holders of any bonds issued under this act. This
 2252 right and power may be assigned or delegated by the authority to
 2253 the department.

2254 (g) To borrow money; to make and issue negotiable notes,
 2255 bonds, refunding bonds, and other evidences of indebtedness or
 2256 obligations, in temporary or definitive form, to finance all or
 2257 part of the improvement of the authority's system and
 2258 appurtenant facilities, including the approaches, streets,
 2259 roads, bridges, and avenues of access for the system and for any
 2260 other purpose authorized by this chapter, the bonds to mature no
 2261 more than 30 years after the date of the issuance; to secure the
 2262 payment of such bonds or any part thereof by a pledge of its

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2263 revenues, rates, fees, rentals, or other charges, including
 2264 municipal or county funds received by the authority under an
 2265 agreement between the authority and a municipality or county;
 2266 and, in general, to provide for the security of the bonds and
 2267 the rights and remedies of the holders of the bonds. However,
 2268 municipal or county funds may not be pledged for the
 2269 construction of a project for which a toll is to be charged
 2270 unless the anticipated tolls are reasonably estimated by the
 2271 governing board of the municipality or county, on the date of
 2272 its resolution pledging the funds, to be sufficient to cover the
 2273 principal and interest of such obligations during the period
 2274 when the pledge of funds is in effect.

2275 1. The authority shall reimburse a municipality or county
 2276 for sums spent from municipal or county funds used for the
 2277 payment of the bond obligations.

2278 2. If the authority elects to fund or refund bonds issued
 2279 by the authority before the maturity of the bonds, the proceeds
 2280 of the funding or refunding bonds, pending the prior redemption
 2281 of the bonds to be funded or refunded, shall be invested in
 2282 direct obligations of the United States, and the outstanding
 2283 bonds may be funded or refunded by the issuance of bonds under
 2284 this chapter.

2285 (h) To make contracts of every name and nature, including,
 2286 but not limited to, partnerships providing for participation in
 2287 ownership and revenues, and to execute each instrument necessary
 2288 or convenient for the conduct of its business.

2289 (i) Without limitation of the foregoing, to cooperate with,
 2290 to accept grants from, and to enter into contracts or other
 2291 transactions with any federal agency, the state, or any agency

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2292 or any other public body of the state.

2293 (j) To employ an executive director, attorney, staff, and
 2294 consultants. Upon the request of the authority, the department
 2295 shall furnish the services of a department employee to act as
 2296 the executive director of the authority.

2297 (k) To accept funds or other property from private
 2298 donations.

2299 (l) To act and do things necessary or convenient for the
 2300 conduct of its business and the general welfare of the
 2301 authority, in order to carry out the powers granted to it by
 2302 this act or any other law.

2303 (3) The authority may not pledge the credit or taxing power
 2304 of the state or a political subdivision or agency of the state.
 2305 Obligations of the authority may not be considered to be
 2306 obligations of the state or of any other political subdivision
 2307 or agency of the state. Except for the authority, the state or
 2308 any political subdivision or agency of the state is not liable
 2309 for the payment of the principal of or interest on such
 2310 obligations.

2311 (4) The authority may not, other than by consent of the
 2312 affected county or an affected municipality, enter into an
 2313 agreement that would legally prohibit the construction of a road
 2314 by the county or the municipality.

2315 (5) The authority shall comply with the statutory
 2316 requirements of general application which relate to the filing
 2317 of a report or documentation required by law, including the
 2318 requirements of ss. 189.015, 189.016, 189.051, and 189.08.

2319 Section 47. Section 345.0005, Florida Statutes, is created
 2320 to read:

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2321 345.0005 Bonds.—

2322 (1) Bonds may be issued on behalf of the authority pursuant
 2323 to the State Bond Act in such principal amount as the authority
 2324 determines is necessary to achieve its corporate purposes,
 2325 including construction, reconstruction, improvement, extension,
 2326 and repair of the regional system; the acquisition cost of real
 2327 property; interest on bonds during construction and for a
 2328 reasonable period thereafter; and establishment of reserves to
 2329 secure bonds.

2330 (2) Bonds issued on behalf of the authority under
 2331 subsection (1) must:

2332 (a) Be authorized by resolution of the members of the
 2333 authority and bear such date or dates; mature at such time or
 2334 times not exceeding 30 years after their respective dates; bear
 2335 interest at a rate or rates not exceeding the maximum rate fixed
 2336 by general law for authorities; be in such denominations; be in
 2337 such form, either coupon or fully registered; carry such
 2338 registration, exchangeability, and interchangeability
 2339 privileges; be payable in such medium of payment and at such
 2340 place or places; be subject to such terms of redemption; and be
 2341 entitled to such priorities of lien on the revenues and other
 2342 available moneys as such resolution or any resolution after the
 2343 bonds' issuance provides.

2344 (b) Be sold at public sale in the manner provided in the
 2345 State Bond Act. Temporary bonds or interim certificates may be
 2346 issued to the purchaser or purchasers of such bonds pending the
 2347 preparation of definitive bonds and may contain such terms and
 2348 conditions as determined by the authority.

2349 (3) A resolution that authorizes bonds may specify

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2350 provisions that must be part of the contract with the holders of
 2351 the bonds as to:

2352 (a) The pledging of all or any part of the revenues,
 2353 available municipal or county funds, or other charges or
 2354 receipts of the authority derived from the regional system.

2355 (b) The construction, reconstruction, improvement,
 2356 extension, repair, maintenance, and operation of the system, or
 2357 any part or parts of the system, and the duties and obligations
 2358 of the authority with reference thereto.

2359 (c) Limitations on the purposes to which the proceeds of
 2360 the bonds, then or thereafter issued, or of any loan or grant by
 2361 any federal agency or the state or any political subdivision of
 2362 the state may be applied.

2363 (d) The fixing, charging, establishing, revising,
 2364 increasing, reducing, and collecting of tolls, rates, fees,
 2365 rentals, or other charges for use of the services and facilities
 2366 of the system or any part of the system.

2367 (e) The setting aside of reserves or sinking funds and the
 2368 regulation and disposition of such reserves or sinking funds.

2369 (f) Limitations on the issuance of additional bonds.

2370 (g) The terms of any deed of trust or indenture securing
 2371 the bonds, or under which the bonds may be issued.

2372 (h) Any other or additional matters, of like or different
 2373 character, which in any way affect the security or protection of
 2374 the bonds.

2375 (4) The authority may enter into deeds of trust,
 2376 indentures, or other agreements with banks or trust companies
 2377 within or without the state, as security for such bonds, and
 2378 may, under such agreements, assign and pledge any of the

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2379 revenues and other available moneys, including any available
 2380 municipal or county funds, under the terms of this chapter. The
 2381 deed of trust, indenture, or other agreement may contain
 2382 provisions that are customary in such instruments or that the
 2383 authority may authorize, including, but without limitation,
 2384 provisions that:

2385 (a) Pledge any part of the revenues or other moneys
 2386 lawfully available.

2387 (b) Apply funds and safeguard funds on hand or on deposit.

2388 (c) Provide for the rights and remedies of the trustee and
 2389 the holders of the bonds.

2390 (d) Provide for the terms of the bonds or for resolutions
 2391 authorizing the issuance of the bonds.

2392 (e) Provide for any additional matters, of like or
 2393 different character, which affect the security or protection of
 2394 the bonds.

2395 (5) Bonds issued under this act are negotiable instruments
 2396 and have the qualities and incidents of negotiable instruments
 2397 under the law merchant and the negotiable instruments law of the
 2398 state.

2399 (6) A resolution that authorizes the issuance of authority
 2400 bonds and pledges the revenues of the system must require that
 2401 revenues of the system be periodically deposited into
 2402 appropriate accounts in sufficient sums to pay the costs of
 2403 operation and maintenance of the system for the current fiscal
 2404 year as set forth in the annual budget of the authority and to
 2405 reimburse the department for any unreimbursed costs of operation
 2406 and maintenance of the system from prior fiscal years before
 2407 revenues of the system are deposited into accounts for the

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2408 payment of interest or principal owing or that may become owing
 2409 on such bonds.

2410 (7) State funds may not be used or pledged to pay the
 2411 principal of or interest on any authority bonds, and all such
 2412 bonds must contain a statement on their face to this effect.

2413 Section 48. Section 345.0006, Florida Statutes, is created
 2414 to read:

2415 345.0006 Remedies of bondholders.—

2416 (1) The rights and the remedies granted to authority
 2417 bondholders under this chapter are in addition to and not in
 2418 limitation of any rights and remedies lawfully granted to such
 2419 bondholders by the resolution or indenture providing for the
 2420 issuance of bonds, or by any deed of trust, indenture, or other
 2421 agreement under which the bonds may be issued or secured. If the
 2422 authority defaults in the payment of the principal or interest
 2423 on the bonds issued under this chapter after such principal or
 2424 interest becomes due, whether at maturity or upon call for
 2425 redemption, as provided in the resolution or indenture, and such
 2426 default continues for 30 days, or if the authority fails or
 2427 refuses to comply with this chapter or any agreement made with,
 2428 or for the benefit of, the holders of the bonds, the holders of
 2429 25 percent in aggregate principal amount of the bonds then
 2430 outstanding are entitled as of right to the appointment of a
 2431 trustee to represent such bondholders for the purposes of the
 2432 default if the holders of 25 percent in aggregate principal
 2433 amount of the bonds then outstanding first give written notice
 2434 to the authority and to the department of their intention to
 2435 appoint a trustee.

2436 (2) The trustee and a trustee under a deed of trust,

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2437 indenture, or other agreement may, or upon the written request
 2438 of the holders of 25 percent or such other percentages specified
 2439 in any deed of trust, indenture, or other agreement, in
 2440 principal amount of the bonds then outstanding, shall, in any
 2441 court of competent jurisdiction, in its own name:

2442 (a) By mandamus or other suit, action, or proceeding at
 2443 law, or in equity, enforce all rights of the bondholders,
 2444 including the right to require the authority to fix, establish,
 2445 maintain, collect, and charge rates, fees, rentals, and other
 2446 charges, adequate to carry out any agreement as to, or pledge
 2447 of, the revenues, and to require the authority to carry out any
 2448 other covenants and agreements with or for the benefit of the
 2449 bondholders, and to perform its and their duties under this
 2450 chapter.

2451 (b) Bring suit upon the bonds.

2452 (c) By action or suit in equity, require the authority to
 2453 account as if it were the trustee of an express trust for the
 2454 bondholders.

2455 (d) By action or suit in equity, enjoin any acts or things
 2456 that may be unlawful or in violation of the rights of the
 2457 bondholders.

2458 (3) A trustee, if appointed under this section or acting
 2459 under a deed of trust, indenture, or other agreement, and
 2460 regardless of whether all bonds have been declared due and
 2461 payable, is entitled to the appointment of a receiver. The
 2462 receiver may enter upon and take possession of the system or the
 2463 facilities or any part or parts of the system, the revenues, and
 2464 other pledged moneys, for and on behalf of and in the name of,
 2465 the authority and the bondholders. The receiver may collect and

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2466 receive revenues and other pledged moneys in the same manner as
 2467 the authority. The receiver shall deposit such revenues and
 2468 moneys in a separate account and apply all such revenues and
 2469 moneys remaining after allowance for payment of all costs of
 2470 operation and maintenance of the system in such manner as the
 2471 court directs. In a suit, action, or proceeding by the trustee,
 2472 the fees, counsel fees, and expenses of the trustee, and the
 2473 receiver, if any, and all costs and disbursements allowed by the
 2474 court must be a first charge on any revenues after payment of
 2475 the costs of operation and maintenance of the system. The
 2476 trustee also has all other powers necessary or appropriate for
 2477 the exercise of any functions specifically described in this
 2478 section or incident to the representation of the bondholders in
 2479 the enforcement and protection of their rights.

2480 (4) A receiver appointed pursuant to this section to
 2481 operate and maintain the system or a facility or a part of a
 2482 facility may not sell, assign, mortgage, or otherwise dispose of
 2483 any of the assets belonging to the authority. The powers of the
 2484 receiver are limited to the operation and maintenance of the
 2485 system or any facility or part of a facility and to the
 2486 collection and application of revenues and other moneys due the
 2487 authority, in the name and for and on behalf of the authority
 2488 and the bondholders. A holder of bonds or a trustee does not
 2489 have the right in any suit, action, or proceeding, at law or in
 2490 equity, to compel a receiver, or a receiver may not be
 2491 authorized or a court may not direct a receiver, to sell,
 2492 assign, mortgage, or otherwise dispose of any assets of whatever
 2493 kind or character belonging to the authority.

2494 Section 49. Section 345.0007, Florida Statutes, is created

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2495 to read:

2496 345.0007 Department to construct, operate, and maintain
 2497 facilities.-

2498 (1) The department is the agent of the authority for the
 2499 purpose of performing all phases of a project, including, but
 2500 not limited to, constructing improvements and extensions to the
 2501 system, with the exception of the transit facilities. The
 2502 division and the authority shall provide to the department
 2503 complete copies of the documents, agreements, resolutions,
 2504 contracts, and instruments that relate to the project and shall
 2505 request that the department perform the construction work,
 2506 including the planning, surveying, design, and actual
 2507 construction of the completion of, extensions of, and
 2508 improvements to the system. After the issuance of bonds to
 2509 finance construction of an improvement or addition to the
 2510 system, the division and the authority shall transfer to the
 2511 credit of an account of the department in the State Treasury the
 2512 necessary funds for construction. The department shall proceed
 2513 with construction and use the funds for the purpose authorized
 2514 by law for construction of roads and bridges. The authority may
 2515 alternatively, with the consent and approval of the department,
 2516 elect to appoint a local agency certified by the department to
 2517 administer federal aid projects in accordance with federal law
 2518 as the authority's agent for the purpose of performing each
 2519 phase of a project.

2520 (2) Notwithstanding subsection (1), the department is the
 2521 agent of the authority for the purpose of operating and
 2522 maintaining the system, with the exception of transit
 2523 facilities. The costs incurred by the department for operation

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2524 and maintenance shall be reimbursed from revenues of the system.
 2525 The appointment of the department as agent for the authority
 2526 does not create an independent obligation on the part of the
 2527 department to operate and maintain a system. The authority shall
 2528 remain obligated as principal to operate and maintain its
 2529 system, and the authority's bondholders do not have an
 2530 independent right to compel the department to operate or
 2531 maintain the authority's system.

2532 (3) The authority shall fix, alter, charge, establish, and
 2533 collect tolls, rates, fees, rentals, and other charges for the
 2534 authority's facilities, as otherwise provided in this chapter.

2535 Section 50. Section 345.0008, Florida Statutes, is created
 2536 to read:

2537 345.0008 Department contributions to authority projects.-

2538 (1) Subject to appropriation by the Legislature, the
 2539 department may, at the request of the authority, pay all or part
 2540 of the cost of financial, engineering, or traffic feasibility
 2541 studies or of the design, financing, acquisition, or
 2542 construction of an authority project or portion of the system
 2543 that is included in the 10-year Strategic Intermodal Plan.

2544 (a) Pursuant to chapter 216, the department shall include
 2545 funding for such payments in its legislative budget request. The
 2546 request for funding may be included in the 5-year Tentative Work
 2547 Program developed under s. 339.135; however, it must appear as a
 2548 distinct funding item in the legislative budget request and must
 2549 be supported by a financial feasibility test provided by the
 2550 department.

2551 (b) Funding provided for authority projects shall appear in
 2552 the General Appropriations Act as a distinct fixed capital

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2553 outlay item and must clearly identify the related authority
 2554 project.

2555 (c) The department may not make a budget request to fund
 2556 the acquisition or construction of a proposed authority project
 2557 unless the estimated net revenues of the proposed project will
 2558 be sufficient to pay at least 50 percent of the annual debt
 2559 service on the bonds associated with the project by the end of
 2560 12 years of operation and at least 100 percent of the debt
 2561 service on the bonds by the end of 30 years of operation.

2562 (2) The department may use its engineers and other
 2563 personnel, including consulting engineers and traffic engineers,
 2564 to conduct the feasibility studies authorized under subsection
 2565 (1).

2566 (3) The department may participate in authority-funded
 2567 projects that, at a minimum:

2568 (a) Serve national, statewide, or regional functions and
 2569 function as part of an integrated regional transportation
 2570 system.

2571 (b) Are identified in the capital improvements element of a
 2572 comprehensive plan that has been determined to be in compliance
 2573 with part II of chapter 163. Further, the project shall be in
 2574 compliance with local government comprehensive plan policies
 2575 relative to corridor management.

2576 (c) Are consistent with the Strategic Intermodal System
 2577 Plan developed under s. 339.64.

2578 (d) Have a commitment for local, regional, or private
 2579 financial matching funds as a percentage of the overall project
 2580 cost.

2581 (4) Before approval, the department must determine that the

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2582 proposed project:

2583 (a) Is in the public's best interest;

2584 (b) Does not require state funding, unless the project is
 2585 on the State Highway System;

2586 (c) Has adequate safeguards in place to ensure that no
 2587 additional costs will be imposed on or service disruptions will
 2588 affect the traveling public and residents of this state if the
 2589 department cancels or defaults on the agreement; and

2590 (d) Has adequate safeguards in place to ensure that the
 2591 department and the authority have the opportunity to add
 2592 capacity to the proposed project and other transportation
 2593 facilities serving similar origins and destinations.

2594 (5) An obligation or expense incurred by the department
 2595 under this section is a part of the cost of the authority
 2596 project for which the obligation or expense was incurred. The
 2597 department may require that money contributed by the department
 2598 under this section be repaid from tolls of the project on which
 2599 the money was spent, other revenue of the authority, or other
 2600 sources of funds.

2601 (6) The department shall receive from the authority a share
 2602 of the authority's net revenues equal to the ratio of the
 2603 department's total contributions to the authority under this
 2604 section to the sum of: the department's total contributions
 2605 under this section; contributions by any local government to the
 2606 cost of revenue-producing authority projects; and the sale
 2607 proceeds of authority bonds after payment of costs of issuance.
 2608 For the purpose of this subsection, the net revenues of the
 2609 authority are determined by deducting from gross revenues the
 2610 payment of debt service, administrative expenses, operations and

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2611 maintenance expenses, and all reserves required to be
 2612 established under any resolution under which authority bonds are
 2613 issued.

2614 Section 51. Section 345.0009, Florida Statutes, is created
 2615 to read:

2616 345.0009 Acquisition of lands and property.-

2617 (1) For the purposes of this chapter, the authority may
 2618 acquire private or public property and property rights,
 2619 including rights of access, air, view, and light, by gift,
 2620 devise, purchase, condemnation by eminent domain proceedings, or
 2621 transfer from another political subdivision of the state, as the
 2622 authority may find necessary for any of the purposes of this
 2623 chapter, including, but not limited to, any lands reasonably
 2624 necessary for securing applicable permits, areas necessary for
 2625 management of access, borrow pits, drainage ditches, water
 2626 retention areas, rest areas, replacement access for landowners
 2627 whose access is impaired due to the construction of a facility,
 2628 and replacement rights-of-way for relocated rail and utility
 2629 facilities; for existing, proposed, or anticipated
 2630 transportation facilities on the system or in a transportation
 2631 corridor designated by the authority; or for the purposes of
 2632 screening, relocation, removal, or disposal of junkyards and
 2633 scrap metal processing facilities. Each authority shall also
 2634 have the power to condemn any material and property necessary
 2635 for such purposes.

2636 (2) The authority shall exercise the right of eminent
 2637 domain conferred under this section in the manner provided by
 2638 law.

2639 (3) An authority that acquires property for a

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2640 transportation facility or in a transportation corridor is not
 2641 liable under chapter 376 or chapter 403 for preexisting soil or
 2642 groundwater contamination due solely to its ownership. This
 2643 section does not affect the rights or liabilities of any past or
 2644 future owners of the acquired property or the liability of any
 2645 governmental entity for the results of its actions which create
 2646 or exacerbate a pollution source. The authority and the
 2647 Department of Environmental Protection may enter into
 2648 interagency agreements for the performance, funding, and
 2649 reimbursement of the investigative and remedial acts necessary
 2650 for property acquired by the authority.

2651 Section 52. Section 345.001, Florida Statutes, is created
 2652 to read:

2653 345.001 Cooperation with other units, boards, agencies, and
 2654 individuals.-A county, municipality, drainage district, road and
 2655 bridge district, school district, or any other political
 2656 subdivision, board, commission, or individual in, or of, the
 2657 state may make and enter into a contract, lease, conveyance,
 2658 partnership, or other agreement with the authority which
 2659 complies with this chapter. The authority may make and enter
 2660 into contracts, leases, conveyances, partnerships, and other
 2661 agreements with any political subdivision, agency, or
 2662 instrumentality of the state and any federal agency,
 2663 corporation, or individual to carry out the purposes of this
 2664 chapter.

2665 Section 53. Section 345.0011, Florida Statutes, is created
 2666 to read:

2667 345.0011 Covenant of the state.-The state pledges to, and
 2668 agrees with, any person, firm, or corporation, or federal or

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2669 state agency subscribing to or acquiring the bonds to be issued
 2670 by the authority for the purposes of this chapter that the state
 2671 will not limit or alter the rights vested by this chapter in the
 2672 authority and the department until all bonds at any time issued,
 2673 together with the interest thereon, are fully paid and
 2674 discharged insofar as the rights vested in the authority and the
 2675 department affect the rights of the holders of bonds issued
 2676 under this chapter. The state further pledges to, and agrees
 2677 with, the United States that if a federal agency constructs or
 2678 contributes any funds for the completion, extension, or
 2679 improvement of the system, or any parts of the system, the state
 2680 will not alter or limit the rights and powers of the authority
 2681 and the department in any manner that is inconsistent with the
 2682 continued maintenance and operation of the system or the
 2683 completion, extension, or improvement of the system, or that
 2684 would be inconsistent with the due performance of any agreements
 2685 between the authority and any such federal agency, and the
 2686 authority and the department shall continue to have and may
 2687 exercise all powers granted in this section, so long as the
 2688 powers are necessary or desirable to carry out the purposes of
 2689 this chapter and the purposes of the United States in the
 2690 completion, extension, or improvement of the system, or any part
 2691 of the system.

2692 Section 54. Section 345.0012, Florida Statutes, is created
 2693 to read:

2694 345.0012 Exemption from taxation.—The authority created
 2695 under this chapter is for the benefit of the people of the
 2696 state, for the increase of their commerce and prosperity, and
 2697 for the improvement of their health and living conditions. The

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2698 authority performs essential governmental functions under this
 2699 chapter, therefore, the authority is not required to pay any
 2700 taxes or assessments of any kind or nature upon any property
 2701 acquired or used by it for such purposes, or upon any rates,
 2702 fees, rentals, receipts, income, or charges received by it.
 2703 Also, the bonds issued by the authority, their transfer and the
 2704 income from their issuance, including any profits made on the
 2705 sale of the bonds, shall be free from taxation by the state or
 2706 by any political subdivision, taxing agency, or instrumentality
 2707 of the state. The exemption granted by this section does not
 2708 apply to any tax imposed by chapter 220 on interest, income, or
 2709 profits on debt obligations owned by corporations.

2710 Section 55. Section 345.0013, Florida Statutes, is created
 2711 to read:

2712 345.0013 Eligibility for investments and security.—Bonds or
 2713 other obligations issued under this chapter are legal
 2714 investments for banks, savings banks, trustees, executors,
 2715 administrators, and all other fiduciaries, and for all state,
 2716 municipal, and other public funds, and are also securities
 2717 eligible for deposit as security for all state, municipal, or
 2718 other public funds, notwithstanding any other law to the
 2719 contrary.

2720 Section 56. Section 345.0014, Florida Statutes, is created
 2721 to read:

2722 345.0014 Applicability.—

2723 (1) The powers conferred by this chapter are in addition to
 2724 the powers conferred by other laws and do not repeal any other
 2725 general or special law or local ordinance, but supplement them,
 2726 and provide a complete method for the exercise of the powers

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2727 granted in this chapter. The extension and improvement of a
 2728 system, and the issuance of bonds under this chapter to finance
 2729 all or part of the cost of such extension or improvement, may be
 2730 accomplished through compliance with this chapter without regard
 2731 to or necessity for compliance with the limitations or
 2732 restrictions contained in any other general, special, or local
 2733 law, including, but not limited to, s. 215.821. Approval of any
 2734 bonds issued under this act by the qualified electors or
 2735 qualified electors who are freeholders in the state or in any
 2736 political subdivision of the state is not required for the
 2737 issuance of such bonds under this chapter.

2738 (2) This act does not repeal, rescind, or modify any other
 2739 law relating to the State Board of Administration, the
 2740 Department of Transportation, or the Division of Bond Finance of
 2741 the State Board of Administration; however, this chapter
 2742 supersedes any other law that is inconsistent with its
 2743 provisions, including, but not limited to, s. 215.821.

2744 Section 57. (1) LEGISLATIVE FINDINGS AND INTENT.—The
 2745 Legislature recognizes that the existing fuel tax structure used
 2746 to derive revenues for the funding of transportation projects in
 2747 this state will soon be inadequate to meet the state's needs. To
 2748 address this emerging need, the Legislature directs the Center
 2749 for Urban Transportation Research to establish an extensive
 2750 study on the impact of implementing a system that charges
 2751 drivers based on the vehicle miles traveled as an alternative,
 2752 sustainable source of transportation funding and to establish
 2753 the framework for implementation of a pilot demonstration
 2754 project. The Legislature recognizes that, over time, the current
 2755 fuel tax structure has become less viable as the primary funding

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2756 source for transportation projects. While the fuel tax has
 2757 functioned as a true user fee for decades, significant increases
 2758 in mandated vehicle fuel efficiency and the introduction of
 2759 electric and hybrid vehicles have significantly eroded the
 2760 revenues derived from this tax. The Legislature also recognizes
 2761 that there are legitimate privacy concerns related to a tax
 2762 mechanism that would charge users of the highway system on the
 2763 basis of miles traveled. Other concerns include the cost of
 2764 implementing such a system and institutional issues associated
 2765 with revenue sharing. Therefore, it is the intent of the
 2766 Legislature that this study and demonstration design will, at a
 2767 minimum, address these issues. To accomplish this task, the
 2768 Center for Urban Transportation Research in consultation with
 2769 the Florida Transportation Commission shall establish a project
 2770 advisory board to assist the center in analyzing this
 2771 alternative funding concept and in developing specific elements
 2772 of the pilot project that will demonstrate the feasibility of
 2773 transitioning Florida to a transportation funding system based
 2774 on vehicle miles traveled.

2775 (2) VEHICLE-MILES-TRAVELED STUDY.—The Center for Urban
 2776 Transportation Research shall conduct a study on the viability
 2777 of implementing a system in this state which charges drivers
 2778 based on their vehicle miles traveled as an alternative to the
 2779 present fuel tax structure to fund transportation projects. The
 2780 study will inventory previous research and findings from pilot
 2781 projects being conducted in other states. The study will address
 2782 at a minimum previous work conducted in these broad areas:
 2783 assessment of technologies; behavioral and privacy concerns;
 2784 equity impacts; and policy implications of a vehicle miles

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2785 traveled road charging system. The effort will also quantify the
 2786 current costs to collect traditional highway user fees. This
 2787 study will synthesize findings of completed research and
 2788 demonstrations in the area of vehicle-miles-traveled charges and
 2789 analyze their applicability to Florida. The Center for Urban
 2790 Transportation Research shall present the findings of this study
 2791 phase to the Legislature no later than January 30, 2016.

2792 (3) VEHICLE-MILES-TRAVELED PILOT PROJECT DESIGN.—

2793 (a) In the course of the study, the Center for Urban
 2794 Transportation Research in consultation with the Florida
 2795 Transportation Commission shall establish the framework for a
 2796 pilot project that will evaluate the feasibility of implementing
 2797 a system that charges drivers based on their vehicle miles
 2798 traveled.

2799 (b) In the design of the pilot project framework, the
 2800 Center for Urban Transportation Research shall address at a
 2801 minimum these elements: the geographic location for the pilot;
 2802 special fleets or classes of vehicles; evaluation criteria for
 2803 the demonstration; consumer choice in the method of reporting
 2804 miles traveled; privacy options for participants in the pilot
 2805 project; the recording of miles traveled with and without
 2806 locational information; records retention and destruction; and
 2807 cyber security.

2808 (c) Contingent upon legislative appropriation, the Center
 2809 for Urban Transportation Research may expend up to \$400,000 for
 2810 the study and pilot project design.

2811 (d) The pilot project design shall be completed no later
 2812 than December 31, 2016, and submitted in a report to the
 2813 Legislature so that implementation of a pilot project can occur

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2814 in 2017.

2815 Section 58. For the purpose of incorporating the amendment
 2816 made by this act to section 333.01, Florida Statutes, in a
 2817 reference thereto, subsection (6) of section 350.81, Florida
 2818 Statutes, is reenacted to read:

2819 350.81 Communications services offered by governmental
 2820 entities.—

2821 (6) To ensure the safe and secure transportation of
 2822 passengers and freight through an airport facility, as defined
 2823 in s. 159.27(17), an airport authority or other governmental
 2824 entity that provides or is proposing to provide communications
 2825 services only within the boundaries of its airport layout plan,
 2826 as defined in s. 333.01(6), to subscribers which are integral
 2827 and essential to the safe and secure transportation of
 2828 passengers and freight through the airport facility, is exempt
 2829 from this section. An airport authority or other governmental
 2830 entity that provides or is proposing to provide shared-tenant
 2831 service under s. 364.339, but not dial tone enabling subscribers
 2832 to complete calls outside the airport layout plan, to one or
 2833 more subscribers within its airport layout plan which are not
 2834 integral and essential to the safe and secure transportation of
 2835 passengers and freight through the airport facility is exempt
 2836 from this section. An airport authority or other governmental
 2837 entity that provides or is proposing to provide communications
 2838 services to one or more subscribers within its airport layout
 2839 plan which are not integral and essential to the safe and secure
 2840 transportation of passengers and freight through the airport
 2841 facility, or to one or more subscribers outside its airport
 2842 layout plan, is not exempt from this section. By way of example

596-02567-15

20151554c1

2843 and not limitation, the integral, essential subscribers may
2844 include airlines and emergency service entities, and the
2845 nonintegral, nonessential subscribers may include retail shops,
2846 restaurants, hotels, or rental car companies.

2847 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.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

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 Bill

Name Suzanne Sewell

Job Title President & CEO

Address 2475 Apalachee Pkway, St. 205 Phone 850-942-3500

Street

Tallahassee FL 32308

City

State

Zip

Email ssewelle@floridart.org

Speaking: [X] For [] Against [X] 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 [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.

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

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

Address 104 West Jefferson Street

Street

Tallahassee, FL 32301

City

State

Zip

Phone (850)224-3427

Email kelly@vhodopa.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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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)

Topic MIAMI-DADE MPO

487104
Amendment Barcode (if applicable)

Name JESS MCCARTY

GARCIA AMEND

Job Title ASSIT COUNTY ATTORNEY

Address 111 NW 1st St 2810

Phone 305-979-7110

MIAMI 33128
City State Zip

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.

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

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 MPO reform

Name Michael Canten 3

Job Title

Address 21748 SR 54

Street

Phone (813) 527-2172

Lutz

City

FL

State

33549

Zip

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.

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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 TRANSPOSITION

Amendment Barcode (if applicable)

Name MICHAEL RUBIN

Job Title VP GOVT AFFAIRS

Address 500 E. JEFFERSON ST.

Phone 850-222-0098

Street
TALL City FL State 32301 Zip

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.

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

Sf 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.

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 106-326 Phone 850 222 8900

Street

Tampa FL 33606

City

State

Zip

Email jd@cardenaspartners.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.

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.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	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.

¹FracFocus 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

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 Act¹³ guarantees every person's right to inspect and copy any state or local government public record¹⁴ 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 provisions²⁰ 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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__

1 A bill to be entitled
 2 An act relating to public records; amending s. 377.45,
 3 F.S.; providing an exemption from public records
 4 requirements for proprietary business information
 5 relating to high pressure well stimulations obtained
 6 by the Department of Environmental Protection in
 7 connection with the department's online high pressure
 8 well stimulation chemical disclosure registry;
 9 providing procedures and requirements with respect to
 10 the granting of confidential and exempt status;
 11 providing for disclosure under specified
 12 circumstances; providing for future legislative review
 13 and repeal of the exemption under the Open Government
 14 Sunset Review Act; providing a statement of public
 15 necessity; providing a contingent effective date.
 16
 17 Be It Enacted by the Legislature of the State of Florida:
 18
 19 Section 1. Subsection (4) is added to section 377.45,
 20 Florida Statutes, as created by SB 1468, 2015 Regular Session,
 21 to read:
 22 377.45 High pressure well stimulation chemical disclosure
 23 registry.—
 24 (4) (a) Proprietary business information, as defined in s.
 25 377.24075(1) (a)-(e) and relating to high pressure well
 26 stimulations, submitted to the department as part of a permit
 27 application or held by the department in connection with the
 28 online high pressure well stimulation chemical disclosure
 29 registry, is confidential and exempt from s. 119.07(1) and s.

Page 1 of 4

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

23-01893A-15

20151582__

30 24(a), Art. I of the State Constitution if the person submitting
 31 such proprietary business information to the department:
 32 1. Requests that the proprietary business information be
 33 kept confidential and exempt;
 34 2. Informs the department of the basis for the claim of
 35 proprietary business information; and
 36 3. Clearly marks each page of a document or specific
 37 portion of a document containing information claimed to be
 38 proprietary business information as "proprietary business
 39 information."
 40 (b) If the department receives a public records request for
 41 a document that is marked proprietary business information under
 42 this section, the department must promptly notify the person who
 43 submitted the information as proprietary business information.
 44 The notice must inform the person that he or she has 30 days
 45 after receipt of the notice to file an action in circuit court
 46 seeking a determination as to whether the document in question
 47 contains proprietary business information and an order barring
 48 public disclosure of the document. If the person files an action
 49 within 30 days after receipt of notice of the public records
 50 request, the department may not release the document pending the
 51 outcome of the legal action. The failure to file an action
 52 within 30 days constitutes a waiver of any claim of
 53 confidentiality, and the department shall release the document
 54 as requested.
 55 (c) Confidential and exempt proprietary business
 56 information may be disclosed:
 57 1. To another governmental entity if the receiving entity
 58 agrees in writing to maintain the confidential and exempt status

Page 2 of 4

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

23-01893A-15 20151582__

59 of the information and has verified in writing its legal
 60 authority to maintain such confidentiality; or
 61 2. When relevant in any proceeding under this part. A
 62 person involved in any proceeding under this section, including,
 63 but not limited to, an administrative law judge, a hearing
 64 officer, or a judge or justice, must maintain the
 65 confidentiality of any proprietary business information revealed
 66 at such proceeding.
 67 (d) This subsection is subject to the Open Government
 68 Sunset Review Act in accordance with s. 119.15 and shall stand
 69 repealed on October 2, 2020, unless reviewed and saved from
 70 repeal through reenactment by the Legislature.
 71 Section 2. The Legislature finds that it is a public
 72 necessity that proprietary business information, as defined in
 73 s. 377.24075(1)(a)-(e), Florida Statutes, and relating to high
 74 pressure well stimulations, submitted to the Department of
 75 Environmental Protection as part of a permit application or held
 76 by the department in connection with the online high pressure
 77 well stimulation chemical disclosure registry, be made
 78 confidential and exempt from s. 119.07(1), Florida Statutes, and
 79 s. 24(a), Article I of the State Constitution. Proprietary
 80 business information must be held confidential and exempt from
 81 public records requirements because the disclosure of such
 82 information would create an unfair competitive advantage for
 83 persons receiving such information and would adversely impact
 84 the service company, chemical supplier, or well owner or
 85 operator that provides chemical ingredients for a well on which
 86 high pressure well stimulations are performed. If such
 87 confidential and exempt information regarding proprietary

Page 3 of 4

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

23-01893A-15 20151582__

88 business information were released pursuant to a public records
 89 request, others would be allowed to take the benefit of the
 90 proprietary business information without compensation or
 91 reimbursement to the service company, chemical supplier, or well
 92 owner or operator.
 93 Section 3. This act shall take effect on the same date that
 94 SB 1468 or similar legislation takes effect, if such legislation
 95 is adopted in the same legislative session or an extension
 96 thereof and becomes a law.

Page 4 of 4

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

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.

Phone 850-973-3699

Street

Madison

FL

32340

Email johnw512@yahoo.com

City

State

Zip

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 Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy.

Phone 941-928-0278

Street

Sarasota Fl. 34243

Email acchildren@aol.com

City

State

Zip

Speaking: For [] Against [x] 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 []

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.

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

Phone 561-6300

Street

TALLAHASSEE

FL

State

32312

Zip

Email

City

Speaking: [X] 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 [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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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

Phone 941-323-2404

SARASOTA FL 34243
City State Zip

Email cullen@see@aol.com

Speaking: For Against Information

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

Representing SEARA CLUB FLORIDA

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.

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

Phone 850-882-2565

Street

Tallahassee

City

FL

State

32308

Zip

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

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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THE FLORIDA SENATE

APPEARANCE RECORD

4-23-15

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

1582

Meeting Date

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

Phone 850-766-7309

Tallahassee FL 32308

Email

Street City State Zip

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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

SB

4-23-15

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

1582

Meeting Date

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

Phone 850 322-7599

Street

Tallahassee Fl. 32303

Email amalie.datz@mal.com

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.

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

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.

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

1582

Bill Number (if applicable)

Topic Oil & Gas Regulation

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Legislative Affairs Director

Address 3700 Commonwealth Blvd

Phone _____

Street

Tallahassee

City

FL

State

32333

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.

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

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 Fracking - Trade Secrets

~~875~~

Amendment Barcode (if applicable)

Name Amy Date

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.

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

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.

Phone 850-973-3699

Street

Madison

FL

32340

Email johnw512@yahoo.com

City

State

Zip

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.

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

1582
Bill Number (if applicable)

Topic Oil & Gas Regulation

Amendment Barcode (if applicable)

Name Paula Cobb

Job Title Deputy Secretary of Regulatory Program

Address 3960 Commonwealth Blvd Phone _____

Tallahassee FL 32333 Email _____
City State Zip

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.

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

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
	<u>Peacock</u>	<u>McVaney</u>		GO Submitted as Committee Bill
1.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
2.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	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 Legislature⁴ 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

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 revised¹² 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

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

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 2011⁴² 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 five⁴⁴ 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

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.



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57 (b) The plan must also include a listing of each law not
58 otherwise listed pursuant to paragraph (a) which the agency
59 expects to implement by rulemaking before the following July 1,
60 except emergency rulemaking. For each law listed under this
61 paragraph, the plan must state whether the rulemaking is
62 intended to simplify, clarify, increase efficiency, improve
63 coordination with other agencies, reduce regulatory costs, or
64 delete obsolete, unnecessary, or redundant rules.
65 (c) The plan must include any desired update to the prior
66 year's regulatory plan or supplement published pursuant to
67 subsection (7). If, in a prior year, a law was identified under
68 this paragraph or under subparagraph (a)1. as a law requiring
69 rulemaking to implement but a notice of proposed rule has not
70 been published:
71 1. The agency shall identify and again list such law,
72 noting the applicable notice of rule development by citation to
73 the Florida Administrative Register; or
74 2. If the agency has subsequently determined that
75 rulemaking is not necessary to implement the law, the agency
76 shall identify such law, reference the citation to the
77 applicable notice of rule development in the Florida
78 Administrative Register, and provide a concise written
79 explanation of the reason why the law may be implemented without
80 rulemaking.
81 (d) The plan must include a certification executed on
82 behalf of the agency by both the agency head, or, if the agency
83 head is a collegial body, the presiding officer; and the
84 individual acting as principal legal advisor to the agency head.
85 The certification must:



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86 1. Verify that the persons executing the certification have
87 reviewed the plan.
88 2. Verify that the agency regularly reviews all of its
89 rules and identify the period during which all rules have most
90 recently been reviewed to determine if the rules remain
91 consistent with the agency's rulemaking authority and the laws
92 implemented.
93 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.-
94 (a) By October 1 of each year, each agency shall:
95 1. Publish its regulatory plan on its website or on another
96 state website established for publication of administrative law
97 records. A clearly labeled hyperlink to the current plan must be
98 included on the agency's primary website homepage.
99 2. Electronically deliver to the committee a copy of the
100 certification required in paragraph (1) (d).
101 3. Publish in the Florida Administrative Register a notice
102 identifying the date of publication of the agency's regulatory
103 plan. The notice must include a hyperlink or website address
104 providing direct access to the published plan.
105 (b) To satisfy the requirements of paragraph (a), a board
106 established under s. 20.165(4), and any other board or
107 commission receiving administrative support from the Department
108 of Business and Professional Regulation, may coordinate with the
109 Department of Business and Professional Regulation, and a board
110 established under s. 20.43(3) (g) may coordinate with the
111 Department of Health, for inclusion of the board's or
112 commission's plan and notice of publication in the coordinating
113 department's plan and notice and for the delivery of the
114 required documentation to the committee.



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115 (c) A regulatory plan prepared under subsection (1) and any
116 regulatory plan published under this chapter before July 1,
117 2014, shall be maintained at an active website for 10 years
118 after the date of initial publication on the agency's website or
119 another state website.

120 (3) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each
121 year:

122 (a) For each board established under s. 20.165(4) and any
123 other board or commission receiving administrative support from
124 the Department of Business and Professional Regulation, the
125 Department of Business and Professional Regulation shall file
126 with the committee a certification that the department has
127 reviewed each board's and commission's regulatory plan. A
128 certification may relate to more than one board or commission.

129 (b) For each board established under s. 20.43(3)(g), the
130 Department of Health shall file with the committee a
131 certification that the department has reviewed the board's
132 regulatory plan. A certification may relate to more than one
133 board.

134 (4) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
135 year, each agency shall publish a notice of rule development
136 under s. 120.54(2) for each law identified in the agency's
137 regulatory plan pursuant to subparagraph (1)(a)1. for which
138 rulemaking is necessary to implement but for which the agency
139 did not report the publication of a notice of rule development
140 under subparagraph (1)(a)2.

141 (5) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for
142 which implementing rulemaking is necessary as identified in the
143 agency's plan pursuant to subparagraph (1)(a)1. or subparagraph



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144 (1)(c)1., the agency shall publish a notice of proposed rule
145 pursuant to s. 120.54(3)(a) by April 1 of the year following the
146 deadline for the regulatory plan. This deadline may be extended
147 if the agency publishes a notice of extension in the Florida
148 Administrative Register identifying each rulemaking proceeding
149 for which an extension is being noticed by citation to the
150 applicable notice of rule development as published in the
151 Florida Administrative Register. The agency shall include a
152 concise statement in the notice of extension identifying any
153 issues that are causing the delay in rulemaking. An extension
154 shall expire on October 1 after the April 1 deadline, provided
155 that the regulatory plan due on October 1 may further extend the
156 rulemaking proceeding by identification pursuant to subparagraph
157 (1)(c)1. or conclude the rulemaking proceeding by identification
158 pursuant to subparagraph (1)(c)2. A published regulatory plan
159 may be corrected at any time to accomplish the purpose of
160 extending or concluding an affected rulemaking proceeding and is
161 deemed corrected as of the October 1 due date. Upon publication
162 of a correction, the agency shall publish in the Florida
163 Administrative Register a notice of the date of the correction
164 identifying the affected rulemaking proceeding by applicable
165 citation to the Florida Administrative Register.

166 (6) CERTIFICATIONS.—Each agency shall file a certification
167 with the committee upon compliance with subsection (4) and upon
168 filing a notice under subsection (5) of either a deadline
169 extension or a regulatory plan correction. A certification may
170 relate to more than one notice or contemporaneous act. The date
171 or dates of compliance shall be noted in each certification.

172 (7) SUPPLEMENTING THE REGULATORY PLAN.—After publication of



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173 the regulatory plan, the agency shall supplement the plan within
174 30 days after a bill becomes a law if the law is enacted before
175 the next regular session of the Legislature and the law
176 substantively modifies the agency's specifically delegated legal
177 duties, unless the law affects all or most state agencies as
178 identified by letter to the committee from the Governor or the
179 Attorney General. The supplement must include the information
180 required in paragraph (1)(a) and shall be published as required
181 in subsection (2), but no certification or delivery to the
182 committee is required. The agency shall publish in the Florida
183 Administrative Register notice of publication of the supplement,
184 and include a hyperlink on its website or web address for direct
185 access to the published supplement. For each law reported in the
186 supplement, if rulemaking is necessary to implement the law, the
187 agency shall publish a notice of rule development by the later
188 of the date provided in subsection (4) or 60 days after the bill
189 becomes a law, and a notice of proposed rule shall be published
190 by the later of the date provided in subsection (5) or 120 days
191 after the bill becomes a law. The proposed rule deadline may be
192 extended to the following October 1 by notice as provided in
193 subsection (5). If such proposed rule has not been filed by
194 October 1, a law included in a supplement shall also be included
195 in the next annual plan pursuant to subsection (1).

196 (8) FAILURE TO COMPLY.—If an agency fails to comply with a
197 requirement of paragraph (2)(a) or subsection (5), within 15
198 days after written demand from the committee or from the chair
199 of any other legislative committee, the agency shall deliver a
200 written explanation of the reasons for noncompliance to the
201 committee, the President of the Senate, the Speaker of the House



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202 of Representatives, and the chair of any legislative committee
203 requesting the explanation of the reasons for noncompliance.

204 (9) EDUCATIONAL UNITS.—This section does not apply to
205 educational units.

206 Section 3. Section 120.7455, Florida Statutes, is repealed.

207 Section 4. Effective upon this act becoming a law, any
208 suspension of rulemaking authority under s. 120.745, Florida
209 Statutes is rescinded. This section does not affect any
210 restriction, suspension, or prohibition of rulemaking authority
211 under any other provision of law.

212 Section 5. Except as otherwise expressly provided in this
213 act and except for this section, which shall take effect upon
214 this act becoming a law, this act shall take effect July 1,
215 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
	<u>Peacock</u>	<u>McVaney</u>		GO Submitted as Committee Bill
1.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
2.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	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 Legislature⁴ 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

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 revised¹² 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

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

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 2011⁴² 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 five⁴⁴ 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

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

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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

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59 expects to implement by rulemaking before the following July 1,
 60 except emergency rulemaking. For each law listed under this
 61 paragraph, the plan must state whether the rulemaking is
 62 intended to simplify, clarify, increase efficiency, improve
 63 coordination with other agencies, reduce regulatory costs, or
 64 delete obsolete, unnecessary, or redundant rules.

65 (c) The plan must include any desired update to the prior
 66 year's regulatory plan or supplement published pursuant to
 67 subsection (8). If, in a prior year, a law was identified under
 68 this paragraph or under subparagraph (a)1. as a law requiring
 69 rulemaking to implement but a notice of proposed rule has not
 70 been published:

71 1. The agency may identify and again list such law, noting
 72 the applicable notice of rule development by citation to the
 73 Florida Administrative Register; or

74 2. If the agency has subsequently determined that
 75 rulemaking is not necessary to implement the law, the agency may
 76 identify such law, reference the citation to the applicable
 77 notice of rule development in the Florida Administrative
 78 Register, and provide a concise written explanation of the
 79 reason why the law may be implemented without rulemaking.

80 (d) The plan must include a certification executed on
 81 behalf of the agency by both the agency head, or, if the agency
 82 head is a collegial body, the chair or equivalent presiding
 83 officer; and the agency general counsel, or, if the agency does
 84 not have a general counsel, the individual acting as principal
 85 legal advisor to the agency head. The certification must:

86 1. Verify that the persons executing the certification have
 87 reviewed the plan.

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88 2. Verify that the agency regularly reviews all of its
 89 rules and identify the period during which all rules have most
 90 recently been reviewed to determine if the rules remain
 91 consistent with the agency's rulemaking authority and the laws
 92 implemented.

93 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

94 (a) By October 1 of each year, each agency shall:

95 1. Publish its regulatory plan on its website or on another
 96 state website established for publication of administrative law
 97 records. A clearly labeled hyperlink to the current plan must be
 98 included on the agency's primary website homepage.

99 2. Electronically deliver to the committee a copy of the
 100 certification required in paragraph (1) (d).

101 3. Publish in the Florida Administrative Register a notice
 102 identifying the date of publication of the agency's regulatory
 103 plan. The notice must include a hyperlink or website address
 104 providing direct access to the published plan.

105 (b) To satisfy the requirements of paragraph (a), a board
 106 established under s. 20.165(4), and any other board or
 107 commission receiving administrative support from the Department
 108 of Business and Professional Regulation, may coordinate with the
 109 Department of Business and Professional Regulation, and a board
 110 established under s. 20.43(3) (g) may coordinate with the
 111 Department of Health, for inclusion of the board's or
 112 commission's plan and notice of publication in the coordinating
 113 department's plan and notice and for the delivery of the
 114 required documentation to the committee.

115 (c) A regulatory plan prepared under subsection (1) and any
 116 regulatory plan published under this chapter before July 1,

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117 2014, shall be maintained at an active website for 10 years
 118 after the date of initial publication on the agency's website or
 119 another state website.

120 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to
 121 the requirements of s. 216.023 and pursuant to s. 216.351, a
 122 copy of the most recent certification executed under paragraph
 123 (1) (d), clearly designated as such, shall be included as part of
 124 the agency's legislative budget request.

125 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each
 126 year:

127 (a) For each board established under s. 20.165(4) and any
 128 other board or commission receiving administrative support from
 129 the Department of Business and Professional Regulation, the
 130 Department of Business and Professional Regulation shall file
 131 with the committee a certification that the department has
 132 reviewed each board's and commission's regulatory plan. A
 133 certification may relate to more than one board or commission.

134 (b) For each board established under s. 20.43(3) (g), the
 135 Department of Health shall file with the committee a
 136 certification that the department has reviewed the board's
 137 regulatory plan. A certification may relate to more than one
 138 board.

139 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
 140 year, each agency shall publish a notice of rule development
 141 under s. 120.54(2) for each law identified in the agency's
 142 regulatory plan pursuant to subparagraph (1) (a)1. for which
 143 rulemaking is necessary to implement but for which the agency
 144 did not report the publication of a notice of rule development
 145 under subparagraph (1) (a)2.

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146 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for
 147 which implementing rulemaking is necessary as identified in the
 148 agency's plan pursuant to subparagraph (1) (a)1. or subparagraph
 149 (1) (c)1., the agency shall publish a notice of proposed rule
 150 pursuant to s. 120.54(3) (a) by April 1 of the year following the
 151 deadline for the regulatory plan. This deadline may be extended
 152 if the agency publishes a notice of extension in the Florida
 153 Administrative Register identifying each rulemaking proceeding
 154 for which an extension is being noticed by citation to the
 155 applicable notice of rule development as published in the
 156 Florida Administrative Register. An extension shall expire on
 157 October 1 after the April 1 deadline, provided that the
 158 regulatory plan due on October 1 may further extend the
 159 rulemaking proceeding by identification pursuant to subparagraph
 160 (1) (c)1. or conclude the rulemaking proceeding by identification
 161 pursuant to subparagraph (1) (c)2. A published regulatory plan
 162 may be corrected at any time to accomplish the purpose of
 163 extending or concluding an affected rulemaking proceeding and is
 164 deemed corrected as of the October 1 due date. Upon publication
 165 of a correction, the agency shall publish in the Florida
 166 Administrative Register a notice of the date of the correction
 167 identifying the affected rulemaking proceeding by applicable
 168 citation to the Florida Administrative Register.

169 (7) CERTIFICATIONS.—Each agency shall file a certification
 170 with the committee upon compliance with subsection (5), upon
 171 filing a notice under subsection (6) of either a deadline
 172 extension or a regulatory plan correction, and upon the
 173 completion of an act that terminates a suspension under
 174 subsection (9). A certification may relate to more than one

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175 notice or contemporaneous act. The date or dates of compliance
 176 shall be noted in each certification.

177 (8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of
 178 the regulatory plan, the agency shall supplement the plan within
 179 30 days after a bill becomes a law if the law is enacted before
 180 the next regular session of the Legislature and the law
 181 substantively modifies the agency’s specifically delegated legal
 182 duties, unless the law affects all or most state agencies as
 183 identified by letter to the committee from the Governor or the
 184 Attorney General. The supplement must include the information
 185 required in paragraph (1)(a) and shall be published as required
 186 in subsection (2), but no certification or delivery to the
 187 committee is required. The agency shall publish in the Florida
 188 Administrative Register notice of publication of the supplement,
 189 and include a hyperlink on its website or web address for direct
 190 access to the published supplement. For each law reported in the
 191 supplement, if rulemaking is necessary to implement the law, the
 192 agency shall publish a notice of rule development by the later
 193 of the date provided in subsection (5) or 60 days after the bill
 194 becomes a law, and a notice of proposed rule shall be published
 195 by the later of the date provided in subsection (6) or 120 days
 196 after the bill becomes a law. The proposed rule deadline may be
 197 extended to the following October 1 by notice as provided in
 198 subsection (6). If such proposed rule has not been filed by
 199 October 1, a law included in a supplement shall also be included
 200 in the next annual plan pursuant to subsection (1).

201 (9) FAILURE TO COMPLY.—If an agency fails to comply with a
 202 requirement of paragraph (2)(a) or subsection (6), the entire
 203 rulemaking authority delegated to the agency by the Legislature

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204 under any statute or law shall be suspended automatically as of
 205 the due date of the required action and shall remain suspended
 206 until the date the agency completes the required act or until
 207 the end of the next regular session of the Legislature,
 208 whichever occurs first.

209 (a) During a period of suspension under this subsection,
 210 the agency has no authority to file rules for adoption under s.
 211 120.54, but may complete any action required by this section and
 212 may conduct public hearings that were noticed before the period
 213 of suspension.

214 (b) A suspension under this subsection does not authorize
 215 an agency to adopt or apply a statement defined as a rule under
 216 s. 120.52(16) unless the statement was filed for adoption under
 217 s. 120.54(3) before the suspension.

218 (c) A suspension under this subsection tolls the time
 219 requirements under s. 120.54 for filing a rule for adoption in a
 220 rulemaking proceeding initiated by the agency before the date of
 221 the suspension. The time requirements shall resume on the date
 222 the suspension ends.

223 (d) This subsection does not suspend the adoption of
 224 emergency rules under s. 120.54(4) or rulemaking necessary to
 225 ensure the state’s compliance with federal law.

226 (10) EDUCATIONAL UNITS.—This section does not apply to
 227 educational units.

228 Section 3. Section 120.7455, Florida Statutes, is repealed.

229 Section 4. Effective upon this act becoming a law, any
 230 suspension of rulemaking authority under s. 120.745, Florida
 231 Statutes is rescinded. This section does not affect any
 232 restriction, suspension, or prohibition of rulemaking authority

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233 under any other provision of law.

234 Section 5. Except as otherwise expressly provided in this
235 act and except for this section, which shall take effect upon
236 this act becoming a law, this act shall take effect July 1,
237 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
9:08:40 AM P. Cobb
9:09:53 AM Sen. Latvala

9:09:57 AM	P. Cobb
9:10:00 AM	Sen. Latvala
9:10:05 AM	P. Cobb
9:10:15 AM	Sen. Latvala
9:10:46 AM	P. Cobb
9:10:54 AM	Sen. Latvala
9:10:55 AM	P. Cobb
9:11:28 AM	Sen. Latvala
9:11:31 AM	P. Cobb
9:11:34 AM	Sen. Latvala
9:11:48 AM	P. Cobb
9:12:33 AM	Sen. Latvala
9:12:39 AM	P. Cobb
9:12:40 AM	Sen. Latvala
9:13:40 AM	P. Cobb
9:15:02 AM	Sen. Montford
9:15:26 AM	P. Cobb
9:15:33 AM	Sen. Montford
9:15:40 AM	P. Cobb
9:15:48 AM	Sen. Montford
9:15:56 AM	P. Cobb
9:16:19 AM	Sen. Montford
9:16:25 AM	P. Cobb
9:16:34 AM	Sen. Latvala
9:17:00 AM	P. Cobb
9:17:11 AM	Sen. Latvala
9:17:14 AM	P. Cobb
9:17:39 AM	Sen. Ring
9:18:01 AM	P. Cobb
9:19:16 AM	Sen. Ring
9:19:38 AM	P. Cobb
9:20:27 AM	Sen. Lee
9:20:31 AM	Sen. Joyner
9:21:06 AM	P. Cobb
9:21:32 AM	Sen. Altman
9:21:49 AM	P. Cobb
9:21:57 AM	Sen. Lee
9:22:13 AM	P. Cobb
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