

Tab 1 **SB 912** by **Diaz**; (Similar to CS/CS/H 00689) Department of Business and Professional Regulation

Tab 2 **CS/CS/SB 996** by **EN, CA, Albritton**; (Compare to H 00639) Local Government Waste Programs

178238 A S CA, Albritton Delete L.40 - 81: 02/14 02:44 PM

Tab 3 **SB 1258** by **Diaz**; (Similar to CS/CS/H 00915) Commercial Service Airports

~~243780~~ D S WD CA, Diaz Delete everything after 02/14 02:29 PM

349612 D S CA, Diaz Delete everything after 02/14 02:30 PM

208538 AA S CA, Flores btw L.97 - 98: 02/17 01:20 PM

Tab 4 **CS/SB 1270** by **GO, Lee**; (Similar to H 01113) Fiduciary Duty of Care for Appointed Public Officials and Executive Officers

122172 A S L CA, Lee Delete L.65: 02/14 04:06 PM

Tab 5 **CS/SB 1636** by **GO, Baxley**; (Compare to CS/CS/H 01013) Repeal of Advisory Bodies and Councils

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Flores, Chair
Senator Farmer, Vice Chair

MEETING DATE: Monday, February 17, 2020
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 912 Diaz (Similar CS/CS/H 689, Compare CS/CS/H 623, CS/CS/S 1154)	Department of Business and Professional Regulation; Requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division’s electronic data submission system; renaming the Florida State Boxing Commission as the Florida Athletic Commission; revising requirements for issuing special licenses to certain food service establishments; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards, etc.	IT 02/03/2020 Not Considered IT 02/10/2020 Favorable CA 02/17/2020 AP
2	CS/CS/SB 996 Environment and Natural Resources / Community Affairs / Albritton (Compare H 639, H 1031, CS/S 724)	Local Government Waste Programs; Exempting fiscally constrained counties from certain local government recycling goals and requirements; creating a recycled materials management pilot program for Polk County, in coordination with the University of Florida, for a specified purpose; removing a provision authorizing a local government to pay a specified amount of compensation to a private waste company as an alternative to delaying displacement for a specified period; removing a provision authorizing a local government and a private waste company to negotiate such compensation and notice period, etc.	CA 01/27/2020 Fav/CS EN 02/10/2020 Fav/CS CA 02/17/2020 RC

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, February 17, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1258 Diaz (Similar CS/H 915)	Commercial Service Airports; Requiring the Auditor General to conduct specified audits of certain airports; requiring members of the governing body of a large-hub commercial service airport to comply with certain financial disclosure requirements; requiring the governing body of a municipality, county, or special district that operates a commercial service airport to establish and maintain a website; requiring commercial service airports to comply with certain contracting requirements, etc.	IS 01/27/2020 Favorable CA 02/17/2020 RC
4	CS/SB 1270 Governmental Oversight and Accountability / Lee (Similar H 1113)	Fiduciary Duty of Care for Appointed Public Officials and Executive Officers; Establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve such training programs or publish a list of approved training providers; specifying requirements for the appointment of executive officers and general counsels of governmental entities, etc.	GO 02/03/2020 Not Considered GO 02/10/2020 Fav/CS CA 02/17/2020 RC
5	CS/SB 1636 Governmental Oversight and Accountability / Baxley (Compare CS/CS/H 1013, H 6027, H 7039, S 388, S 1616, S 1688)	Repeal of Advisory Bodies and Councils; Repealing chapters 2003-287 and 2006-43, Laws of Florida, relating to the membership, powers, and duties of the Citrus/Hernando Waterways Restoration Council; removing the requirement that the Division of Historical Resources of the Department of State annually convene an ad hoc committee for purposes of administering the Great Floridians program; modifying procedures governing reclamation program applications to conform to the repeal of the Nonmandatory Land Reclamation Committee, etc.	GO 02/10/2020 Fav/CS CA 02/17/2020 RC

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 Community Affairs

BILL: SB 912

INTRODUCER: Senator Diaz

SUBJECT: Department of Business and Professional Regulation

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 912 revises provisions related to the licensing and regulation of tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

Related to reporting requirements for tobacco product wholesalers, the bill:

- Requires that reports required to be filed with the Division of Alcoholic Beverages and Tobacco must be filed through the agency's electronic system; and
- Revises the reporting requirements.

Related to procedures for licensing public lodging establishments and public food service establishments licensing, the bill:

- Deletes the requirement for a staggered license renewal schedule; and
- Requires that full annual license fee be paid at the time of application, instead of the current requirement for payment of a prorated initial license fee.

Related to regulation of pugilistic events, the bill:

- Changes the name of the Florida State Boxing Commission to the Florida Athletic Commission (commission); and
- Authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Related to alcohol beverage regulations, the bill:

- Requires applicants for an alcoholic beverage license to submit fingerprints to the DBPR electronically, provide proof of the applicant's right of occupancy for the entire premises for

which the applicant is seeking to license, and maintain a current electronic mail address with the DBPR;

- Requires licensees to submit reports on alcohol sales through the DBPR's electronic system;
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail; and
- Revises the compliance audit timeframes for special restaurant licensees.

Related to condominium associations, the bill:

- Requires that a proposed annual budget be provided to members of the association and adopted by its board of directors no later than 30 days before the beginning of the fiscal year;
- Defines when a person is delinquent in a payment due to an association;
- Deletes the requirement that the condominium ombudsman keep his or her principal office in Leon County; and
- Authorizes the DBPR to adopt rules for the submission of complaints against condominium associations.

The bill has an effective date of July 1, 2020.

II. Present Situation:

For ease of reference, the Present Situation for each section of SB 912 is addressed in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (the DBPR) is provided below.

Organization of the Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.¹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.²

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation,”³ as well as the procedural and administrative framework for those divisions and all of the professional boards within the DBPR.⁴

The DBPR’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state,”⁵ and regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁶

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁷

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.⁸ FCTMH has limited regulatory authority over the following entities and individuals:⁹

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and

¹ Section 548.003(1), F.S.

² See Parts I and III of ch. 450, F.S.

³ See s. 455.01(6), F.S.

⁴ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. See s. 455.221(1), F.S.

⁵ Section 455.201(2), F.S.

⁶ *Id.*

⁷ Section 455.201(4)(b), F.S.

⁸ Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Feb. 13, 2020).

⁹ *Id.*

- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DH&R) licenses, inspects and regulates public lodging and food service establishments in Florida. The DH&R also licenses and regulates elevators, escalators, and other vertical conveyance devices.¹⁰

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (DABT) regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- Receipt and processing of license applications;
- Collection and auditing of taxes, surcharges, and fees paid by licensees; and
- Enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.¹¹

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

The DABT is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements for cigarettes and other tobacco products, and ch. 569, F.S., which sets out requirements for the retail sale of tobacco products.¹²

“Cigarettes” are defined in s. 210.01(1), F.S., for the purpose of taxation, as “any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.”

“Tobacco products” are defined in s. 210.25(11), F.S., in the context of state taxes on tobacco products other than cigarettes or cigars, as “loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.”

¹⁰ Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Feb.12, 2020).

¹¹ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Feb. 12, 2020).

¹² Section 561.02, F.S.

Cigars, nicotine products, and nicotine dispensing devices are not included in the above definitions, and therefore are not taxed as a cigarette or tobacco product in Florida.¹³

A person, firm, association, or corporation must obtain a permit from the DABT to function as any of the following in Florida:

- Retail tobacco products dealer;¹⁴
- Cigarette manufacturer;¹⁵
- Cigarette wholesale dealer;¹⁶
- Cigarette distributing agent;¹⁷
- Cigarette importer;¹⁸
- Cigarette exporter;¹⁹
- Cigar wholesale dealer;²⁰ or
- Tobacco wholesale dealer/distributor.²¹

The DABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to DABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. The DABT prescribes the manner in which these records are submitted.²²

The DABT also collects monthly returns showing the taxable price of each tobacco product (other than cigarettes or cigars) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. The DABT prescribes the form and content for submitting such returns to the DABT. Each return must be accompanied by a remittance for the full tax liability shown.²³

Effect of Proposed Changes

The bill amends ss. 210.09(2) and 210.55(1), F.S., related to monthly reports and records for cigarettes and other tobacco products, to require that all reports filed with the DABT must be made through the DABT's electronic data submission system.

¹³ Sections 210.01(1) and 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. Section 877.112(1)(a) and (b), F.S.

¹⁴ Section 569.003, F.S.

¹⁵ Sections 210.01(21) and 210.15, F.S.

¹⁶ Sections 210.01(6) and 210.15(1), F.S.

¹⁷ Sections 210.01(14) and 210.15(1), F.S.

¹⁸ Sections 210.01(20) and 210.15(1), F.S.

¹⁹ Sections 210.01(17) and 210.15(1), F.S.

²⁰ Section 210.65(2), F.S.

²¹ Sections 210.25(5) and 210.40, F.S.

²² Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission.

Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1> (last visited Feb. 12, 2020).

²³ Sections 210.55(1), F.S.

The bill also amends s. 210.55(1), F.S., to require a tobacco wholesaler (the taxpayer) to submit a full and complete report with the DABT showing the tobacco products (other than cigars or cigarettes) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. The bill deletes the requirement that the report show the taxable price of each tobacco product.

Division of Hotels and Restaurants

Present Situation

The DH&R licenses, inspects, and regulates public lodging establishments and public food service establishments in Florida.²⁴

The term “public lodging establishment” includes:²⁵

- “Transient public lodging establishments,” which means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests;” and
- “Nontransient public lodging establishments,” which means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.”

“Public food service establishments” means “any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption,” with certain exceptions.²⁶

Each public lodging establishment and public food service establishment must obtain a license from the DH&R. Licenses are renewed annually, and the DH&R must adopt a rule establishing a staggered schedule for license renewals.²⁷ For public lodging establishments, the DH&R must adopt, by rule, a schedule of fees to be paid based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments. Such fees may not exceed \$1,000.²⁸

License fees generally range from \$91 for a temporary food vendor to \$370 for a hotel with more than 500 rental units.²⁹

²⁴ Section 509.032, F.S.

²⁵ Section 509.013(4), F.S.

²⁶ Section 509.013(5), F.S.

²⁷ Section 509.241(1), F.S.

²⁸ Section 509.251(1) and (2), F.S.

²⁹ See Fla. Admin. Code R. 61C-1.008 and Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Feb. 12, 2020); Department of Business and Professional Regulation, *Hotel and Restaurants – Food*

The fee schedule for a public lodging establishment and public food service establishment license must require an applicant for an initial license to pay the full license fee if the application is made during the annual renewal period or more than six months before the next such renewal period, and one-half of the fee if the application is made six months or less before the next renewal period.³⁰

Effect of Proposed Changes

The bill amends s. 509.241(1), F.S., to delete the requirement for a staggered license renewal schedule for public lodging establishments and public food service establishments. The bill authorized the DH&R to adopt rules to establish procedures for license issuance and renewals.

The bill amends s. 509.251(1) and (2), F.S., to delete the requirement for payment of a prorated initial license fee based on when an application is submitted. Under the bill, the full annual license fees must be paid at the time of the initial license application.

State Boxing Commission

Present Situation:

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,³¹ and mixed martial arts³² by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.³³

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida³⁴ which involves a professional.³⁵ Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.³⁶ Chapter 548, F.S. does not apply to certain professional or amateur “martial arts,” such as karate, aikido, judo, and kung fu; the term “martial arts” is distinct from and does not include “mixed martial arts.”³⁷

However, as to amateur matches, the commission’s jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.³⁸

Service Fees, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Feb. 12, 2020).

³⁰ Sections 509.251(1) and (2), F.S., relating to the fee schedule for public lodging establishments and public food service establishments, respectively, and Fla. Admin. Code R. 61C-1.008.

³¹ The term “kickboxing” means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.

³² The term “mixed martial arts” means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

³³ *See* s. 548.003(1), F.S.

³⁴ *See* s. 548.006(1), F.S.

³⁵ The term “professional” means a person who has “received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match.” *See* s. 548.002(19), F.S.

³⁶ *See* s. 548.006(4), F.S.

³⁷ *See* s. 548.007(6), F.S., and *see supra* note 32 for the definition of “mixed martial arts.”

³⁸ *See* s. 548.006(3), F.S.

Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.³⁹ During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.⁴⁰

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.⁴¹

The commission must establish by rule appropriate weight of gloves to be used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices that the commission deems necessary.⁴²

Effect of Proposed Changes

The bill amends s. 458.003, F.S., to change the name of the commission to the Florida Athletic Commission.

The bill amends s. 548.043(3), F.S., to authorize the commission to establish by rule the need for gloves, if any, in each pugilistic match. The bill also authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches, and deletes the requirement that the gloves weigh between four to eight ounces each. The bill also deletes the requirement for all participants in pugilistic matches to wear gloves.

The bill amends ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S., to conform references to the name of the commission.

Division of Alcoholic Beverages and Tobacco

Present Situation

The DABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.⁴³

³⁹ Section 548.002(2), F.S.

⁴⁰ See DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Feb. 12, 2020).

⁴¹ The term “participant” means a professional competing in a boxing, kickboxing, or mixed martial arts match. See s. 548.002, F.S., for the definitions of “participant,” “manager,” “second,” “judge,” “physician,” “matchmaker,” and “promoter.” The terms “trainer,” “timekeeper,” “referee,” and “announcer” are not defined in ch. 548, F.S.

⁴² Section 548.043(3), F.S.

⁴³ Section 561.02, F.S.

License Application Process

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, must file a sworn application in the format prescribed by the DABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by the DABT.⁴⁴

Before any application is approved, the DABT may require an applicant, and any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, to file a set of fingerprints with the DABT on regular United States Department of Justice forms.⁴⁵

All applications for alcoholic beverage licenses for consumption on the premises must be accompanied by a certificate from DH&R, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business where the business is to be conducted meets all of the sanitary requirements of the state.⁴⁶

The application for an alcoholic beverage license must include a sketch of the licensed premises over which the applicant must have some dominion and control.⁴⁷ Current law does not require an applicant for an alcoholic beverage license to submit proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Current law does not require an alcoholic beverage licensee or an applicant for a license to provide and maintain an electronic mail address for communications with the DABT.

Recordkeeping and Reporting Requirements

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports to the DABT showing the amount of alcoholic beverages:⁴⁸

- Manufactured or sold within the state and to whom sold;
- Imported from beyond the limits of the state and to whom sold; and
- Exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to the DABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate with two copies sent to the DABT and a third copy to

⁴⁴ Section 561.17(1), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 561.01(11), F.S., defining the term "licensed premises, and s. 565.03(2)(c), F.S., dealing with craft distilleries.

⁴⁸ Section 561.55(1), F.S.

be retained for the licensee's record. Reports must be made on forms prepared and furnished by DABT.⁴⁹

Credit for the Sale of Liquor

A retail vendor must make a timely payment to a distributor of alcoholic beverages within 10 days after the calendar week in which the alcoholic beverages were purchased. When a vendor does not make a timely payment, the distributor who made the sale must, within three days, notify the DABT in writing that payment has not been made.⁵⁰

The DABT must then give notice to the vendor that it has received a notice of payment delinquency from a distributor. The vendor has five days after receipt of the notice to show cause why further sales to the vendor should not be prohibited. The vendor may demand a hearing before the DABT. The demand for a hearing must be delivered to the DABT in person or by mail within those five days.⁵¹

If a vendor does not demand a hearing, the DABT must declare in writing to the vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until the DABT certifies in writing that such vendor has fully paid for all liquors previously purchased.⁵²

Permit Carriers

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries away from its place of business for sales made at the licensed place of business. Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁵³

The term "permit carrier" is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.⁵⁴ A permit is not required for licensees making a delivery of alcoholic beverages under this section.

In 2015, the Legislature amended s. 561.57, F.S., to delete a requirement for a permit for each vehicle used to deliver alcoholic beverages from a distributor's place of business to the vendor's licensed premises or to an off-premises storage permitted by the DABT. The 2015 amendment to

⁴⁹ Section 561.55(2), F.S.

⁵⁰ Section 561.42(3), F.S.

⁵¹ Section 561.42(4), F.S.

⁵² *Id.*

⁵³ Section 561.57(2), F.S.

⁵⁴ Section 561.01(20), F.S.

s. 561.57, F.S., also removed a requirement for vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.⁵⁵

Special Restaurant Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

A “special license” is an exception to the quota licensing scheme to allow the sale of beer, wine, and distilled spirits without a quota license and subject to conditions. One such special license is a “special restaurant license,” (termed and SRX license) which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. The DABT must perform an audit to confirm compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period and each 12-month operating period thereafter.⁵⁶

If a special restaurant licensee fails to satisfy the percentage requirements for the sale of food and nonalcoholic beverage, the license must be revoked or a pending license application must be denied. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation or denial of a license application.⁵⁷

Effect of Proposed Changes

The bill deletes the definition for the term “permit carrier” in s. 561.01(20), F.S. The bill also corrects cross-references in s. 561.20(2)(a), F.S., affected by the deletion of the definition of the term “permit carrier.”

The bill amends the alcoholic beverage license application process in s. 561.17(1), F.S., to require applicants to file fingerprints electronically through an approved electronic fingerprinting vendor, or to use a form prescribed by the Florida Department of Law Enforcement. The bill deletes the requirement that the fingerprints be submitted on regular United States Department of Justice forms.

The bill amends s. 561.17(2), F.S., to require an applicant for any alcoholic beverage license to provide proof of the applicant’s right of occupancy for the entire premises sought to be licensed.

The bill creates s. 561.17(5), F.S., to require any person or entity licensed or permitted by the DABT to provide an electronic mail address to the DABT to function as the primary contact for all communication by the DABT to the licensee or permittee. Under the bill, licensees and permittees are responsible for maintaining accurate contact information with the DABT.

⁵⁵ Chapter 2015-52, Laws of Fla.

⁵⁶ Section 561.20(2)(a)4., F.S.

⁵⁷ Section 561.20(2)(a)4., F.S.

The bill amends s. 561.20(2)(a)4., F.S., to revise the auditing timeframes for special restaurant licensees. Under the bill, the DABT must perform the initial compliance audit within the first 120 days of operation, instead of within the first 60 days.

In addition, the bill revises the frequency of subsequent audits. Under the bill, the frequency of compliance audits is determined by the percentage of the licensee's gross revenue from the sale of food and nonalcoholic beverages, as established by the licensee's most recent audit. The bill provides the following audit levels:

- Level 1 licensees, with 51 to 60 percent, will be audited every year;
- Level 2 licensees, with 61 to 75 percent, will be audited every two years;
- Level 3 licensees, with 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, with 91 to 100 percent, will be audited every four years.

The bill amends s. 561.42(4), F.S., to require the DABT to give a retail vendor notice of a payment delinquency via electronic mail. The bill deletes the requirement that the delinquency notice must be a written notice. The bill also allows a vendor to send a demand for a hearing to the DABT by electronic mail.

The bill amends s. 561.55(2), F.S., to delete the requirement that reports by a manufacturer, distributor, broker, sales agent, and importer must be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

Condominiums

Present Situation

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.⁵⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁵⁹ All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws which govern the administration of the association.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.⁶⁰ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer

⁵⁸ Section 718.103(11), F.S.

⁵⁹ Section 718.104(2), F.S.

⁶⁰ Sections 718.501(1) and 719.501(1), F.S.

control to the association.⁶¹ After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.⁶² For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁶³

As part of the FCTMH's authority to investigate complaints, the FCTMH may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁶⁴

If the FCTMH has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The FCTMH may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The FCTMH may also impose civil penalties.⁶⁵

Annual Budget

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.⁶⁶

An association must hold a meeting to adopt a proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.⁶⁷ The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.⁶⁸ Current law does not define the timing for adoption of the budget.

Board of Directors – Eligibility based on Payment of Monetary Obligations

A condominium association is overseen by an elected board of directors (termed a Board of Administration). The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, has the responsibility to act with the highest degree

⁶¹ *Id.*

⁶² Section 718.501(1), F.S.

⁶³ Section 719.501(1), F.S.

⁶⁴ Sections 718.501(1) and 719.501(1), F.S.

⁶⁵ *Id.*

⁶⁶ Section 718.112(2)(f), F.S.

⁶⁷ Section 718.112(2)(e)1., F.S.

⁶⁸ Sections 718.112(2)(f) and 718.504(21), F.S.

of good faith, and must place the interests of the unit owners above the personal interests of the directors.⁶⁹

To become a board member, a person may be:

- Elected to the board by the members of the association;⁷⁰ or
- Appointed to the board by the developer if the developer is still entitled to representation; or by the board of directors if a vacancy on the board occurs between meetings.⁷¹

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.⁷² However, current law also establishes minimum qualification to serve on an association's board of directors.⁷³ To serve as a director, a person may not:⁷⁴

- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be delinquent in the payment of any monetary obligation to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.⁷⁵

Chapter 718, F.S., does not define the terms "monetary obligation" or "delinquent." According to the DBPR, the defining the term "delinquent" would assist in the FCTMH's investigation of cases in which the unit owner alleges they were left off of an election ballot because of a delinquent payment to the association.⁷⁶ The DBPR also maintains that it is the practice of a "controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election."⁷⁷

Condominium Ombudsman

The office of the ombudsman within the FCTMH is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷⁸

⁶⁹ Sections 718.103(4), 718.111, and 718.112, F.S.

⁷⁰ Section 718.112(2)(d)4., F.S.

⁷¹ Sections 617.0809 and 718.112(2)(d)9., F.S.

⁷² Section 718.112(2)(a), F.S.

⁷³ Section 718.112(2)(d), F.S.

⁷⁴ Section 718.112(2)(d), F.S.

⁷⁵ Section 718.111(1)(d), F.S.

⁷⁶ See Department of Business and Professional Regulation, *SB 912 Bill Analysis*, p. 5 (Dec. 9, 2019) (on file with Senate Committee on Innovation, Industry, and Technology).

⁷⁷ *Id.*

⁷⁸ Sections 718.5011 and 718.5012, F.S.

The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁷⁹

The ombudsman is required to maintain his or her principal office in Leon County.⁸⁰

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2.F.S., to replace the term “monetary obligation” with the term “assessment.” The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association’s declaration, articles of incorporation, or bylaws (governing documents). If no due date is specifically identified in the governing documents, the due date is the first day of the monthly or quarterly assessment period.

The bill amends s. 718.112(2)(f), F.S., to require a condominium association’s annual budget to be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. Under the bill, an association must also satisfy the 14-day notice requirement in s. 718.112(2)(e)1., F.S., for any meeting at which a proposed annual budget of an association will be considered by the board or unit owners.

The bill amends s. 718.501, F.S., to authorize the FCTMH to adopt rules regarding the submission of a complaint against a condominium association.

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Effective Date

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷⁹ *Id.*

⁸⁰ Section 718.5014, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DBPR, the bill may reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save approximately \$1.4 million in Fiscal Year 2020-2021 by the elimination of the staggered and prorated renewal schedule which would provide new licensees with a full year of licensure.

C. Government Sector Impact:

According to the DBPR, “tax revenue may be maximized by the required electronic submission of tax reports” to the Division of Alcoholic Beverages and Tobacco.

For the Division of Hotels and Restaurants, the DBPR projects that the bill will reduce the division’s revenue by approximately 3.9 percent for Fiscal Year 2020-2021.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida Department of Law Enforcement, to facilitate state and national criminal history record checks, the department recommends modifying the proposed language on lines 329-332 to read:

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13), F.S. The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

Fees for the state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in

s. 943.053(3)(e), F.S., for records provided to persons or entities other than those specified as exceptions therein.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 509.241, 509.251, 548.003, 548.043, 561.01, 561.17, 561.20, 561.42, 561.55, 718.112, 718.501, 718.5014, 455.219, 548.002, 548.05, 548.071, and 548.077.

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.

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 Community Affairs

BILL: CS/CS/SB 996

INTRODUCER: Environment and Natural Resources Committee; Community Affairs Committee; and Senator Albritton

SUBJECT: Local Government Waste Programs

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
3.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 996 exempts fiscally constrained counties from solid waste goals and requirements for local governments. The exemption expires July 1, 2035.

The bill creates a recycled materials management pilot project for Polk County, in coordination with the University of Florida. The bill contains requirements for the program. During the term of the program, Polk County is exempt from the solid waste goals and requirements for local governments. Polk County must submit a report on the pilot program to the Governor and Legislature by July 1, 2025. The pilot program expires July 1, 2025.

The bill revises the definition of “displacement” in requirements for local government collection services that displace private waste companies. The bill states that the term does not apply to certain government actions or situations at the end of a franchise granted to a private company.

The bill revises the process and procedures a local government must follow to displace a private waste company. The bill removes the discretion of the local government to pay a displaced company in lieu of providing a 3-year notice period. The bill makes the 3-year notice requirement mandatory before a local government engages in the actual provision of the service that displaces the company. In addition, the bill requires a local government to pay a displaced

company an amount equal to the company's gross receipts for the preceding 18 months at the end of the 3-year period.

II. Present Situation:

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.³

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.⁴ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.⁵

Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.⁶ A county may require that any person within the county demonstrate the existence of some arrangement or contract by which the person's solid waste⁷ will be disposed of in a manner consistent with county ordinance or state or federal law.⁸ Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.⁹

The Department of Environmental Protection (DEP) is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.¹⁰ The program is required to include procedures and requirements to ensure cooperative efforts in

¹ FLA. CONST., art. VIII, s. 1.(f).

² FLA. CONST., art. VIII, s. 1.(g).

³ FLA. CONST., art. VIII, s. 2.(b); *see also* s. 166.021(1), F.S.

⁴ Section 125.01(1)(d)(e)(f) and (k)1., F.S.

⁵ Section 166.021(3), F.S.

⁶ Section 125.01(1)(k)1., F.S.

⁷ Section 403.703(36), F.S., defines "solid waste" as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

⁸ Section 125.01(1)(k)2., F.S.

⁹ Section 403.706(1), F.S.

¹⁰ Section 403.705, F.S.

solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.¹¹

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county¹² and may contract with other persons to fulfill some or all of its solid waste responsibilities.¹³ Each county must ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.¹⁴ In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.¹⁵ Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.¹⁶

Competition with Private Companies

Section 403.70605, F.S., was enacted in 2000¹⁷ to address concerns of private waste management companies about competition with local government solid waste departments for third party service contracts. Private companies were concerned that public entities were able to subsidize their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.¹⁸

Solid Waste Collection Services in Direct Competition

Under s. 403.70605, F.S., local governments providing specific solid waste collection services in direct competition with a private company must comply with local environmental, health, and safety standards applicable to private companies providing competitive collection services.¹⁹ Local governments may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services, excluding zoning, land use, or comprehensive plan requirements.²⁰

¹¹ Section 403.705(2)(a), F.S.

¹² Section 403.706(1), F.S.

¹³ Section 403.706(8), F.S.

¹⁴ Section 403.706(3), F.S.

¹⁵ Section 403.7063, F.S.

¹⁶ *Id.*

¹⁷ Chapter 2000-304, s. 1, Laws of Fla.

¹⁸ See Florida House of Representatives, *CS/HB 1425 Final Analysis*, p. 2 (May 12, 2000), available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited Feb. 13, 2020).

¹⁹ Section 403.70605(1)(a), F.S.

²⁰ Section 403.70605(1)(a)2., F.S.

When providing solid waste collection services outside of their jurisdiction in competition with private companies, local governments are prohibited from instituting predatory pricing schemes.²¹

A private company in competition with a local government has legal remedies against local government action that violates the statute, including injunctive relief.²² The private company must notify the local government of the violation and give them 30 days to respond. A local government may defend against these suits if the official action has a reasonable relationship to the health, safety, or welfare of the citizens of the local government or the action taken was in direct response to a natural disaster or emergency declaration order by the Governor. A court may still grant relief in cases where the official action was taken for public health and safety if the court finds that the actual or potential anticompetitive effects of the official action outweigh the public benefits.

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company²³ that provides garbage, trash, or refuse collection without following the requirements under s. 403.70605, F.S. “Displacement” refers to a local government deciding to provide a collection service and prohibiting a private company from continuing to provide the same service it was providing at the time the local government decision was made.²⁴

Displacement does not include situations such as:

- Public and private sector competition for individual contracts;
- A local government refusing to renew an expiring contract with a private company;
- Local government action in response to any act by a private company that is a threat to public health or safety or a substantial public nuisance;
- A material breach of contract by a private company;
- Contracts between local governments and private companies absent an ordinance that displaces another private company;
- A majority of property owners in the displacement area petitioning for the local governing body to take over collection services;
- Municipal annexations honoring existing solid waste contracts pursuant to law; or
- A private company licensed to provide service for a limited time whose license expires and is not renewed by the local government.²⁵

Before displacing a private company, a local government must first hold at least one public hearing, publicly noticed, with separate notice to private companies providing service in the jurisdiction by mail at least 45 days before the hearing.²⁶ The local government must take measures to provide services within 1 year of the final public hearing, and provide 3 years’

²¹ Section 403.70605(2), F.S.; *see also* ss. 542.18 and 542.19, F.S.

²² *See* ss. 403.70605(1)(b) & (2)(c), F.S. for information for this entire paragraph.

²³ “Private company” does not include another local government providing solid waste collection services. Section 403.70605(4)(b), F.S.

²⁴ Section 403.70605(3)(a), F.S.

²⁵ *Id.*

²⁶ Section 403.70605(3)(b), F.S.

notice to a private company before it engages in the actual provision of the service that displaces the company. To avoid the 3 years' notice requirement, the local government may pay the displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service in the displacement area. The local government and the private company are not prohibited from agreeing to a different notice period or compensation amount.²⁷

If a private company refuses to continue operations under the terms and conditions of its existing agreement during the 3-year notice period, the company no longer falls within the definition of displaced.²⁸

Other Restrictions on Terminating Private Solid Waste Collection Services

A new municipality, except for the merger of existing municipalities, cannot incorporate without honoring any existing solid waste contracts for 5 years or the remainder of the contract term, whichever is shorter.²⁹ Similarly, municipalities cannot annex additional land subject to existing solid waste contracts without honoring the existing contracts for 5 years or the remainder of the contract term, whichever is shorter.³⁰ If an exclusive franchisee has provided services in an area to be annexed for at least the preceding 6 months, the franchisee may continue to provide service in the area for the shorter of 5 years or the expiration of its service contract as long as it meets certain conditions including providing the service at a reasonable cost.³¹

Recycling in Florida

“Recycling” is any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.³² “Municipal solid waste” includes any solid waste (except for sludge) resulting from the operation of residential, commercial, or governmental establishments that would normally be collected, processed, and disposed of through a solid waste management service (this excludes waste from industrial, mining, or agricultural operations).³³

In 2008, the Legislature established a weight-based goal of recycling 75 percent of Florida's municipal solid waste by 2020.³⁴ In 2010, the Legislature established interim goals that counties must pursue leading up to 2020.³⁵ The interim goals require each Florida county to implement a recyclable materials recycling program with a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31,

²⁷ Section 403.70605(3)(c), F.S.

²⁸ Section 403.70605(3)(a)5., F.S.

²⁹ See s. 165.061(1)(f); see also FLA. CONST., art. I, s. 10.

³⁰ See s. 171.062(4), F.S.; see also FLA. CONST., art. I, s. 10.

³¹ Section 171.062(4)(a)2., F.S.

³² Section 403.703(31), F.S.

³³ Section 403.706(5), F.S.

³⁴ Chapter 2008-227, s. 95, Laws of Fla.; s. 403.7032, F.S.; see DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 5, 7, 28 (2017)[hereinafter *DEP 2017 Report*], available at <https://floridadep.gov/waste/waste-reduction/content/recycling>. The 75% recycling goal is a weight-based recycling rate: for every 100 tons of municipal solid waste collected, the goal is to recycle (or recover energy from) at least 75 tons.

³⁵ Chapter 2010-143, s. 7, Laws of Fla.; s. 403.706(2)(a), F.S.

2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.³⁶ These programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream before final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers.
- Aluminum cans.
- Steel cans.
- Glass.
- Plastic bottles.
- Cardboard.
- Office paper.
- Yard trash.³⁷

Counties with a population of 100,000 or less, in lieu of achieving the interim goals, may instead provide residents with the opportunity to recycle.³⁸ Providing the “opportunity to recycle” must include both of the following:

- Either:
 - Providing a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or
 - Providing a system of places within the county for collection of source-separated recyclable materials.
- Providing a public education and promotion program that is conducted to inform residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling and composting materials.³⁹

According to a 2019 report by DEP, only 36 of Florida’s 67 counties have populations over 100,000.⁴⁰ These 36 counties contain approximately 95% of Florida’s population, and produced 45 million of the 47 million tons of municipal solid waste generated in Florida in 2018.⁴¹

In order to assess progress towards achieving the interim goals, counties are required to provide information on their solid waste management programs and recycling activities to DEP by April 1 of each year.⁴² Certain activities are eligible for special credit towards achieving a county’s recycling goals, including using solid waste as a fuel in a renewable energy facility and innovatively using yard trash or other clean wood waste or paper waste.⁴³ If DEP determines that a county has not reached the interim recycling goals in time, DEP is authorized to direct the county to develop a plan to expand recycling programs to existing commercial and multifamily

³⁶ Section 403.706(2)(a), F.S.

³⁷ Section 403.706(2)(f), F.S.

³⁸ Section 403.706(4)(c), F.S.

³⁹ *Id.*

⁴⁰ DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 1*, 3, 9 (2019)[hereinafter *DEP 2019 Report*], available at <https://floridadep.gov/waste/waste-reduction/content/recycling> (last visited Feb. 13, 2020).

⁴¹ *Id.* at 18, 29.

⁴² Section 403.706(7), F.S.; Fla. Admin. Code R. 62-716.450.

⁴³ Section 403.706(4), F.S.

dwellings, including apartment complexes.⁴⁴ Such a directive applies to the larger counties (with populations over 100,000), which are required to pursue the interim goals.⁴⁵

Florida achieved the interim recycling goals established for 2012 and 2014.⁴⁶ However, Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent.⁴⁷ Florida's recycling rate declined from 52 percent in 2017 to 49 percent in 2018, both of which fall short of the interim targets.⁴⁸ This decrease can largely be attributed to a reduction in the reported amount of construction and demolition (C&D) debris recycled in 2018.⁴⁹ In those years when the state's recycling rate does not meet the statutory thresholds for the interim goals, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives, identifying those additional programs or statutory changes needed to achieve the state's recycling goals.⁵⁰ DEP submitted the most recent status report in 2019.⁵¹ Without significant changes to the current approach, DEP does not expect the 75 percent by 2020 goal will be achieved.⁵²

In 2018, of Florida's 36 large counties (with populations over 100,000), four met the 70% interim recycling goal.⁵³ Recycling credits received for renewable energy and C&D debris were the primary factors for success in these four counties.⁵⁴ In August of 2019, DEP requested each of the 32 large counties not reaching the interim goals to develop a plan to expand current recycling programs to existing commercial and multifamily dwellings.⁵⁵ As of November 21, 2019, DEP has received all 32 county recycling plans.⁵⁶

DEP may reduce or modify the municipal solid waste recycling goal if necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.⁵⁷

DEP has been working to increase recycling rates through grant programs, educational opportunities, and the development of a statewide outreach campaign called "Rethink. Reset. Recycle."⁵⁸ DEP is also working on the following recycling options:

⁴⁴ Section 403.706(2)(d), F.S.

⁴⁵ *DEP 2019 Report*, at 3.

⁴⁶ *DEP 2017 Report*, at 5, available at <https://floridadep.gov/waste/waste-reduction/content/recycling> (last visited Feb. 13, 2020).

⁴⁷ *Id.*

⁴⁸ *DEP 2019 Report*, at 3.

⁴⁹ *Id.* at 9; *see. s. 403.706(2)(b)*, F.S. Each county must implement a program for recycling C&D debris.

⁵⁰ Section 403.706(2)(e), F.S.

⁵¹ *DEP 2019 Report*, at 3.

⁵² *Id.* at 29.

⁵³ *Id.* at 3.

⁵⁴ *Id.*

⁵⁵ *Id.* at 9.

⁵⁶ *Id.*; DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 2, Appendices*, Appendix B (2019), available at <https://floridadep.gov/waste/waste-reduction/content/recycling> (last visited Feb. 13, 2020).

⁵⁷ *Id.*

⁵⁸ *DEP 2019 Report*, at 22, available at <https://floridadep.gov/waste/waste-reduction/content/recycling>; Rethink. Reset. Recycle., *About*, <https://floridarecycles.org/> (last visited Feb. 13, 2020).

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management⁵⁹ processes.
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020 to market-specific goals such as a food diversion goal or an organics recycling goal.
- Requesting that Florida's state universities and Department of Education review potential K-12 curriculum programs emphasizing waste reduction and recycling practices.
- Continuing to work with state agencies to identify recycling/cost-saving measures specific to their operations.
- Providing counties not achieving the interim recycling goals with assistance in analyzing, planning, and executing opportunities to increase recycling.⁶⁰

Contamination

Many counties and municipalities have instituted single stream recycling programs.⁶¹ Single stream curbside recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling paper, plastic bottles, metal cans, and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the number of materials collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recovered materials, resulting in increased contamination originating in the curbside recycling cart.⁶²

Contamination hinders processing at recovered materials processing facilities (RMPFs) when unwanted items are placed into recycling carts.⁶³ For example, plastic bags are harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While RMPFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process and result in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair, or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recovered materials, and increased rejection and landfilling of materials. Although some local governments have implemented successful single-stream recycling programs with low contamination rates, contamination rates for other programs have continued to increase.⁶⁴

⁵⁹ See EPA, *Sustainable Materials Management Basics*, <https://www.epa.gov/smm/sustainable-materials-management-basics> (last visited Feb. 13, 2020); see *DEP 2019 Report*, at 26-29, available at https://floridadep.gov/sites/default/files/Final%20Strategic%20Plan%202012-13-2019_1.pdf (last visited Feb. 13, 2020). The report contains a discussion of Sustainable Materials Management.

⁶⁰ *DEP 2019 Report*, at 10.

⁶¹ *Id.* at 11.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

Recycling Markets

Until 2017, China consumed over 50 percent of the recycled paper and plastic in the world, including 70 percent of the plastics collected for recycling in the U.S.⁶⁵ In 2017, China announced a ban on the import of 24 recyclable materials, such as post-consumer plastics and mixed paper, as well as a 0.5 percent contamination standard for most recyclables not named in the ban.⁶⁶ In 2018, the ban was expanded to include post-industrial plastics and a variety of scrap metals, and China implemented pre-shipment inspection requirements for inbound loads of certain material.⁶⁷ The ban has caused shipments of recyclables to other Asian countries to increase dramatically, resulting in nations including India, Malaysia, Indonesia, Thailand, and Vietnam enacting policies restricting the import of recyclable materials.⁶⁸

China's recycling ban has created substantial challenges around the world for the solid waste and recycling industry.⁶⁹ The loss of the Chinese export markets has caused recyclable materials to be sent to landfills or burned.⁷⁰ China's ban and higher standards for contamination are leading to higher costs and lower revenues for the U.S. recycling industry.⁷¹ In Florida, local governments are struggling with issues such as rising costs of processing and high contamination rates.⁷² DEP reports that these changes in the markets create challenges for Florida as it tries to increase its recycling rates because future growth is dependent on healthy markets.⁷³ The increased supply of recyclable materials and decreased demand from end markets has resulted in a depression of commodities prices in the recycling industry.⁷⁴ In response, DEP has utilized state programs and engaged various stakeholders to develop and grow Florida's recycling markets.⁷⁵

⁶⁵ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1 (Apr. 2018), available at <https://wasterecycling.org/>; Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, Yale Environment 360 (Mar. 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Feb. 13, 2020).

⁶⁶ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*, <https://resource-recycling.com/recycling/2018/02/13/green-fence-red-alert-china-timeline/> (last visited Feb. 13, 2020); National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1 (Apr. 2018).

⁶⁷ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*; see also Resource Recycling, *China Reiterates Total Ban and Tries to Define "Solid Waste"* (Apr. 9, 2019), available at <https://resource-recycling.com/recycling/2019/04/09/china-reiterates-total-ban-and-tries-to-define-solid-waste/> (last visited Feb. 13, 2020).

China is planning a total ban on virtually all recovered material imports.

⁶⁸ Resource Recycling, *From Green Fence to Red Alert: A China Timeline*; Christopher Joyce, *Where Will Your Plastic Trash Go Now That China Doesn't Want It?*, NPR (Mar. 13, 2019), <https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it> (last visited Feb. 13, 2020).

⁶⁹ See Brooks et. al., *The Chinese Import Ban and Its Impact on Global Plastic Waste Trade*, SCIENCES ADVANCES (Jun. 20, 2019), available at <https://advances.sciencemag.org/content/advances/4/6/eaat0131.full.pdf> (last visited Feb. 13, 2020).

⁷⁰ Cheryl Katz, *Piling Up: How China's Ban on Importing Waste Has Stalled Global Recycling*, Yale Environment 360 (March 7, 2019), <https://e360.yale.edu/features/piling-up-how-chinas-ban-on-importing-waste-has-stalled-global-recycling> (last visited Feb. 13, 2020).

⁷¹ National Waste & Recycling Association, *Issue Brief: China's Changing Policies on Imported Recyclables*, 1-2 (Apr. 2018), available at <https://wasterecycling.org/> (last visited Feb. 13, 2020).

⁷² Waste Dive, *How Recycling is Changing in All 50 States* (June 5, 2019), <https://www.wastedive.com/news/what-chinese-import-policies-mean-for-all-50-states/510751/> (last visited Feb. 13, 2020).

⁷³ *DEP 2017 Report*, at 15, available at <https://floridadep.gov/waste/waste-reduction/content/recycling>.

⁷⁴ *Id.*

⁷⁵ *Id.* at 15-17; *DEP 2019 Report*, at 12-15, available at <https://floridadep.gov/waste/waste-reduction/content/recycling>.

The reduction in global markets has forced many waste haulers and waste management companies to reduce the amount of contamination, i.e., unwanted items found in recycling bins, being transported and delivered to their processing facilities.⁷⁶ Reducing contamination increases the value of the recovered materials.⁷⁷ Due to decreases in the average price for mixed recovered materials, several counties have been asked to renegotiate their recycling contracts.⁷⁸ Many of the contracts have clauses that stipulate contamination must be below a certain percentage or the local government will be charged a much higher rate and/or penalized.⁷⁹ There is very little revenue, if any, generated and returned to municipalities for recovered materials that have been collected and processed, and many municipalities are left with decisions regarding which materials to include in curbside recycling programs or whether to continue the programs.⁸⁰

Fiscally Constrained Counties

Section 218.67, F.S., defines “fiscally constrained counties” as:

- Each county entirely within a rural area of opportunity⁸¹ as designated by the Governor pursuant to the Rural Economic Development Initiative in s. 288.0656, F.S.; or
- Each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to the calculations in s. 1011.62(4)(a)1.a., F.S., from the previous July 1.⁸²

For the 2019-20 fiscal year, the Department of Revenue determined the following 29 counties to be fiscally constrained: Baker, Bradford, Calhoun, Columbia, DeSoto, Dixie, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Suwannee, Taylor, Union, Wakulla, and Washington.⁸³

III. Effect of Proposed Changes:

The bill amends s. 403.706, F.S., which contains goals and requirements for county recycling programs. The bill exempts fiscally constrained counties⁸⁴ from solid waste goals and requirements for local governments in s. 403.706, F.S. The exemption expires July 1, 2035.

The bill contains legislative findings regarding challenges in meeting the state’s recycling goals and the need to investigate other options for the management of recyclable material resources.

⁷⁶ *DEP 2019 Report*, at 12.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 12-13.

⁸⁰ *Id.* at 13.

⁸¹ See s. 288.0656(2), F.S. A rural area of opportunity is a rural community (such as counties with a population of 75,000 or fewer), or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe/chronic distress, or a natural disaster, or which presents a unique economic development opportunity of regional impact.

⁸² Section 218.67(1), F.S.

⁸³ Office of Economic and Demographic Research, *2019 Local Government Financial Information Handbook*, 93 (2019), available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf>; see also Department of Revenue, *Fiscally Constrained Counties*, available at <https://floridarevenue.com/property/Documents/fcco081210.pdf>. (last visited Feb. 13, 2020).

⁸⁴ Section 218.67(1), F.S. The bill defines fiscally constrained counties using this subsection.

The bill creates a recycled materials management pilot project for Polk County, in coordination with the University of Florida. The pilot project must identify sustainable, environmentally responsible, and cost-effective collection, storage, and retention methods for recyclable materials which have limited economic or industrial utility but retain their potential to be reintroduced into the market through an economically viable recycling process. The pilot program expires July 1, 2025.

The bill states the following regarding the pilot program:

- Polk County may join or contract with one or more other public or private entities to finance or implement the pilot program. The contracts may provide for contributions by each party to the contract for the division and apportionment of resulting costs, including operations and maintenance, benefits, services, and products. The Legislature may not provide funding assistance for the pilot program. However, this does not limit the University of Florida or other state entities from providing in-kind services to the pilot program.
- During the term of the pilot program, Polk County is exempt from the solid waste goals and requirements for local governments.⁸⁵
- Polk County must periodically communicate and collaborate with the Department of Environmental Protection (DEP) regarding the program's objectives, progress, and conclusions.
- Polk County must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2025, regarding the conclusions of the pilot program. The report must include all of the following:
 - A description of the pilot program, including its goals and an overview of the methodology used to identify the specific recyclable materials determined to provide the greatest environmental benefit and opportunity for recycling.
 - An overview of the methodology used to segregate the recyclable materials of greatest benefit while minimizing the processing of recyclable materials of low environmental benefit.
 - Progress made with the pilot program in comparison to other processes currently being used for the collection, disposal, or reuse of the same recyclable materials.
 - Capital and operating costs Polk County estimates it would expend to implement recycling and solid waste management practices revealed by the pilot program, in comparison to other alternatives local governments have implemented in Florida.
 - The source of funds used in developing and implementing the pilot program.
 - The benefits to Polk County and the state from implementing any recycling and solid waste management practices revealed by the pilot program.
 - A recommendation as to whether any recycling and solid waste management practices revealed by the pilot program should be available as an alternative to traditional processes used by local governments to manage recyclable materials and, if so, identification of the statutory changes necessary to do so.

⁸⁵ See DEP, *Florida and the 2020 75% Recycling Goal: 2019 Status Report, Volume 2, Appendices*, 162-164 (2019), available at <https://floridadep.gov/waste/waste-reduction/content/recycling>. In 2019, Polk County submitted a recycling plan to DEP in accordance with s. 403.706, F.S. Polk County is working with the University of Florida's Sustainable Materials Management Research Laboratory to update the county's recycling data and explore future recycling initiatives that would have the greatest positive environmental impact.

The bill amends s. 403.70605(3), F.S., which contains requirements for when a local government's collection service displaces a private waste company. The bill revises the definition of the term "displacement," as used in the subsection. The bill states that the term "displacement" does not include actions by which a local government, at the end of a franchise that the local government has granted to a private company, refuses to renew the franchise and either: grants a franchise or awards a contract to another company or companies, or decides to provide the collection service itself. The bill also states that the term "displacement" does not include situations where private companies are franchised to do business within a local government for a limited time and such franchise expires and is not renewed by the local government.

The bill revises the process and procedures a local government must follow to displace a private waste company. The local government must provide 3 years' notice to the private company before the local government engages in the actual provision of the service that displaces the company. At the end of the 3-year notice period, the local government must pay the displaced company an amount equal to the company's preceding 18 months' gross receipts for the displaced service in the displacement area. The bill also removes a provision stating that a local government and a private waste company may voluntarily negotiate a different notice period or amount of compensation.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive economic impact on the private sector because displaced private waste collection companies are assured 3 years' notice prior to displacement and 18 months of gross receipts when their service ends.

C. Government Sector Impact:

There may be a negative fiscal impact on local governments due to the required 3-year notice period for displacement of a private waste company and the payment of 18 months of gross receipts when the service ends.

The bill exempts fiscally constrained counties from solid waste goals and requirements for local governments, which could result in these counties avoiding expenditures on recycling programs. This may have an indeterminate, positive fiscal impact on fiscally constrained counties.

The bill creates a recycled materials management pilot project that Polk County must implement, which may cause Polk County to incur additional costs. The bill exempts Polk County from solid waste goals and requirements for local governments during the term of the pilot program, which may result in Polk County avoiding certain expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 39-41 and 79-81, the bill creates exemptions from all goals and requirements in s. 403.706, F.S. While s. 403.706, F.S., contains required recycling goals and related requirements for county governments, it also contains requirements pertaining to the solid waste responsibilities of local governments in general. Therefore, in order to create exemptions from the recycling goals in s. 403.706, F.S., revising the language to make the exemptions apply only to the recycling goals in s. 403.706, F.S., is recommended.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.70605 and 403.706.

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 Environment and Natural Resources on February 10, 2020:**

- Exempts fiscally constrained counties from the solid waste goals and requirements for local governments. This exemption expires July 1, 2035.

- Creates a pilot project for Polk County, in coordination with the University of Florida, for recycled materials management. The project will identify collection, storage, and retention methods for recyclable materials. Regarding the pilot project, the bill provides the following: Polk County may join or contract with other entities to finance or implement the project, but the Legislature may not provide funding assistance to the program; during the term of the pilot program, Polk County is exempt from solid waste goals and requirements for local governments; Polk County must periodically communicate and collaborate with DEP regarding the program's objectives and progress; and Polk County must submit a report to the Governor and Legislature by July 1, 2025, which must include the program's goals and progress, overviews of the methodologies used to identify and segregate the recyclable materials of greatest environmental benefit, funding sources for the program, estimated costs and benefits to Polk County of implementing practices revealed by the program, and a recommendation on practices revealed by the program.
- Repeals the pilot program on July 1, 2025.
- Revises the definition of "displacement" in requirements for local governments' collection services that displace a private waste company. The bill states that the term "displacement" does not include actions by which a local government, at the end of a franchise that the local government has granted to a private company, refuses to renew the franchise and either: grants a franchise or awards a contract to another company or companies, or decides to provide the collection service itself. The bill also states that the term "displacement" does not include situations where private companies are franchised to do business within a local government for a limited time and such franchise expires and is not renewed by the local government.

CS by Community Affairs on January 27, 2020:

The committee substitute:

- Removes the discretion of a local government to pay a displaced private waste company in lieu of providing a 3-year notice period and makes the 3-year notice mandatory.
- Requires a local government to pay a displaced private waste company an amount equal to the company's preceding 18 months' gross receipts for the displaced service at the end of the 3-year notice period.
- Removes a provision stating that a local government and a private waste company are not prohibited from voluntarily negotiating a different notice period or amount of compensation.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Albritton) recommended the following:

Senate Amendment

Delete lines 40 - 81
and insert:
218.67(1), is exempt from the recycling goals set forth in this section and any requirements relating thereto. This subsection expires July 1, 2035.

(24) (a) The Legislature finds that local governments, regional solid waste management authorities, and government-owned and privately owned waste management entities face



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11 significant challenges in meeting this state's waste recycling
12 goals, as provided in subsection (2), due to a variety of
13 factors, including the diversity and magnitude of the waste
14 stream and the ever-changing global demand and market conditions
15 for recyclable materials. These factors make it necessary to
16 investigate other options for the management of recyclable
17 material resources to ensure the protection of the environment
18 and to limit the cost to the residents of this state for solid
19 waste collection and disposal.

20 (b) A recycled materials management pilot project is
21 created for Polk County, in coordination with the University of
22 Florida, to identify sustainable, environmentally responsible,
23 and cost-effective collection, storage, and retention methods
24 for recyclable materials which have limited economic or
25 industrial utility, but retain their potential to be
26 reintroduced into the market through an economically viable
27 recycling process.

28 (c) Polk County may join with one or more counties,
29 municipalities, special districts, publicly owned or privately
30 owned waste utilities, multijurisdictional water management
31 entities, or other entities in carrying out the pilot program
32 and may contract with other entities to finance or otherwise
33 implement the operation and maintenance of the pilot program.
34 The contracts may provide for contributions to be made by each
35 party to the contract for the division and apportionment of
36 resulting costs, including operations and maintenance, benefits,
37 services, and products. The contracts may contain other
38 covenants and agreements necessary and appropriate to accomplish
39 their purposes. The Legislature will not provide any funding



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40 assistance for the pilot program. However, this section may not
41 be construed so as to limit or prevent the University of Florida
42 or any other state entity wishing to participate in the pilot
43 program from providing in-kind services in furtherance of the
44 goals of the pilot program.

45 (d) During the term of the pilot program, Polk County is
46 exempt from the recycling goals set forth in this section and
47 any requirements relating thereto.

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 Community Affairs

BILL: SB 1258

INTRODUCER: Senator Diaz

SUBJECT: Commercial Service Airports

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<u>Favorable</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 1258 requires the Auditor General to conduct an operational and financial audit of each large-hub commercial service airport in the state. The bill additionally requires each member of the governing body of such airports to comply with the full and public disclosure of financial interests set out in section 8, Article II of the State Constitution.

The bill also requires the governing body of each commercial service airport to establish and maintain a website to post specified information relating to the operation of the airport, and subjects such airports to the requirements of ch. 287, F.S., relating to procurement. After an opportunity for public comment, a governing body must approve as a separate line item on its agenda each contract executed by or on behalf of a commercial service airport in amounts exceeding a threshold of \$65,000. Approval of such contracts as part of a consent agenda is prohibited.

Members of a governing body and employees of a commercial service airport are subjected to part II of Ch. 112, F.S., relating to the Code of Ethics for Public Officers and Employees, and must comply with the requirements for full and public disclosure of financial interests set out in section 8, Article II of the State Constitution. The bill also imposes on each member of a governing body certain annual ethics training requirements.

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit specified information to the Florida Department of Transportation (FDOT). The FDOT is required to review the information submitted by such airports and posted on the required websites to determine the accuracy of the information. Beginning January 15, 2022, and each January 15 thereafter, the FDOT must submit to the Governor, the Senate President, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with the bill's provisions. The FDOT is

prohibited from expending any funds allocated to a commercial service airport, unless pledged for debt service, until such airport demonstrates its compliance.

The bill appears to have no impact on state or local revenues. The fiscal impact on state and local expenditures is indeterminate. See the Fiscal Impact Statement for details.

The bill takes effect on July 1, 2020.

II. Present Situation:

Twenty commercial service airports and 109 general aviation airports,¹ as well as hundreds of small private airports, currently operate in Florida. Commercial service airports are publicly-owned airports having at least 2,500 passenger boardings each year and receiving scheduled passenger service. General aviation airports are airports that do not have scheduled service or have less than 2,500 passenger boardings each year.²

Commercial service airports operating in this state vary in size from large-hub airports,³ with over 20 million annual passenger boardings, to small municipal airports with approximately 10,000 annual passenger boardings.⁴ Commercial service airports in Florida support approximately 1.1 million jobs, have a total annual payroll of approximately \$47.3 billion, and a total annual economic impact of approximately \$144 billion.⁵

Airport Oversight

The Federal Aviation Administration (FAA) is responsible for planning and developing a safe and efficient national airport system, including all programs related to airport safety and inspections and standards for airport design, construction, and operation. Federal law requires each commercial service airport to operate under a federal certificate and comply with federal aviation requirements. The FAA is responsible for national airport planning and environmental and social requirements and establishes policies related to airport rates and charges, compliance with grant assurances, and airport privatization.⁶

In Florida, the FDOT is responsible for planning airport systems and overseeing the public airport system.⁷ The owner or lessee of a proposed public airport⁸ must receive FDOT approval

¹ Florida Department of Transportation, *Florida Aviation System Plan Introduction*, available at: <https://www.fdot.gov/aviation/FASP2035> (last visited January 22, 2020).

² 49 U.S.C. s. 47102.

³ A subsection of commercial airports are large-hub airports. Large-hub airports are commercial service airports that have at least 1 percent of the passenger boardings in the United States.

⁴ See FAA, Commercial Service Airports, Rank Order based on calendar year 2018, December 20, 2019, available at: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf (last visited January 22, 2020).

⁵ Florida Department of Transportation, *Florida Statewide Aviation Economic Impact Study*, March 2019, Executive Summary at p. 7, available at: <https://www.fdot.gov/aviation/economicimpact.shtm> (last visited January 22, 2020).

⁶ See the FAA website, *Airports*, available at: https://www.faa.gov/about/office_org/headquarters_offices/arp/ (last visited January 22, 2020).

⁷ Section 332.001, F.S.

⁸ Section 330.27(6), F.S. For purposes of FDOT approval and licensure, the term “public airport” means a publicly or privately owned airport for public use.

before site acquisition, construction, or establishment of a public airport facility.⁹ The FDOT is also responsible for licensing public airport facilities prior to the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or license renewal.¹⁰ Current law authorizes local governments to establish and operate airports¹¹ and governs airport zoning and land use issues.¹²

Neither state nor federal law establishes requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Airport operation and administration is generally governed as part of the local government or special district that owns the airport.

Large-hub Airports in Florida

The FAA provides that large-hub commercial airports are airports that facilitate 1 percent or more of the total annual passenger boardings in the U.S.¹³ The Florida airports that currently meet the criteria to be a large-hub airport are Orlando, Miami, Fort Lauderdale, and Tampa.¹⁴ The table below portrays relevant information about these airports.

Airport	2018 Enplanements (passangers boarded)¹⁵	2018 Total Revenue	2018 Total Expenditures	End of 2018 Net Position
Orlando ¹⁶	23,184,634	\$743,147,000	\$564,540,000	\$2,528,297,000
Miami ¹⁷	21,025,210	\$920,968,000	\$997,026,000	\$1,228,566,000
Fort Lauderdale ¹⁸	17,613,957	\$374,997,000	\$262,886,000	\$1,516,000,000
Tampa ¹⁹	10,369,622	\$373,071,000	\$196,827,000	\$1,123,305,599

⁹ Section 330.30(1), F.S.

¹⁰ Section 330.30(2), F.S.

¹¹ See chapter 332, F.S.

¹² See chapter 333, F.S.

¹³ See Federal Aviation Administration, Airport Categories, available at:

https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/categories/ (last visited February 14, 2020).

¹⁴ See Federal Aviation Administration, Commercial Service (Rank Order) 2018, available at:

https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/preliminary-cy18-commercial-service-enplanements.pdf (last visited February 14, 2020).

¹⁵ *Id.*

¹⁶ See Greater Orlando Aviation Authority, Comprehensive Annual Financial Report 2018, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2018%20greater%20orlando%20aviation%20authority.pdf (last visited February 14, 2020).

¹⁷ See Miami-Dade Aviation Department, Comprehensive Annual Financial Report 2018, available at: <http://www.miami-airport.com/library/pdfdoc/Finance/Miami-Dade%20Aviation%20Department%209-30-18%20ISSUED%20CAFR.pdf> (last visited February 14, 2020).

¹⁸ See Broward County Aviation Department, Financial Statements 2018, available at:

<https://www.broward.org/Airport/Business/about/Documents/FLLfy18financialstatements.pdf> (last visited February 14, 2020).

¹⁹ See Hillsborough County Aviation Authority, Financial Statements 2018, available at:

https://flauditor.gov/pages/specialdistricts_efile%20rpts/2018%20hillsborough%20county%20aviation%20authority.pdf (last visited February 14, 2020).

FDOT Airport Funding

The FDOT's work program identifies aviation development projects and discretionary capacity improvement projects. To the maximum extent possible, the FDOT's work program must remain consistent with the Florida Aviation System Plan and any approved and applicable local government comprehensive plans. The FDOT's work program also includes any project with funds administered by the FDOT but undertaken and implemented by the airport operator. The FDOT's aviation program assists airports in the areas of access, economic enhancement, development, improvement, and land acquisition in the way of matching funds. These matching funds assist local governments and airport authorities in planning, designing, purchasing, constructing, and maintaining public use aviation facilities.²⁰

For commercial service airports, FDOT may provide up to 50 percent of the non-federal share if federal funding is available and up to 50 percent of the total project costs if federal funding is not available.²¹ For Fiscal Year 2019-2020, FDOT was appropriated \$266 million from the State Transportation Trust Fund for Aviation Development Grants,²² available to both commercial service airports and general aviation airports.²³

Auditor General

The position of the Auditor General is established by Article III, section 2 of the State Constitution.²⁴ The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.²⁵ The Auditor General must conduct audits, examinations, or reviews of government programs as well as audit the accounts of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.²⁶ The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.²⁷

A financial audit is an examination of financial statements to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted under legal and regulatory requirements.²⁸ The purpose of an operational audit is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities

²⁰ Section 332.007(2), F.S.

²¹ FDOT website available at <https://www.fdot.gov/aviation/workProgram.shtm> (last visited January 22, 2020).

²² Chapter 2019-115, L.O.F., Specific Appropriation 1940.

²³ FDOT Fiscal Year 2020 Aviation Work Program available at <https://fdotewp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CT=I&FY=TRUE|FALSE|FALSE|FALSE|FALSE&RP=ITEM> (last visited January 22, 2020).

²⁴ Art. III, s. 2, Fla. Const.

²⁵ Section 11.42(2), F.S.

²⁶ Section 11.45(2)(d)-(f), F.S.

²⁷ Section 11.45(7)(b), F.S.

²⁸ Section 11.45(1)(d), F.S.

following applicable laws, administrative rules, contracts, grant agreements, and other guidelines.²⁹

In 2017, the Auditor General conducted an operational audit of Tampa International Airport's 2012 Master Plan Capital Project.³⁰ More recently, at its meeting on December 12, 2019, the Joint Legislative Auditing Committee directed the Auditor General to perform a targeted operational audit of the Greater Orlando Aviation Authority.³¹ However, the Auditor General has not conducted financial and operational audits of an entire airport's operation.³²

Financial Disclosure

Florida ethics laws provide for two tiers of financial disclosure for public officers, candidates for public office, and certain public employees: full and public disclosure of financial interests (Form 6) and a statement of financial interests (Form 1).³³ The Florida Commission on Ethics oversees the financial disclosure filing process with the assistance of local qualifying officers.

Article 2, section 8(a) of the State Constitution requires all elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees to file a Form 6. Additionally, members of certain expressway authorities, transportation authorities, bridge authorities, toll authorities, or expressway agencies are required to comply with these financial disclosure requirements.³⁴ Form 6 requires the filer to disclose his or her net worth and identify each asset and liability in excess of \$1,000 and its value together with either a copy of the person's most recent federal income tax return, or a sworn statement identifying each separate source and amount of income exceeding \$1,000.

Form 1 requires less detail than Form 6 and is filed by certain state and local officers not subject to the full and public disclosure of financial interests, including local officers³⁵ and specified state employees. Form 1 requires filers to disclose their primary sources of income (other than from their public position), secondary sources of income (in certain circumstances), real property in Florida (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses.³⁶

²⁹ Section 11.45(1)(i), F.S.

³⁰ Chapter 2017-70, L.O.F. This audit was provided for in proviso language to Specific Appropriation 1862 in the 2017 General Appropriations Act.

³¹ Joint Legislative Auditing Committee, Meeting Summary, December 12, 2019, *available at*: <http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/Meetingsummaries/121219.pdf> (last visited January 22, 2020).

³² Email from Bruce Jeroslow, General Counsel, Florida Auditor General, to House committee staff, relating to HB 915, January 6, 2020 (on file in the Senate Infrastructure and Security Committee.)

³³ Sections 112.3144 and 112.3145, F.S.

³⁴ Section 112.3144(1)(b), F.S.

³⁵ Section 112.3145(1)(a), F.S., defines the term "local officer" to include every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office and any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state.

³⁶ Section 112.3145(3), F.S.

Procurement

Chapter 287, F.S., provides statutory requirements for the procurement of goods and services by the state. The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.³⁷

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:³⁸

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

For contracts for commodities or services in excess of \$35,000 (CATEGORY TWO), agencies must utilize a competitive solicitation process;³⁹ however, certain contractual services and commodities are exempt from this requirement.⁴⁰

Code of Ethics for Public Officers and Employees

Part III of ch. 112, F.S., contains the Code of Ethics for Public Officers and Employees. The code intends to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.⁴¹ Included in the code are provisions relating to doing business with one's agency,⁴² conflicting employment or contractual relationships,⁴³ post-employment restrictions,⁴⁴ and requirements for ethics training for specified constitutional officers and elected municipal officers and commissioners.⁴⁵

³⁷ Section 287.001, F.S.

³⁸ See ss. 287.012(6) and 287.057, F.S.

³⁹ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁴⁰ See s. 287.057(3), F.S.

⁴¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and the Code of Ethics for Public Employees*. 2019, p.1., available at: <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=20191213> (last visited January 22, 2020).

⁴² Section 112.313(3), F.S.

⁴³ Section 112.313(7), F.S.

⁴⁴ Section 112.313(9), F.S.

⁴⁵ Section 112.313(9), F.S.

III. Effect of Proposed Changes:

The bill provides for additional transparency and accountability of commercial service airports.

Section 1 amends s. 11.45(2)(m), F.S., requiring the Auditor General, at least once every five years, to conduct an operational and financial audit of each large-hub commercial service airport. The bill defines the term “large-hub commercial service airport” for purposes of paragraph (m) to mean a publicly owned airport that has at least one percent of the annual passenger boardings in the United States as reported by the FAA.

Section 2 amends s. 112.3144(1)(c), F.S., requiring each member of the governing body of a large-hub commercial service airport to comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. For purposes of paragraph (c), the bill defines the term “large-hub commercial service airport” to mean a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the FAA.

Based on the definitions in the bill, there are 20 commercial service airports in Florida, four of which are large-hub commercial service airports (Orlando, Miami, Fort Lauderdale, and Tampa International). The Auditor General would be required to conduct a financial and operational audit of these four airports at least once every five years.

Each member of the governing body of a large-hub commercial service airport would be required to comply with the full and public disclosure of their financial interests set out in section 8, Article II of the State Constitution (Form 6). Because the Miami and Fort Lauderdale airports are operated by Miami-Dade and Broward counties, respectively, in which county commissioners are already subject to the constitutional financial disclosure requirements (Form 6), this provision only impacts the governing bodies of the Orlando and Tampa airports, which are governed as independent special districts.

Section 3 creates s. 332.0075, F.S., entitled *Commercial service airports; transparency and accountability; penalty*, providing the following definitions for purposes of the new section:

- “Commercial service airport” means a publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service as reported by the FAA.
- “Department” means the Department of Transportation.
- “Governing body” means the governing body of the municipality, county, or special district that operates a commercial service airport.

The bill requires the governing body of each commercial service airport to establish and maintain a website to post information relating to the operation of such airport, including:

- All published notices of meetings and published meeting agendas for the governing body.
- The official minutes of each meeting of the governing body, which must be posted within three business days after the date of the meeting in which the minutes are approved.
- The approved budget for the commercial service airport for the current fiscal year, which must be posted on the website, which must be posted within seven days after the date of

adoption. Budgets must remain on the website for two years after the conclusion of the fiscal year in which they were adopted.

- All commercial service airport planning documents and all financial and statistical reports submitted to the FAA, which must be posted upon submission.
- Any contract or contract amendment executed by or on behalf of the airport in excess of \$35,000,⁴⁶ which must be posted on the website no later than seven days before the governing body votes to approve the contract or amendment.
- Position and rate information for each employee, including, at a minimum, the employee's position title, position description, and annual or hourly salary.

The bill provides that commercial service airports are subject to the requirements of ch. 287, F.S., relating to procurement of personal property and services, notwithstanding any other law.

All contracts executed by or on behalf of the commercial service airport in excess of \$65,000⁴⁷ must be approved by the governing body of the airport as a separate line item on the agenda after providing a reasonable opportunity for public comment. The bill prohibits approving such contracts as part of a consent agenda.

The bill reiterates that members of the governing body and employees of a commercial service airport are subject to the Code of Ethics for Public Officers and Employees.⁴⁸

Beginning January 1, 2021, each member of a governing body of a commercial service airport will be required to complete four hours of ethics training each calendar year which addresses, at a minimum, section 8, Article II of the State Constitution, relating to ethics in government; the Code of Ethics for Public Officers and Employees; and the public records and public meetings laws. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subject material is covered by the class.⁴⁹

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit to the FDOT the following information:

- Its approved budget for the current fiscal year.
- Any financial reports submitted to the FAA during the previous calendar year.
- A link to the website for the commercial service airport.
- A statement that the commercial service airport has complied with part III of chapter 112, F.S., relating to the Code of Ethics for Public Officers and Employees; chapter 287, F.S., relating to procurement; and the statutory provisions created in the bill. This statement must be verified as provided in s. 92.525, F.S.

The FDOT is required to review the submitted and website-posted information to determine the information's accuracy. Beginning January 15, 2022, and each January 15 thereafter, the FDOT

⁴⁶ This is the CATEGORY TWO purchasing threshold in s. 287.017, F.S.

⁴⁷ This is the CATEGORY THREE purchasing threshold in s. 287.017, F.S.

⁴⁸ Part III of chapter 112, F.S.

⁴⁹ This requirement is identical to the ethics training required for constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies contained in s. 112.3142(2), F.S.

is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with these provisions. The bill prohibits the FDOT from expending any funds allocated to a commercial service airport as contained in the FDOT's adopted work program unless pledged for debt service until the airport demonstrates its compliance.

Section 4 provides the bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Article VII, of the Florida Constitution, provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless certain exemptions or exceptions are met. Article VII, section 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, *laws having insignificant fiscal impact*,⁵⁰ and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section. For Fiscal Year 2020-2021, an insignificant impact is forecast at slightly over \$2.1 million.⁵¹

The county/municipality mandate provision in Art. VII, s. 18 of the State Constitution may apply to the bill's requirements when the commercial service airport is a government department model (where the airport operates as a department of the local government) or possibly an airport authority model (for dependent special districts⁵²). The insignificant impact exemption may apply if the cost of compliance with the bill's provisions does not exceed \$2.1 million in the aggregate.

The fiscal impact of the bill to local governments is indeterminate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited January 22, 2020).

⁵¹ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 22, 2020).

⁵² For example, a "dependent special district" can mean a special district in which the membership of its governing body is identical to that of the governing body of a single county. See s. 189.012(2), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no apparent fiscal impact on state or local government revenues.

Local government entities operating commercial service airports may incur expenditures associated with compliance with the provisions of the bill; however, the amount of these expenditures would vary from airport to airport based on how the bill's requirements exceed current operational and administrative practices. The total fiscal impact on local government is therefore indeterminate.

The FDOT may not expend any funds allocated to a commercial service airport as contained in the FDOT's adopted work program unless pledged for debt service until the airport demonstrates its compliance. However, the fiscal impact of any non-compliance, and the effect of such non-compliance on the FDOT's adopted work program, is indeterminate.

The FDOT will incur administrative expenses and use of resources associated with the bill's provisions. According to the FDOT, to fully administer such a program, the FDOT would need to establish rules and procedures to establish the processes for submission and review of the required information, thresholds for compliance, and timelines to reasonably accomplish tasks without impairing project production schedules. Other funding needs include but are not limited to technology costs for data storage, electronic file exchange, and websites.⁵³ However, the agency analysis assigns no estimated dollar value for such costs. The fiscal impact to the FDOT appears to be indeterminate.

VI. Technical Deficiencies:

None.

⁵³ See the FDOT's analysis of similar HB 915 (2020) available at <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx> (last visited January 22, 2019).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 11.45 and 112.3144.

This bill creates the following sections of the Florida Statutes: 332.0075.

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.



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LEGISLATIVE ACTION

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The Committee on Community Affairs (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (m) is added to subsection (2) of
section 11.45, Florida Statutes, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(m) At least once every 7 years, conduct an operational and
financial audit of each large-hub commercial service airport.



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11 Each operational audit shall include, at a minimum, an
12 assessment of compliance with s. 332.0075, including compliance
13 with chapter 287, and compliance with the public records and
14 public meetings laws of this state. For purposes of this
15 paragraph, the term "large-hub commercial service airport" means
16 a publicly owned airport that has at least 1 percent of the
17 annual passenger boardings in the United States as reported by
18 the Federal Aviation Administration.

19
20 The Auditor General shall perform his or her duties
21 independently but under the general policies established by the
22 Legislative Auditing Committee. This subsection does not limit
23 the Auditor General's discretionary authority to conduct other
24 audits or engagements of governmental entities as authorized in
25 subsection (3).

26 Section 2. Paragraph (c) is added to subsection (1) of
27 section 112.3144, Florida Statutes, to read:

28 112.3144 Full and public disclosure of financial
29 interests.-

30 (1)

31 (c) Each member of the governing body of a large-hub
32 commercial service airport shall comply with the applicable
33 financial disclosure requirements of s. 8, Art. II of the State
34 Constitution. Any person otherwise required under this
35 subsection to file a full and public financial disclosure, is
36 not required to separately file a full and public financial
37 disclosure under this paragraph. For purposes of this paragraph,
38 the term "large-hub commercial service airport" means a publicly
39 owned airport that has at least 1 percent of the annual



40 passenger boardings in the United States as reported by the
41 Federal Aviation Administration.

42 Section 3. Subsection (3) of section 287.017, Florida
43 Statutes, is amended to read:

44 287.017 Purchasing categories, threshold amounts.—The
45 following purchasing categories are hereby created:

46 (3) CATEGORY THREE: \$100,000 ~~\$65,000~~.

47 Section 4. Section 332.0075, Florida Statutes, is created
48 to read:

49 332.0075 Commercial service airports; transparency and
50 accountability; penalty.—

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

52 (a) “Commercial service airport” means a primary airport,
53 as defined in 49 U.S.C. s. 47102, that is classified as a large,
54 medium, or small-hub airport by the Federal Aviation
55 Administration.

56 (b) “Department” means the Department of Transportation.

57 (c) “Governing body” means the governing body of the
58 county, municipality, or special district that operates a
59 commercial service airport.

60 (2) Each governing body shall establish and maintain a
61 website to post information relating to the operation of a
62 commercial service airport, including:

63 (a) All published notices of meetings and published meeting
64 agendas of the governing body.

65 (b) The official minutes of each meeting of the governing
66 body, which shall be posted within 7 business days after the
67 date of the meeting in which the minutes were approved.

68 (c) The approved budget for the commercial service airport



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69 for the current fiscal year, which shall be posted within 7
70 business days after the date of adoption. Budgets must remain on
71 the website for 2 years after the conclusion of the fiscal year
72 for which they were adopted.

73 (d) A link to the airport master plan for the commercial
74 service airport on the Federal Aviation Administration's
75 website.

76 (e) A link to all financial and statistical reports for the
77 commercial service airport on the Federal Aviation
78 Administration's website.

79 (f) Any contract or contract amendment executed by or on
80 behalf of the commercial service airport in excess of the
81 threshold amount provided in s. 287.017 for CATEGORY THREE,
82 shall be posted no later than 7 business days after the
83 commercial service airport executes the contract or contract
84 amendment. However, a contract or contract amendment may not
85 reveal information made confidential or exempt by law. Each
86 commercial service airport must redact confidential or exempt
87 information from each contract or contract amendment before
88 posting a copy on its website.

89 (g) Position and rate information for each employee of the
90 commercial service airport, including, at a minimum, the
91 employee's position title, position description, and annual or
92 hourly salary.

93 (3) (a) Notwithstanding any other provision of law to the
94 contrary, commercial service airports are subject to the
95 requirements of chapter 287 for purchases of commodities or
96 contractual services that exceed the threshold amount provided
97 in s. 287.017 for CATEGORY THREE. If the purchase of commodities



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98 or contractual services exceeds the threshold amount provided in
99 s. 287.017 for CATEGORY THREE, purchase of commodities or
100 contractual services may not be made without receiving
101 competitive sealed bids, competitive sealed proposals, or
102 competitive sealed replies unless an exception applies as
103 provided in s. 287.057(3) or an immediate danger to the public
104 health, safety, or welfare, or other substantial loss to the
105 commercial service airport requires emergency action.

106 (b) A governing body must approve, award, or ratify all
107 contracts executed by or on behalf of a commercial service
108 airport in excess of the threshold amount provided in s. 287.017
109 for CATEGORY FIVE as a separate line item on the agenda and must
110 provide a reasonable opportunity for public comment. Such
111 contracts may not be approved, awarded, or ratified as part of a
112 consent agenda.

113 (4) (a) Members of a governing body and employees of a
114 commercial service airport are subject to part III of chapter
115 112. However, this paragraph does not prohibit the application
116 of more stringent ethical standards adopted by county or
117 municipal charter, ordinance, or resolution of the governing
118 body for its members and employees.

119 (b) Beginning January 1, 2021, each member of a governing
120 body must complete 4 hours of ethics training each calendar year
121 which addresses, at a minimum, s. 8, Art. II of the State
122 Constitution, the Code of Ethics for Public Officers and
123 Employees, and the public records and public meetings laws of
124 this state. This requirement may be satisfied by completion of a
125 continuing legal education class or other continuing
126 professional education class, seminar, or presentation if the



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127 required subject material is covered therein. Constitutional
128 officers and elected municipal officers who are members of the
129 governing body who complete the ethics training required in s.
130 112.3142 shall be considered in compliance with this paragraph.

131 (5) (a) Beginning November 1, 2021, and each November 1
132 thereafter, the governing body of each commercial service
133 airport shall submit the following information to the
134 department:

- 135 1. Its approved budget for the current fiscal year.
136 2. Any financial reports submitted to the Federal Aviation
137 Administration during the previous calendar year.
138 3. A link to its website.
139 4. A statement, verified as provided in s. 92.525, that it
140 has complied with part III of chapter 112, chapter 287, and this
141 section.

142 (b) The department shall review the information submitted
143 by the commercial service airport and posted on the airport's
144 website to determine the accuracy of such information. Beginning
145 January 15, 2022, and each January 15 thereafter, the department
146 shall submit to the Governor, the President of the Senate, and
147 the Speaker of the House of Representatives a report summarizing
148 commercial service airport compliance with this section.

149 (6) The department may not expend any funds allocated to a
150 commercial service airport as contained in the adopted work
151 program, unless pledged for debt service, until the commercial
152 service airport demonstrates its compliance with this section.

153 Section 5. This act shall take effect October 1, 2020.

154
155 ===== T I T L E A M E N D M E N T =====



156 And the title is amended as follows:

157 Delete everything before the enacting clause
158 and insert:

159 A bill to be entitled
160 An act relating to commercial service airports;
161 amending s. 11.45, F.S.; directing the Auditor General
162 to conduct specified audits of certain airports;
163 defining the term "large-hub commercial service
164 airport"; amending s. 112.3144, F.S.; requiring
165 members of the governing body of a large-hub
166 commercial service airport to comply with certain
167 financial disclosure requirements; providing that a
168 separate filing is not required under specified
169 circumstances; defining the term "large-hub commercial
170 service airport"; amending s. 287.017, F.S.; revising
171 the threshold amount for a specified purchasing
172 category; creating s. 332.0075, F.S.; providing
173 definitions; requiring the governing body of a
174 municipality, county, or special district that
175 operates a commercial service airport to establish and
176 maintain a website; requiring the governing body to
177 post or provide links to certain information on the
178 website; requiring the posting of specified contracts;
179 providing for the redaction of confidential and exempt
180 information; requiring commercial service airports to
181 comply with certain contracting requirements;
182 providing exceptions; requiring the governing body to
183 approve, award, or ratify certain contracts; requiring
184 members of the governing body of a commercial service



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185 airport to comply with certain ethics requirements and
186 complete annual ethics training; requiring governing
187 bodies of commercial service airports to submit
188 certain information annually to the Department of
189 Transportation; requiring the department to review
190 such information and submit an annual report to the
191 Governor and the Legislature; prohibiting the
192 department's expenditure of certain funds unless
193 specified conditions are met; providing an effective
194 date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (m) is added to subsection (2) of
section 11.45, Florida Statutes, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(m) At least once every 7 years, conduct an operational and
financial audit of each large-hub commercial service airport.



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11 Each operational audit shall include, at a minimum, an
12 assessment of compliance with s. 332.0075, including compliance
13 with chapter 287, and compliance with the public records and
14 public meetings laws of this state. For purposes of this
15 paragraph, the term "large-hub commercial service airport" means
16 a publicly owned airport that has at least 1 percent of the
17 annual passenger boardings in the United States as reported by
18 the Federal Aviation Administration.

19
20 The Auditor General shall perform his or her duties
21 independently but under the general policies established by the
22 Legislative Auditing Committee. This subsection does not limit
23 the Auditor General's discretionary authority to conduct other
24 audits or engagements of governmental entities as authorized in
25 subsection (3).

26 Section 2. Paragraph (c) is added to subsection (1) of
27 section 112.3144, Florida Statutes, to read:

28 112.3144 Full and public disclosure of financial
29 interests.-

30 (1)

31 (c) Each member of the governing body of a large-hub
32 commercial service airport shall comply with the applicable
33 financial disclosure requirements of s. 8, Art. II of the State
34 Constitution. Any person otherwise required under this
35 subsection to file a full and public financial disclosure, is
36 not required to separately file a full and public financial
37 disclosure under this paragraph. For purposes of this paragraph,
38 the term "large-hub commercial service airport" means a publicly
39 owned airport that has at least 1 percent of the annual



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40 passenger boardings in the United States as reported by the
41 Federal Aviation Administration.

42 Section 3. Section 332.0075, Florida Statutes, is created
43 to read:

44 332.0075 Commercial service airports; transparency and
45 accountability; penalty.—

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

47 (a) "Commercial service airport" means a primary airport,
48 as defined in 49 U.S.C. s. 47102, that is classified as a large-
49 , medium-, or small-hub airport by the Federal Aviation
50 Administration.

51 (b) "Department" means the Department of Transportation.

52 (c) "Governing body" means the governing body of the
53 county, municipality, or special district that operates a
54 commercial service airport.

55 (2) Each governing body shall establish and maintain a
56 website to post information relating to the operation of a
57 commercial service airport, including:

58 (a) All published notices of meetings and published meeting
59 agendas of the governing body.

60 (b) The official minutes of each meeting of the governing
61 body, which shall be posted within 7 business days after the
62 date of the meeting in which the minutes were approved.

63 (c) The approved budget for the commercial service airport
64 for the current fiscal year, which shall be posted within 7
65 business days after the date of adoption. Budgets must remain on
66 the website for 2 years after the conclusion of the fiscal year
67 for which they were adopted.

68 (d) A link to the airport master plan for the commercial



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69 service airport on the Federal Aviation Administration's
70 website.

71 (e) A link to all financial and statistical reports for the
72 commercial service airport on the Federal Aviation
73 Administration's website.

74 (f) Any contract or contract amendment executed by or on
75 behalf of the commercial service airport in excess of \$100,000,
76 shall be posted no later than 7 business days after the
77 commercial service airport executes the contract or contract
78 amendment. However, a contract or contract amendment may not
79 reveal information made confidential or exempt by law. Each
80 commercial service airport must redact confidential or exempt
81 information from each contract or contract amendment before
82 posting a copy on its website.

83 (g) Position and rate information for each employee of the
84 commercial service airport, including, at a minimum, the
85 employee's position title, position description, and annual or
86 hourly salary.

87 (3) (a) Notwithstanding any other provision of law to the
88 contrary, commercial service airports are subject to the
89 requirements of chapter 287 for purchases of commodities or
90 contractual services that exceed \$100,000. If the purchase of
91 commodities or contractual services exceeds \$100,000, the
92 purchase of commodities or contractual services may not be made
93 without receiving competitive sealed bids, competitive sealed
94 proposals, or competitive sealed replies unless an exception
95 applies as provided in s. 287.057(3) or an immediate danger to
96 the public health, safety, or welfare, or other substantial loss
97 to the commercial service airport requires emergency action.



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98 (b) A governing body must approve, award, or ratify all
99 contracts executed by or on behalf of a commercial service
100 airport in excess of the threshold amount provided in s. 287.017
101 for CATEGORY FIVE as a separate line item on the agenda and must
102 provide a reasonable opportunity for public comment. Such
103 contracts may not be approved, awarded, or ratified as part of a
104 consent agenda.

105 (4) (a) Members of a governing body and employees of a
106 commercial service airport are subject to part III of chapter
107 112. However, this paragraph does not prohibit the application
108 of more stringent ethical standards adopted by county or
109 municipal charter, ordinance, or resolution of the governing
110 body for its members and employees.

111 (b) Beginning January 1, 2021, each member of a governing
112 body must complete 4 hours of ethics training each calendar year
113 which addresses, at a minimum, s. 8, Art. II of the State
114 Constitution, the Code of Ethics for Public Officers and
115 Employees, and the public records and public meetings laws of
116 this state. This requirement may be satisfied by completion of a
117 continuing legal education class or other continuing
118 professional education class, seminar, or presentation if the
119 required subject material is covered therein. Constitutional
120 officers and elected municipal officers who are members of the
121 governing body who complete the ethics training required in s.
122 112.3142 shall be considered in compliance with this paragraph.

123 (5) (a) Beginning November 1, 2021, and each November 1
124 thereafter, the governing body of each commercial service
125 airport shall submit the following information to the
126 department:



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127 1. Its approved budget for the current fiscal year.

128 2. Any financial reports submitted to the Federal Aviation
129 Administration during the previous calendar year.

130 3. A link to its website.

131 4. A statement, verified as provided in s. 92.525, that it
132 has complied with part III of chapter 112, chapter 287, and this
133 section.

134 (b) The department shall review the information submitted
135 by the commercial service airport and posted on the airport's
136 website to determine the accuracy of such information. Beginning
137 January 15, 2022, and each January 15 thereafter, the department
138 shall submit to the Governor, the President of the Senate, and
139 the Speaker of the House of Representatives a report summarizing
140 commercial service airport compliance with this section.

141 (6) The department may not expend any funds allocated to a
142 commercial service airport as contained in the adopted work
143 program, unless pledged for debt service, until the commercial
144 service airport demonstrates its compliance with this section.

145 Section 4. This act shall take effect October 1, 2020.

146
147 ===== T I T L E A M E N D M E N T =====

148 And the title is amended as follows:

149 Delete everything before the enacting clause
150 and insert:

151 A bill to be entitled
152 An act relating to commercial service airports;
153 amending s. 11.45, F.S.; directing the Auditor General
154 to conduct specified audits of certain airports;
155 defining the term "large-hub commercial service



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156 airport"; amending s. 112.3144, F.S.; requiring
157 members of the governing body of a large-hub
158 commercial service airport to comply with certain
159 financial disclosure requirements; providing that a
160 separate filing is not required under specified
161 circumstances; defining the term "large-hub commercial
162 service airport"; creating s. 332.0075, F.S.;
163 providing definitions; requiring the governing body of
164 a municipality, county, or special district that
165 operates a commercial service airport to establish and
166 maintain a website; requiring the governing body to
167 post or provide links to certain information on the
168 website; requiring the posting of specified contracts;
169 providing for the redaction of confidential and exempt
170 information; requiring commercial service airports to
171 comply with certain contracting requirements;
172 providing exceptions; requiring the governing body to
173 approve, award, or ratify certain contracts; requiring
174 members of the governing body of a commercial service
175 airport to comply with certain ethics requirements and
176 complete annual ethics training; requiring governing
177 bodies of commercial service airports to submit
178 certain information annually to the Department of
179 Transportation; requiring the department to review
180 such information and submit an annual report to the
181 Governor and the Legislature; prohibiting the
182 department's expenditure of certain funds unless
183 specified conditions are met; providing an effective
184 date.



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LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Community Affairs (Flores) recommended the following:

Senate Amendment to Amendment (349612)

Between lines 97 and 98

insert:

In making purchases or conducting a competitive solicitation pursuant to this section, a commercial service airport is authorized to enact or adopt criteria, standards, preferences, or policies for the promotion of small or locally owned businesses, or otherwise apply such criteria, standards, preferences, or policies otherwise generally applicable to



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11 competitive solicitations of the political subdivision owning
12 and operating such commercial service airport, and may impose
13 contract provisions necessary to address local economic
14 conditions or local regulatory requirements.

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 Community Affairs

BILL: CS/SB 1270

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Lee

SUBJECT: Fiduciary Duty of Care for Appointed Public Officials and Executive Officers

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1270 creates part IX of chapter 112, F.S., to establish an express fiduciary duty of care for appointed public officials' and executive officers acting on behalf of governmental entities.

The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill provides definitions for relevant terms including, but not limited to, "appointed public official," "executive officer," and "governmental entity."

The bill establishes training requirements for each appointed public official and executive officer to begin on January 1, 2021. The bill specifies that a minimum of five hours of board governance training must be completed for each term served. The bill provides three exceptions to the training requirement for appointed public officials and executive officers (i) of governmental entities whose annual revenues are less than \$100,000; (ii) who hold elected office in another capacity; or (iii) who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law. The bill requires appointed public

officials and executive officers to provide written certification of compliance with the board governance training.

The bill requires the Department of Business and Professional Regulation (DBPR), by January 1, 2021, to either (i) contract for or approve a board governance training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved training providers. The bill grants rulemaking authority to the DBPR.

The bill requires the appointment of an executive officer or general counsel to be subject to approval by a majority vote of the governing body of the governmental entity. The bill specifies that all legal counsel employed by a governmental entity must represent the legal interest and position of the governing body of the governmental entity, unless such representation is directed by the governmental entity.

The bill will have an indeterminate fiscal impact on the private sector to the extent entities are selected by DBPR to provide training. The bill will have an indeterminate fiscal impact on the local and state government. The DPBR may experience a slightly negative impact in complying with the bill's board governance training program requirements. Additionally, local governments will experience an indeterminate negative impact to the extent its appointed public officials and executive officers are subject to the training requirement.

The bill will take effect on July 1, 2020.

II. Present Situation:

Chapter 112, F.S.

Chapter 112, F.S., contains general provisions governing public officers and employees. Part III of ch. 112, F.S., establishes a Code of Ethics for Public Officers and Employees that sets forth standards of conduct required for public officers and employees in the performance of their official duties.¹ To enforce the Code of Ethics, the legislature created the Commission on Ethics (Commission).²

Section 112.3145, F.S., requires state and local officers and specified state employees to file a statement of financial interest with the Commission. This section defines a "local officer" to include persons elected to office in any political subdivision of the state and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.³

Additionally, the term includes *appointed* members of specified boards. Specifically, s. 112.3145(1)(a)2., F.S., provides that "public officer" means:

Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

¹ Sections 112.311-112.3261, F.S.

² Section 112.320, F.S.

³ Section 112.3145(1)(a)1., F.S.

- a. The governing body of the political subdivision, if appointed;
- b. A community college or junior college district board of trustees;
- c. A board having the power to enforce local code provisions;
- d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;
- e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or
- f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

A “state officer” is defined to mean:

- Any elected public officer, excluding those elected to the U.S. Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office;
- An *appointed* member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body;
- A member of the Board of Governors of the State University System or a state university board of trustees, in Chancellor and Vice Chancellors of the State University System, and the president of a state university; or
- A member of the judicial nominating commission for any district court of appeal or any judicial circuit.⁴

Fiduciary Duty of Care

A Fiduciary Relationship and Breach of Fiduciary Duty

Black’s Law Dictionary defines “fiduciary relationship” as:

A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. • Fiduciary relationships—such as ... principal-agent ...—require an unusually high degree of care. Fiduciary relationships usu[ally] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.⁵

⁴ Section 112.3145(1)(c), F.S.

⁵ BLACK’S LAW DICTIONARY, 744 (10th ed. 2014).

As explained by the Florida Supreme Court, a fiduciary relationship exists “where confidence is reposed by one party and trust is accepted by the other, or where confidence has been acquired or abused.”⁶ In Florida, a breach of fiduciary duty is considered a tort.⁷ To state a claim for breach of fiduciary duty, a plaintiff must show three elements: (1) the existence of a fiduciary duty, (2) the breach of that duty, and (3) damages resulting from the breach.⁸

A fiduciary relationship may be either express or implied.⁹ “Express fiduciary relationships are created by contract, such as principal/agent or can be created by legal proceedings, as in the case of a guardian/ward.”¹⁰ On the other hand, an implied in law fiduciary relationship may be found based on the “specific factual situation surrounding the transaction and the relationship of the parties.”¹¹ Under Florida law, for an implied fiduciary relationship to exist, “there must be substantial evidence showing some dependency by one party and some undertaking by the other party to advise, counsel, and protect the weaker party.”¹²

The most basic duty of a fiduciary is the duty of loyalty, which obligates the fiduciary to put the interests of the beneficiary first, ahead of the fiduciary’s self-interest, and to refrain from exploiting the relationship for the fiduciary’s personal benefit.¹³ In addition to a duty of loyalty, a fiduciary also owes a duty of care to carry out responsibilities in an informed and considered manner and to act as an ordinary prudent person would act in the management of his own affairs. For example, under s. 518.11(1)(a), F.S., a trustee has the duty to invest or manage assets of an estate prudently – “as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.”¹⁴

Fiduciary Obligations owed by Public Officials

The origins of fiduciary duty for public or political officials dates back to English common law. At first, common law did not distinguish among associations; English common law did not treat the City of London different from the East India Company.¹⁵ Both were considered creatures of

⁶ *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002).

⁷ *Doe v. Evans*, 814 So.2d 370, 374 (Fla. 2002)(“ [a] fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act. . . [t]he liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation.”) (quoting Restatement (Second) of Torts § 874 cmt. B(1979)).

⁸ *Gracey v. Eaker*, 837 So.2d 348, 353 (Fla.2002).

⁹ *Capital Bank v. MVB, Inc.*, 644 So.2d 515, 518 (Fla. 3d DCA 1994).

¹⁰ *MediaXposure Ltd. v. Harrington*, No. 8:11-CV-410-T-TGW, 2012 WL 1805493, at *6 (M.D.Fla.2012)

¹¹ *Id.* See e.g., *Fla. Software Svs., Inc. v. Columbia/HCA Healthcare Corp.*, 46 F.Supp.2d 1276, 1286 (M.D.Fla.1999) (stating that “Florida law recognizes fiduciary relationships arising out of joint ventures.”); *Askew v. Allstate Title & Abstract Co., Inc.*, 603 So.2d 29, 31 (Fla. 2d DCA 1992) (stating that “the title agent has a fiduciary duty to both the buyer and the seller”); *Cohen v. Hattaway*, 595 So.2d 105, 107 (Fla. 5th DCA 1992) (stating that “[c]orporate directors and officers owe a fiduciary obligation to the corporation and its shareholders and must act in good faith and in the best interest of the corporation.”).

¹² *Lanz v. Resolution Trust Corp.*, 764 F.Supp. 176, 179 (S.D.Fla.1991); See *Maszal v. City of Miami*, 971 So.2d 803, 809 (Fla. 3d DCA 2007).

¹³ See Restatement (Third) of Agency §8.01 (2006); see also *Capital Bank*, 644 So. 2d at 520.

¹⁴ See *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003) (a fiduciary administering trust property owes a fundamental common law duty as trustee to preserve and maintain trust assets; “the standard of responsibility is ‘such care and skill as a man of ordinary prudence would exercise in dealing with his own property’”) (citations omitted).

¹⁵ Blackstone famously grouped together as “lay corporations” towns, the “trading companies of London,” and colleges and universities. See 1 WILLIAM BLACKSTONE, COMMENTARIES *470-71.

associational or corporate law, and were referred to as bodies politic, bodies corporate, or corporations.¹⁶ This English common law viewpoint was brought to the New World, and cities, like the Virginia Company of London, were established with this concept in mind.¹⁷ Since these English common law origins, U.S. association law has increasingly divided private and public associations and the concept of fiduciary duty, where the corporation is now deemed private (having more fiduciary duties) and the governmental entity public (having less fiduciary duty).¹⁸

Today, “[p]ublic officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.”¹⁹ Accordingly, a public official’s fiduciary duty is a general one rather than a specific one.²⁰ Stated differently, a public official owes a fiduciary duty to the constituents he or she serves generally, but not to each individual constituents he or she serves.²¹ Additionally, Florida recognizes that public officials occupy a fiduciary relationship with respect to public property in that such property is held in trust.²²

Proprietary/Corporate Functions vs. Governmental/Policy Functions

Public officials acting on behalf of governmental entities have two distinct categories of functions when serving residents in their official capacity. Propriety functions encompass actions when a governmental entity is behaving as a property owner or conducting commercial transactions. For example, Florida courts hold that the construction, maintenance, and repair of streets in a municipality is a corporate or proprietary function because the governmental entity is operating as a property owner.²³

Alternatively, when a governmental entity exercises powers regarding the location and installation of traffic control devices such as stop signs, automatic traffic lights, etc., courts hold that public officials are performing a governmental function by making a particular decision on traffic policy.²⁴ The difference between proprietary and governmental functions is important because the common law fiduciary duty of care does not arise from governmental functions. Policy decisions by public officials are largely shielded from judicial review through sovereign immunity.²⁵ Whereas, proprietary decisions in governmental entity management have historically been subject to due care considerations²⁶ and requirements that officials act “as prudent persons ought to allow themselves in the management of their own affairs.”²⁷

¹⁶ *Id.* at *467

¹⁷ See Judith M. Diamondstone, Philadelphia’s Municipal Corporation, 1701-1776, 90 PA. MAG.

HIST. & BIOGRAPHY 183, 183 (1966).

¹⁸ See *People v. Morris*, 13 Wend. 325, 337 (N.Y. Sup. Ct. 1835) (“The distinction between public and private corporations is strongly marked, and, as to all essential purposes, they correspond only in name.”).

¹⁹ *U.S. v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999).

²⁰ *Id.*

²¹ See *Maryelin Albertov v. Housing Authority of the City of Fort Lauderdale et al.*, 2018 WL 7108227 (Fla.Cir.Ct.) See also *Nussbaum v. Weeks*, 214 Cal. App. 3d 1580, 1598-99 (1990) (holding that the general manager of a water district, as a public official, owed a fiduciary duty to the residents of the water district generally, but not to each resident specifically).

²² See, e.g., *City of Coral Gables v. Hepkins*, 144 So. 385(Fla. 1932).

²³ See *Gordon v. City of West Palm Beach*, 321 So.2d 78 (Fla. 4th DCA 1975).

²⁴ *Id.*

²⁵ See OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 815-16 (3d ed. 2009); *id.* at 816 n.11 (collecting cases).

²⁶ See 2 RESTATEMENT (THIRD) OF AGENCY § 8.08 (AM. LAW INST. 2006).

²⁷ *Tuggle v. Mayor of Atlanta*, 57 Ga. 114, 117 (1876).

Taxpayer Standing to Bring a Claim against a Governmental Entity

It is well settled in Florida that – absent a constitutional challenge – a taxpayer may bring suit against a governmental entity only upon a showing of special injury,²⁸ which is distinct from that suffered by other taxpayers.²⁹ Thus, a private citizen is precluded from filing a taxpayer complaint to challenge government action unless the private citizen alleges and proves a “special injury,” which is an injury that is different from that of the general public.³⁰ Thus, Florida law permits a very limited – if nonexistent – remedy for a breach of a duty of care in the public official context as opposed to private law. Even if a plaintiff could establish that a public official owed them a special fiduciary duty, they would still have to prove that the official caused them to suffer a special injury – that is the essence of the current breach of fiduciary duty claims for public officials.

Fiduciary Obligations owed by Private Trustees and Corporate Officials

The Uniform Trust Code stipulates that trustees must “administer the trust as a prudent person would.”³¹ Trust law defines prudence as “reasonable care, skill, and caution.”³² This requirement has been interpreted as a traditional negligence standard in tort law.³³ While reviewing the actions of a trustee, the prudence analysis prioritizes whether the decision-making processes used by a trustee are reasonable and whether the overall substance of the decision is reasonable as a whole.³⁴

Corporations and other business entities utilize a lower fiduciary duty of care than trust law. In the corporate context, as prescribed by the Model Business Corporation Act (MBCA)³⁵ (which Florida’s Business Corporation Act³⁶ mirrors), a breach of the fiduciary duty of care occurs when a corporate official acts with bad-faith, gross negligence, or recklessness.³⁷ This relaxed standard of care is largely due to the application of the business judgment rule. Under this doctrine, courts will not review decisions of corporate officials as being right or wrong, good or bad, because business operations and market transactions are inherently risky, and corporate officials are

²⁸ This has been termed the “Special injury rule” or “Rickman rule.”

²⁹ *Dep’t of Rev. v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981); *see also Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917) (Generally, for a taxpayer to have standing to challenge a government’s compliance with the law, the taxpayer must establish a “special damage to his individual interests, distinct from that of every other inhabitant”); *School Bd. of Volusia Co. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) (requirement of special injury for taxpayer standing is “consistent with long established precedent”).

³⁰ *N. Broward Hosp. Dist. v. Fornes*, 476 So.2d 154 (Fla.1985); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

³¹ UNIF.TR.CODE § 804 (UNIF. LAW COMM’N 2000).

³² *Id.*

³³ *See* John H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 YALE L.J. 625, 656 (1995)

³⁴ 3 RESTATEMENT (THIRD) OF TRS. § 87 cmt. c (AM. LAW INST. 2007).

³⁵ MODEL BUS. CORP. ACT (AM. BAR ASS’N 2016); *see also Corp. Laws Comm., Am. Bar Ass’n Bus. Law Section, Model Business Corporation Act* (2016 Revision), 72 BUS. LAW. 421, 421 (2017) (reporting that the model act has been “substantially adopted by a majority of the states”).

³⁶ Chapter 607, F.S.

³⁷ *See, e.g., AmeriFirst Bank v. Bomar*, 757 F. Supp. 1365, 1376 (S.D. Fla. 1991) (requiring a showing of “abuse of discretion, fraud, bad faith or illegality” to rebut the presumption of good faith).

obligated to engage in this risk on behalf of a corporation to provide benefits to stakeholders.³⁸ Instead, the fiduciary duty of care in the corporate decision-making context is reviewed for the processes utilized, and the degree of diligence exercised by officials in coming to a decision.

The Department of Business and Professional Regulation

The Florida DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.³⁹

The Department, through its various divisions, oversees and administers certain training programs related to the professions it regulates. Additionally, under the Condominium Act, Chapter 718, and the Cooperative Act, Chapter 719, F.S., require the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) to provide training and educational programs for condominium and cooperative association board members and unit owners.⁴⁰ The training may include web-based electronic media and live training seminars in various locations throughout the state. The Division is permitted to review and approve education and training programs for board members and unit owners offered by providers and must maintain and make available a current list of approved programs and providers.⁴¹

Elected and appointed members and directors of the board of a residential condominium association must certify in writing, within 90 days after being elected or appointed, to the secretary of the association that he or she:

- Has read the association's declaration of condominium, articles of incorporation, bylaws and current written policies;
- That he or she will work to uphold such documents and policies to the best of his or ability; and
- That he or she will faithfully discharge his or her fiduciary responsibility to the association's members.⁴²

³⁸ WILLIAM T. ALLEN ET AL., COMMENTARIES AND CASES ON THE LAW OF BUSINES ORGANIZATION 263 (2d ed. 2007).

³⁹ Section 20.165, F.S.

⁴⁰ See Sections 718.501 and 719.501, F.S.

⁴¹ Section 718.501(1)(j), F.S.

⁴² Section 718.112(2)(d)4.b., F.S.

To meet the requirements of an educational curriculum for a condominium educational curriculum for a condominium education program under s. 718.112(2)(d)4.b., F.S., the program must cover at least four of the following topics:

- Budgets and reserves.
- Elections.
- Financial reporting.
- Condominium operations.
- Records maintenance, including unit owner access to records.
- Dispute resolution.
- Bids and contracts.⁴³

Each condominium association which operates more than two units must pay the Division an annual fee of \$4 for each residential unit in the condominiums operated by the association.⁴⁴ The association is assessed a penalty of 10 percent of the amount due, if the fee is not paid by March 1.⁴⁵ Additionally, until the amount due, plus any penalty, is paid, the association will not have legal standing to maintain or defend any action in the courts.⁴⁶

III. Effect of Proposed Changes:

Section 1 creates part IX of chapter 112, F.S., consisting of s. 112.89, F.S., to be entitled “Fiduciary Duty of Care for Appointed Public Officials and Executive Officers.”

Section 2 creates s. 112.89, F.S., to establish a fiduciary duty of care for appointed public officials and executive officers acting to the applicable entity in accordance with law he or she serves. The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill includes the following definitions:

- “Appointed public official” means either a “local officer” as defined in s. 112.3145(1)(a)2., F.S., or a “state officer” as defined in ss. 112.3145(1)(c)2. and 3., F.S.;⁴⁷
- “Department” means the DBPR;
- “Executive officer” means the chief executive officer of a governmental entity to which an appointed public official is appointed; and

⁴³ Rule 61B-19.001, F.A.C.

⁴⁴ Section 718.501(2)(a), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Approximately 16,785 individuals report under these provisions (approximately 15,195 reporting under subsection (1)(a)2); approximately 1,415 reporting under subsection (1)(c)2., and approximately 175 under subsection (1)(c)3.) Telephone Interview with Steven Zuilkowski, Attorney, Florida Commission on Ethics (Jan. 30, 2020).

- “Governmental entity” means the entity, or a board, a council, a commission, an authority, or another body thereof, to which an appointed public official or an executive officer is appointed or hired.

The bill establishes an express fiduciary duty of care for each appointed public official and executive director owed to the applicable entity in accordance with law he or she serves. The bill specifies that each appointed public official and executive officer has the duty to:

- Act in accordance with the laws, ordinances, rules, policies, and terms governing his or her office or employment;
- Act with the care, competence, and diligence normally exercised by private business professionals in similar corporate and proprietary circumstances;
- Act only within the scope of his or her authority;
- Refrain from conduct that is likely to damage the financial or economic interests of the governmental entity;
- Use reasonable efforts to maintain documentation in accordance with applicable laws; and
- Maintain reasonable oversight of any delegated authority and discharge his or her duties with the care that a reasonably prudent person in a like business position would believe appropriate under the circumstances.

The bill provides that the duty to maintaining reasonable oversight includes (i) becoming reasonably informed in connection with any decision-making function and when devoting attention to any oversight function; and (ii) keeping reasonably informed concerning the affairs of the governmental entity concerning the performance of a governmental entity’s executive officers or other officers, agents, or employees. While this provision creates express fiduciary duties for appointed public officials and state officers, it does not create a private cause of action or enforcement mechanism.

This section also establishes training requirements. Each appointed public official and executive officer, beginning January 1, 2021, must complete a minimum of 5 hours of board governance training (Training) for each term served. For those holding office or employed by a governmental entity on January 1, 2021, he or she is required to complete 5 hours of training before the expiration of his or her term of service. If the appointed public official or appointed executive officer is appointed, reappointed, or hired after January 1, 2021, the bill specifies that he or she shall complete 5 hours of training within 180 days of the appointment, reappointment or hire. If an appointed public official or executive officer is employed under a contract that does not specify a termination date for employment, the public official or executive officer shall complete the 5 hours of training by January 1, 2022, and once every 4 years, thereafter for the duration of their employment.

The bill requires DBPR, by January 1, 2021, to either (i) contract for or approve a Training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved training providers. The bill provides that the Training programs, at a minimum, must include education materials and instruction related to:

- Generally accepted corporate board governance principles and best practices;
- Corporate board fiduciary duty of care legal analyses;
- Corporate board oversight and evaluation procedures;

- Governmental entity responsibilities;
- Executive officer responsibilities;
- Executive officer performance evaluations;
- Selecting, monitoring, and evaluating an executive management team;
- Reviewing and approving proposed investments, expenditures, and budget plans;
- Financial accounting and capital allocation principles and practices;
- New governmental entity member orientation; and
- The fiduciary duty of care and obligations imposed upon appointed public officials and executive officers pursuant to this section.

The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the in-house counsel for the unit of government that created the entity, to provide training as long as it comports with the minimum course content established by DBPR rule.

The bill sets forth training compliance requirements. Each appointed public official and the executive officer must certify, in writing or electronic form and under oath to DBPR that she or he has completed the Training, has read the laws and policies applicable to her position, will work to uphold such laws and policies, and will faithfully discharge his or her fiduciary responsibility. This certification must be submitted within 30 days of completing the Training.

The bill provides three exceptions to the training requirement for (i) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; appointed officials who hold elected office in another capacity; or (iii) appointed public officials or executive officers who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law.

The bill grants rulemaking authority to the DBPR.

The bill requires approval by a majority vote of the governing body of the governmental entity for the appointment of any executive officer or general counsel.

The bill provides standards for legal counsel requiring all legal counsel employed by a governmental entity must represent the legal interest and position of the governmental entity and not the interest of any individual or employee of the governmental entity, unless such representation is directed by the governmental entity. (emphasis added).

Section 3 provides that the bill will take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the State Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under this bill, there is a possibility cities and counties may incur costs relating to the board governance training. However, to the extent the bill applies to counties and municipalities, the mandate requirements do not apply to laws having an insignificant impact which, for Fiscal Year 2020-2021, is forecast at slightly over \$2.1 million.^{48,49,50} The fiscal impact of this bill on cities and counties is indeterminate. The bill's impact is largely dependant on the affordability of the DBPR training programs⁵¹ and the number of individuals within county and municipality governments that fit within the scope of the bill.

If costs imposed by the bill are determined to exceed \$2.1 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., applies to all persons similarly situated (i.e., cities, counties, and all other state and local governing entities with appointed officials) or enactment by vote of two-thirds of the membership of Feach house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁸ FLA. CONST. art. VII, s. 18(d).

⁴⁹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Dec. 20, 2019).

⁵⁰ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 20, 2019).

⁵¹ The majority of the approved providers for the DBPR condominium board member training courses are provided at no fee. See DBPR website, *Approved Providers*, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Feb. 14, 2020).

B. Private Sector Impact:

The private sector will experience an indeterminate positive fiscal impact to the extent of DBPR contracts with private entities for the required training.

C. Government Sector Impact:

The DBPR will experience a negative fiscal impact as it uses resources to implement the provisions of the bill related to training and processes the certification of completed training. The DBPR's agency analysis of the bill states that additional staff may be required to review and approve training programs and maintain reporting data.⁵²

Also, governmental entities that fall under the bill's criteria may be required to expend funds in providing the training to its appointed public officials or executive officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.89 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 Governmental Oversight and Accountability on February 10, 2020:

The committee substitute:

- Revises the definition of “executive officer.”
- Clarifies the applicable fiduciary duty of care standard.
- Amends the provision regarding the duty to maintain reasonable oversight to provide that it be discharged with the care that reasonably prudent person in a like business position would believe appropriate under the circumstances.
- Provides for training requirements for appointed public officials or executive officers employed by a governmental entity under a contract without a termination date.
- Makes technical changes to the minimum education materials to be included in the training program.
- Makes those appointed public officials or executive offers who complete board governance training involving fiduciary duties or responsibilities as required under any other state law exempt from the training requirements under the bill.

⁵² DBPR, *Senate Bill 1270 Agency Analysis* (Jan. 13, 2020) (on file with the Senate Committee on Community Affairs).

- Amends the legal counsel standards provision.

B. Amendments:

None.

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



122172

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Lee) recommended the following:

Senate Amendment

Delete line 65
and insert:
exercised by a reasonably prudent person in similar corporate

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 Community Affairs

BILL: CS/SB 1636

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Repeal of Advisory Bodies and Councils

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1636 abolishes specific advisory bodies and programs that are no longer active, necessary, or beneficial to the furtherance of a public purpose. Specifically, this bill abolishes the following entities and the statutory references relating to:

- Citrus/Hernando Waterways Restoration Council;
- My Safe Florida Home Program Advisory Council;
- Ad hoc committee for the Great Floridian Program within the Department of State;
- Geneva Freshwater Lens Task Force;
- Brownfield Areas Loan Guarantee Council;
- Nonmandatory Land Reclamation Committee;
- Sturgeon Production Working Group;
- Trap Certificate Technical Advisory Appeals Board;
- Clean Fuel Florida Advisory Board;
- Technical advisory council for water and domestic wastewater operator certification;
- Technical advisory panels for Florida Health Choices, Inc.;
- Technical advisory panel relating to result-oriented accountability program within the Department of Children and Families;
- Learning Gateway steering committee;
- Department of Elderly Affairs Advisory Council;
- Florida Agricultural Promotion Campaign Advisory Council;
- Healthy Schools for Healthy Lives Council;

- Tropical Fruit Advisory Council;
- Board of Governors Advisory board relating to online baccalaureate degree programs; and
- Florida Early Learning Advisory Council.

The bill takes effect July 1, 2020.

II. Present Situation:

Advisory Bodies, Commissions, and Boards

Under the organizational structure of the executive branch of state government, a “council” or “advisory council” is

an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.¹

An advisory body, commission, board of trustees, or any other collegial body created by specific statutory authority as an adjunct to an executive agency must be established, evaluated, and maintained in accordance with the following provisions:²

- It may be created only when it is necessary and beneficial to the furtherance of a public purpose;
- It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose;
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions, boards of trustees, and other collegial bodies established as adjuncts to executive agencies; and
- It must meet a statutorily defined purpose and its power must conform to the definitions for governmental units.

Because these advisory bodies are codified in statute, the Legislature must take an affirmative action to abolish the advisory bodies.

Citrus/Hernando Waterways Restoration Council

The Citrus/Hernando Waterways Restoration Council was established, in 2003, in response to regional concerns for the health of Citrus and Hernando county waterways.³ It is the council’s responsibility to review audits and all data specifically related to lake and river restoration techniques and sport fish population recovery strategies, evaluate whether additional studies are needed, explore all possible sources of funding to conduct restoration activities, and report to the Legislature on the progress made and any recommendations for the next fiscal year. The council last submitted an annual report in 2015.

¹ Section 20.03(6), F.S.

² Section 20.052, F.S.

³ Ch. 2003-28, Laws of Fla. In 2006, the Legislature expanded the council’s responsibilities to include all of the waterways in Citrus and Hernando Counties. Ch. 2006-43, Laws of Fla.

In 2014, the Southwest Florida Water Management District formed its Springs Coast Steering Committee, which performs the same work as the council.

My Safe Florida Home Program Advisory Council

The My Safe Florida Home Program is established within the Department of Financial Services (DFS) to develop and implement a comprehensive and coordinated approach for hurricane damage mitigation. The program provides trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties. It also provides grants to eligible applicants as funding allows.

In 2006, the My Safe Florida Home Program Advisory Council was established to advise DFS in its administration of the program.⁴ The program, after fulfilling its purpose, ceased operations in 2008. As such, the council has not been utilized.

The Great Floridian Program

The Great Floridian Program is a program administered under the Division of Historical Resources within the Department of State to recognize and record the achievements of Floridians, living and deceased, who have made major contributions to the progress and welfare of this state.⁵ Annually, the division must convene an ad hoc committee to nominate not fewer than two persons whose names must be submitted to the Secretary of State with the recommendation that they be honored with the designation “Great Floridian.”⁶

The last time Great Floridian recognitions were made was in 2013. In addition, a 2008 sunset review report by the Office of Program Policy Analysis and Government Accountability recommended abolishing the committee.⁷

Geneva Freshwater Lens Task Force

The Geneva Freshwater Lens Task Force was created in 1993 to provide a means by which representatives from state agencies, local government, water management districts, environmental organizations, industry, and the public at large could evaluate the management needs of the Geneva Freshwater Lens for the proper protection of the public interest and to recommend actions for addressing any deficiencies discovered.⁸ The task force was directed to present a report to the President of the Senate and the Speaker of the House of Representatives by December 1, 1993, which evaluated the adequacy of current planning, regulatory, and other programs and made recommendations for future management of the Geneva Freshwater Lens.⁹

⁴ Section 215.5586(4), F.S.

⁵ Section 267.0731, F.S.

⁶ *Id.*

⁷ The Florida Legislature Sunset Review: Office of Program Policy Analysis and Government Accountability, *Department of State Advisory Committees Assessment*, 7 (Dec. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/08-S12.pdf> (last visited Feb.12, 2020).

⁸ Ch. 93-273, Laws of Fla.

⁹ *Id.*

The task force submitted its report and in 1995, the Legislature directed the appropriate state agencies to implement the recommendations of the Geneva Freshwater Lens Task Force.¹⁰

Brownfield Areas Loan Guarantee Council

The Brownfield Areas Loan Guarantee Council was established in 1998 to support the Brownfield Areas Loan Guarantee Program, which provides tax credits for rehabilitation of brownfield sites in designated brownfield areas. The term “brownfield sites” means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.¹¹ The term “brownfield area” means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.¹²

The Brownfield Areas Loan Guarantee Council reviews certain partnership agreements with local governments, financial institutions, and other entities associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves.¹³ By 2006, the loan guarantee provisions had been used only once. As such, the council does not appear to be active.

Nonmandatory Land Reclamation Committee

The Nonmandatory Land Reclamation Committee was created within the Department of Environmental Protection (DEP) to advise the department on nonmandatory land reclamation and recommend approval, modification, or denial of reclamation grant applications submitted by landowners for lands disturbed by phosphate mining prior to July 1, 1975.¹⁴ According to DEP’s website, all projects for nonmandatory land reclamation have been identified and selected.¹⁵ No new applicants are being accepted as the funding program will end when the last of the projects are funded and released. As such, the committee appears to be inactive.

Sturgeon Production Working Group

The Sturgeon Production Working Group was created within the Department of Agriculture and Consumer Services (DACS) to coordinate the implementation of a state sturgeon production management plan to promote the commercial production and stock enhancement of sturgeon in the state.¹⁶ The group has not met since 2009.

¹⁰ Ch. 95-377, Laws of Fla.; codified at section 373.4597(3), F.S.

¹¹ Section 376.79(4), F.S.

¹² Section 376.79(5), F.S.

¹³ Section 376.86, F.S.

¹⁴ Section 378.033, F.S. *See also* Nonmandatory Land Reclamation Program, DEP website, *available at* <https://floridadep.gov/water/mine-restoration-funding-program> (last visited Feb. 12, 2020).

¹⁵ Nonmandatory Land Reclamation Program, DEP website, *available at* <https://floridadep.gov/water/mine-restoration-funding-program> (last visited Feb. 12, 2020).

¹⁶ Section 379.2524, F.S.

Trap Certificate Technical Advisory and Appeals Board

The Trap Certificate Technical Advisory and Appeals Board was established to consider and advise the Florida Fish and Wildlife Conservation Commission (FWC) on disputes and other problems arising from the implementation of the spiny lobster trap certificate program.¹⁷ Current law provides that, beginning July 1, 1994, the board will no longer consider and advise FWC on disputes and other problems arising from implementation of the trap certificate program or allotment of certificates.¹⁸ As such, the board no longer appears to be active or necessary.

Clean Fuel Florida Advisory Board

The Clean Fuel Florida Advisory Board was established within DEP to serve as a resource to the department and to provide the Governor, the Legislature, and the Secretary of DEP with private sector and other public agency perspectives on achieving the goal of increasing the use of alternative fuel vehicles in this state.¹⁹ Current law provides for termination of the board five years after the effective date of s. 403.42, F.S.²⁰ The board appears to have terminated in 2006.

Technical Advisory Council, Water and Domestic Wastewater Operator Certification

The Technical Advisory Council for Water and Domestic Wastewater Operator Certification was established in 1997 to advise DEP regarding the operator certification program and provide expertise on water and wastewater treatment.²¹ The council does not appear to be active. In addition, DEP has a separate water and domestic wastewater operator certification program and likely does not need an advisory council.

Florida Health Choices Corporation

The Florida Health Choices Corporation (corporation) was established in 2008 to create an online market for diverse health care coverage products, particularly for small businesses, as an Internal Revenue Code s. 125 cafeteria plan using pre-tax dollars.²² The corporation is governed by a 15-member board of directors made up of members appointed by the Speaker, President, and Governor, as well as state agency ex-officio members.²³ The board of directors may establish technical advisory panels consisting of interested parties, including consumers, health care providers, individuals with expertise in insurance regulation, and insurers.²⁴ The last appropriation of funding for the corporation was vetoed in 2017. As such, the corporation does not appear to be active and the authority to establish advisory panels no longer appears to be necessary.

Technical Advisory Panel, Child Welfare Results-Oriented Accountability Program

The child welfare results-oriented accountability program monitors and measures the use of resources, the quality and amount of services provided, and child and family outcomes in

¹⁷ Section 379.3671, F.S.

¹⁸ Section 379.3671(4)(i), F.S.

¹⁹ Section 403.42(3), F.S.

²⁰ Section 403.42(3)(b)7., F.S.

²¹ Section 403.87, F.S.

²² See section 408.910, F.S.

²³ Section 408.910(11)(a), F.S.

²⁴ Section 408.910(11)(h), F.S.

Florida's child welfare system.²⁵ Current law requires the Department of Children and Families (DCF) to establish a technical advisory panel to advise DCF on the implementation of the results-oriented accountability program.²⁶ It appears DCF is no longer using this technical advisory panel for advice on implementing the program.

Learning Gateway Steering Committee

In 2002, the Legislature authorized a three-year demonstration program called the Learning Gateway. The purpose of Learning Gateway is to provide parents access to information, referral, and services to lessen the effects of learning disabilities in children from birth to age 9.²⁷

The Learning Gateway Steering Committee was established within the Department of Education to provide policy development, consultation, oversight, and support for the implementation of the Learning Gateway Programs and to advise the agencies, the Legislature, and the Governor on statewide implementation of system components and issues and on strategies for continuing improvement to the system.²⁸ No appointments have been made to the steering committee since the original three-year term appointments, and the steering committee was marked as inactive in 2014.

Department of Elderly Affairs Advisory Council

The Department of Elderly Affairs Advisory Council was established within the Department of Elderly Affairs to serve in an advisory capacity to the Secretary of Elderly Affairs and to assist the secretary in carrying out the purpose, duties, and responsibilities of the department.²⁹ The advisory council is not required to submit any reports and only appears to serve as an advisor to the secretary, who may create an ad hoc group to advise him or her at any time. As such, the establishment of the advisory council in statute appears unnecessary.

Florida Agricultural Promotional Campaign Advisory Council

The Florida Agricultural Promotional Campaign Advisory Council is created within DACS³⁰ to review and make recommendations to the Commissioner of Agriculture regarding the Florida Agricultural Promotion Campaign.³¹ The council does not appear to be active as the last noticed meeting was in 2013.

Healthy Schools for Healthy Lives Council

The Healthy Schools for Healthy Lives Council is created within DACS to advise the department on matters relating to nutritional standards and the prevention of childhood obesity, nutrition education, anaphylaxis, and other needs to further the development of the various school nutrition programs.³² The council does not appear to be active.

²⁵ Section 409.997(2), F.S.

²⁶ Section 409.997(3), F.S.

²⁷ Section 411.226(1), F.S.

²⁸ Section 411.226(2), F.S.

²⁹ Section 430.05, F.S.

³⁰ Section 571.28(1), F.S.

³¹ Section 571.28, F.S.

³² Section 595.701(1), F.S.

Tropical Fruit Advisory Council

Current law creates the Tropical Fruit Advisory Council within DACS to provide necessary assistance, review, and recommendations to the Commissioner of Agriculture for drafting a South Florida Tropical Fruit Plan.³³ However, the council does not appear to be active.

Advisory Board, Preeminent State Research University Institute for Online Learning

Current law establishes a collaborative partnership between the Board of Governors (BOG) and the Legislature to elevate the academic and research preeminence of Florida's highest-performing state research universities. The partnership stems from the State University System Governance Agreement executed on March 24, 2010, wherein the Governor and leaders of the Legislature agreed to a framework for the collaborative exercise of their joint authority and shared responsibility for the State University System.³⁴

The preeminent state research universities program requires each state research university that meets all 12 academic and research excellence standards, as verified by the BOG, to establish an institute for online learning.

In 2013, the BOG was required to convene an advisory body to support the development of high-quality, fully online baccalaureate degree programs; advise the BOG on the release of funding to the university; and monitor, evaluate, and report on the implementation of the plan to the BOG, the Governor, the President of the Senate, and the Speaker of the House of Representatives.³⁵ The advisory board for the preeminent state research university institute for online learning has completed its statutory duties.

Florida Early Learning Advisory Council

The Florida Early Learning Advisory Council was created within the Agency for Workforce Innovation in 2004³⁶ and was moved within the Office of Early Learning in 2011.³⁷ The Office of Early Learning provides staff and administrative support for the council.³⁸

The Florida Early Learning Advisory Council is tasked with periodically analyzing and providing recommendations to the Office of Early Learning on the effective and efficient use of local, state, and federal funds; the content of professional development training programs; and best practices for the development and implementation of early learning coalition plans.³⁹ However, the advisory council does not appear to be active.

³³ Section 603.203, F.S.

³⁴ Section 1001.7065(1), F.S.

³⁵ Section 1001.7065(4), F.S.

³⁶ Section 1, ch. 2004-484, Laws of Fla.; codified at section 1002.77, F.S.

³⁷ Section 457, ch. 2011-142, Laws of Fla.

³⁸ Section 1002.77(5), F.S.

³⁹ Section 1002.77, F.S.

III. Effect of Proposed Changes:

Section 1 repeals chapters 2003-287 and 2006-43, L.O.F., relating to the membership, powers, and duties of the Citrus/Hernando Waterways Restoration Council.

Section 2 repeals s. 215.5586(4), F.S., relating to the advisory council for the My Safe Florida Home Program.

Section 3 amends s. 267.0731, F.S., to delete a requirement that the Division of Historical Resources of the Department of State convene an ad hoc committee to make recommendations for the Great Floridians Program.

Section 4 repeals s. 373.4597(3), F.S., relating to implementation of recommendations of the Geneva Freshwater Lens Task Force.

Section 5 repeals s. 376.86, F.S., to abolish the Brownfield Areas Loan Guarantee Council.

Section 6 repeals s. 378.032(3), F.S., to delete a definition referring to the Nonmandatory Land Reclamation Committee, which is abolished in section 10 of the bill.

Section 7 repeals s. 378.033, F.S., to abolish the Nonmandatory Land Reclamation Committee.

Section 8 amends s. 378.034, F.S., to modify the procedures governing reclamation program applications to conform to the abolition of the Nonmandatory Land Reclamation Committee by shifting duties of the committee to the either the Secretary of the Department of Environmental Protection or the department staff.

Section 9 repeals s. 379.2524, F.S., to abolish to the Sturgeon Production Working Group.

Section 10 amends s. 379.361, F.S., to delete cross-references to conform to the abolition of the Sturgeon Production Working Group.

Section 11 amends s. 379.367, F.S., to conform a cross-reference.

Section 12 repeals s. 379.3671(4), F.S., to abolish the Trap Certificate Technical Advisory and Appeals Board.

Section 13 repeals s. 403.42, F.S., to abolish the Clean Fuel Florida Advisory Board.

Section 14 repeals s. 403.87, F.S., to abolish the technical advisory council for water and domestic wastewater operator certification.

Section 15 repeals s. 408.910(11)(h), F.S., to delete statutory authority granted to the Florida Health Choices, Inc., to appoint technical advisory panels.

Section 16 repeals s. 409.997(3), F.S., to delete statutory authority granted to the Department of Children and Families to establish a technical advisory panel relating to the results-oriented accountability program.

Section 17 repeals s. 411.226, F.S., to delete the statutorily-defined goals of the Learning Gateway, to abolish the Learning Gateway steering committee, and to delete the statutory authority for the steering committee to approve demonstration projects.

Section 18 repeals s. 430.05, F.S., to abolish the Department of Elderly Affairs Advisory Council.

Section 19 repeals s. 571.24(7), F.S., to delete a duty of DACS relating to the Florida Agricultural Promotional Campaign Advisory Council, which is abolished by section 20 of this bill.

Section 20 repeals s. 571.28, F.S., to abolish the Florida Agricultural Promotional Campaign Advisory Council.

Section 21 repeals s. 595.701, F.S., to abolish the Healthy Schools for Healthy Lives Council.

Section 22 repeals s. 603.203, F.S., to abolish the Tropical Fruit Advisory Council.

Section 23 amends s. 603.204, F.S., to delete a reference to the Tropical Fruit Advisory Council, which is abolished by section 22 of the bill.

Section 24 repeals s. 1001.7065(4)(a)–(f), F.S., to delete statutory authority granted to the Board of Governors to convene an advisory board relating to online baccalaureate degree programs.

Section 25 repeals s. 1002.77, F.S., to abolish the Florida Early Learning Advisory Council.

Section 26 amends s. 1002.83, F.S., to delete a reference to the Early Learning Advisory Council, which is abolished by section 25 of the bill.

Section 27 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.5586, 267.0731, 373.4597, 378.032, 378.034, 379.361, 379.367, 379.3671, 408.910, 409.997, 571.24, 603.204, 1001.7065, and 1002.83.

This bill repeals the following sections of the Florida Statutes: 376.86, 378.033, 379.2524, 403.42, 403.87, 411.226, 430.05, 571.28, 595.701, 603.203, and 1002.77.

This bill repeals the following chapters of the Laws of Florida: 2003-287 and 2006-43.

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 Governmental Oversight and Accountability on February 10, 2020:
The CS deletes language abolishing the Florida Film and Entertainment Advisory Council and the Florida Young Farmer and Rancher Advisory Council.

- B. **Amendments:**

None.