

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMERCE AND TOURISM**  
**Senator Gruters, Chair**  
**Senator Torres, Vice Chair**

**MEETING DATE:** Monday, March 18, 2019

**TIME:** 1:30—3:30 p.m.

**PLACE:** *Toni Jennings Committee Room, 110 Senate Building*

**MEMBERS:** Senator Gruters, Chair; Senator Torres, Vice Chair; Senators Hutson, Stewart, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 890</b> Baxley (Identical H 707)	Drug-free Workplaces; Revising the contents of an employer policy statement with respect to employee drug use; revising the frequency of followup testing; revising specimen collection, verification, and documentation procedures, etc.  CM 03/18/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
2	<b>SB 1066</b> Baxley (Identical H 979)	Sales Tax Absorption; Deleting prohibitions against a dealer advertising or holding out to the public that he or she will absorb all or part of the sales and use tax or will relieve the purchaser of all or part of the tax; authorizing dealers, subject to specified conditions, to advertise or hold out to the public that they will absorb all or part of the tax or refund any part thereof to the purchaser, etc.  CM 03/18/2019 Fav/CS FT RC	Fav/CS Yeas 5 Nays 0
3	<b>SB 1162</b> Gainer (Similar H 191)	Northwest Florida Rural Inland Affected Counties Recovery Fund; Creating the Northwest Florida Rural Inland Affected Counties Recovery Fund within the Department of Economic Opportunity; requiring certain payments to be appropriated annually to the fund; requiring the department to grant awards to organizations and local governments for specified infrastructure projects and workforce programs, etc.  CM 03/11/2019 Temporarily Postponed CM 03/18/2019 Favorable ATD AP	Favorable Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, March 18, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1708</b> Rouson	Tourist Development Councils; Authorizing certain counties to adopt a resolution that establishes and appoints members of more than one tourist development council upon a certain finding; exempting such counties from organizing their tourist development councils in accordance with specified requirements of membership composition upon the adoption of such resolution, etc.  CM 03/18/2019 Fav/CS CA RC	Fav/CS Yeas 5 Nays 0
5	<b>SR 1808</b> Taddeo	Film and Television Production; Recognizing the value of film and television production as an economic driver and a creator of high-wage jobs, encouraging the collaboration of public-sector and private-sector efforts through the development of programs and partnerships, and encouraging the Florida Office of Film and Entertainment's continued support of various collaborative programs and partnerships for national and international marketing, etc.  CM 03/18/2019 Temporarily Postponed RC	Temporarily Postponed
6	<b>SB 754</b> Stewart (Identical H 323)	Motor Vehicle Insurance Coverage for Windshield Glass; Prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons, etc.  BI 03/11/2019 Favorable CM 03/18/2019 Favorable RC	Favorable Yeas 5 Nays 0
7	<b>SB 1412</b> Gruters (Compare S 1112)	Sales Tax Holiday for Disaster Preparedness Supplies; Providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; providing applicability for certain exemptions; authorizing the Department of Revenue to adopt emergency rules; specifying locations where the exemptions do not apply, etc.  CM 03/18/2019 Fav/CS FT AP	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, March 18, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1652</b> Gruters (Identical H 1239)	Consumer Fraud, Identity Theft, and Skimmer Working Group; Creating the Consumer Fraud, Identity Theft, and Skimmer Working Group as an advisory committee adjunct to the Department of Agriculture and Consumer Services for a specified purpose, etc.  CM      03/18/2019 Fav/CS GO RC	Fav/CS Yeas 5 Nays 0
9	Consideration of proposed bill:		
	<b>SPB 7084</b>	Public Records and Public Meetings/Consumer Fraud, Identity Theft, and Skimmer Working Group; Specifying that information obtained by the Consumer Fraud, Identity Theft, and Skimmer Working Group, which is exempt or confidential and exempt from public records requirements, retains its protected status; providing an exemption from public records requirements for identifying information concerning a victim of identity theft, credit card fraud, or consumer financial fraud in records created by the working group; providing for future legislative review and repeal; providing statements of public necessity, etc.	Submitted and Reported Favorably as Committee Bill Yeas 5 Nays 0
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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 890

INTRODUCER: Commerce and Tourism Committee and Senator Baxley

SUBJECT: Drug-free Workplaces

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	<b>Fav/CS</b>
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 890 makes changes to the drug-free workplace programs in Chapters 112 and 440, F.S.

The bill amends s. 112.0455, F.S., which applies to any agency within state government, to:

- Require that prescreening and drug-screening tests meet specified standards;
- Prohibit sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Require the Agency for Health Care Administration to adopt rules

Currently, an employer subject to the Workers' Compensation Law who implements a drug-free workforce program pursuant to s. 440.102, F.S., is eligible for a workers' compensation insurance discount of up to 5 percent. If an employee in such a program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits. This bill:

- Amends the definition of "drug" to include substances named in state and federal law;
- Adds additional certification requirements for drug tests and specimens;
- Requires follow-up testing to be done at least six times, up from two times in current law;
- Removes a requirement that an employee be provided a form on which to note medications, which must be taken into account in interpreting drug tests;
- Replaces a list of professions qualified to collect specimens with a requirement that such persons meet qualification standards set by specified federal agencies;

- Requires specimens from positive tests to be preserved for one year after the confirmation test was conducted, instead of 210 days after result was mailed;
- Shortens from 180 to 60 days after notification of a positive result the period during which an employee may have a specimen retested;
- Requires that prescreening and drug-screening tests meet specified standards;
- Prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Requires the Agency for Health Care Administration to adopt rules.

The bill takes effect July 1, 2019.

## **II. Present Situation:**

### **Drug-Free Workplace Act for State Agency Employers**

The Drug-Free Workplace Act in s. 112.0455, F.S., exists to promote the goal of drug-free workplaces within government through drug-testing, and to provide opportunities for assistance to employees with alcohol or drug problems. The Act, which applies to agencies within state government,<sup>1</sup> specifies requirements for testing standards and procedures, notice, employee and employer protections, and remedies.

### **Drug-Free Workplace Program for Workers' Compensation Employers**

The Workers' Compensation Law in Chapter 440, F.S., provides legislative intent to promote drug-free workplaces, and sets out the notice, educational, and procedural requirements that an employer must follow to implement the employee and applicant drug testing that is a component of such workplaces.<sup>2</sup> An "employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law.<sup>3</sup>

If an employer implements a drug-free workplace program that conforms to applicable law and rules, the employer is eligible for workers' compensation and employer's liability insurance discounts<sup>4</sup> of up to five percent,<sup>5</sup> and the employer may require an employee to submit to a test for the presence of drugs or alcohol. If an employee in a drug-free workplace program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits.<sup>6</sup>

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<sup>1</sup> Section 112.0455(5)(h), F.S.

<sup>2</sup> See ss. 440.101 and 440.102, F.S.

<sup>3</sup> Section 440.102(1)(h), F.S.

<sup>4</sup> Section 440.102(2), F.S. See s. 627.0915, F.S., providing that the Office of Insurance Regulation must approve rating plans for workers' compensation and employers' liability insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to s. 440.102 F.S., and attendant rules.

<sup>5</sup> Fla. Admin Code R. 69L-5.220 (2019)

<sup>6</sup> Section 440.101(2), F.S.

### *Definitions*

The following definitions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration (AHCA):

- “Drug” means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph.
- “Drug test” or “test” means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the U.S. Department of Health and Human Services or licensed by the AHCA, for the purpose of determining the presence or absence of a drug or its metabolites.
- “Specimen” means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the U.S. Food and Drug Administration or the AHCA.<sup>7</sup>

### *Notice*

One time only, prior to testing, an employer must give all employees and applicants for employment a written policy statement that contains:

- A general statement of the employer’s policy on employee drug use identifying the types of drug testing an employee or applicant may be required to submit to, and the actions the employer may take against an employee or applicant on the basis of a positive confirmed drug test result;
- A statement advising the employee or job applicant of the existence of s. 440.102, F.S.;
- A general statement concerning confidentiality;
- Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications both before and after being tested;
- A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test;
- The consequences of refusing to submit to a drug test;
- A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs;
- A statement that an employee or applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee’s or applicant’s explanation or challenge is unsatisfactory to the medical review officer, the medical review officer must report a positive test result back to the employer; and that a person may contest the drug test result;
- A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to the drug-free workplace law;
- A list of all drugs for which the employer will test, described by brand name or common name, as well as by chemical name;

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<sup>7</sup> Section 440.102(1), F.S.

- A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court; and
- A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.<sup>8</sup>

An employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required.<sup>9</sup>

### ***Types of Testing***

An employer is required to conduct job applicant, reasonable-suspicion, and routine fitness-for-duty drug testing. If an employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. If follow-up testing is required, it must be conducted at least once a year for a 2-year period after completion of the program.<sup>10</sup>

### ***Procedures***

All specimen collection and testing for drugs pursuant to s. 440.102, F.S., must be performed in accordance with the following procedures:

- Samples must be collected with due regard to privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample.
- Specimen collection must be documented, and the documentation procedures must include:
  - Labeling of specimen containers, and
  - A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but must be taken into account in interpreting any positive confirmed test result;
- Specimen collection, storage, and transportation to the testing site must be performed in a manner that reasonably precludes contamination or adulteration of specimens;
- Each confirmation test conducted must be conducted by a licensed or certified laboratory;
- A specimen for a drug test may be taken or collected by any of the following persons:
  - A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment; or
  - A qualified person employed by a licensed or certified laboratory;
- A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two drug tests as determined by the AHCA.

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<sup>8</sup> Section 440.102(3)(a), F.S.

<sup>9</sup> Section 440.102(3)(c), F.S.

<sup>10</sup> Section 440.102(4), F.S.

- Every specimen that produces a positive, confirmed test result must be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the medical review officer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample must be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the AHCA, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory;
- Within 5 working days after receipt of a positive confirmed test result from the medical review officer, an employer must inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The employer must provide to the employee or job applicant, upon request, a copy of the test results;
- Within 5 working days after receiving notice of a positive confirmed test result, an employee or job applicant may submit information to the employer explaining or contesting the test result, and explaining why the result does not constitute a violation of the employer's policy;
- The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and all such documentation shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year;
- An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer;
- An employer that performs drug testing or specimen collection must use chain-of-custody procedures established by the AHCA;
- An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. An employee or job applicant shall pay the costs of any additional drug tests not required by the employer;
- An employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program;
- If drug testing is conducted based on reasonable suspicion, the employer must promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing; and
- All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under s. 440.102, F.S., must be paid for by the carrier or self-insurer.



### ***Confirmation Testing***

If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test, which may be conducted only by licensed or certified laboratories. All positive initial tests must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the AHCA or the U.S. Food and Drug Administration as such technology becomes available in a cost-effective form. If an initial drug test of an employee or job applicant is confirmed as positive, the employer's medical review officer must provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

### ***Employer Protection***

An employee or job applicant whose drug test result is confirmed as positive in accordance with s. 440.102, F.S., shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause.

## **III. Effect of Proposed Changes:**

### **Drug-Free Workplace Program for Agencies within State Government**

**Section 1** makes changes to the Drug-Free Workplace Act in s. 112.0455, F.S., by requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatine, oxidants and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

### **Drug-Free Workplace Program for Workers' Compensation Employers**

**Section 2** makes numerous changes to the procedures relating to drug-free workplaces for Workers' Compensation Law employers in s. 440.102, F.S.

### ***Definitions***

The bill amends the definition of "drug" by specifying that alcohol means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol. A controlled substance includes those identified under Schedules I, II, III, IV, or Schedule V of s. 893.03, F.S.;<sup>11</sup> and any controlled substance identified under Schedules I, II, III, IV, or V of the Controlled Substances Act, 21 U.S.C. s. 812(c).

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<sup>11</sup> Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the "potential for abuse" of the substance and whether there is a currently accepted medical use for the substance in the United States.

A “drug test,” when testing for alcohol, must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.<sup>12</sup>

The U. S. Department of Health and Human Services (HHS) and U. S. Department of Transportation (USDOT) are added to the list of governmental agencies that can approve what “specimen” means.

### ***Notice***

The bill changes the written policy statement that employers are required to give to all employees and applicants prior to testing by removing from the procedures for employees and job applicants to confidentially report to a medical review officer their use of prescription or nonprescription medications to a medical review officer both before and after being tested. The bill also removes the requirement that the policy contain the brand name of drugs being tested for.

### ***Testing***

Under current law, if follow-up drug testing is required because an employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the testing must be conducted once a year for a 2-year period after completion of the program.

The bill changes the amount of required follow-up testing to at least six times in the first year, and provides that testing may be conducted twice for 1 additional year.

### ***Procedures***

The bill deletes a labeling requirement for specimen containers for saliva or breath testing when not being transported to a laboratory for analysis.

The bill deletes a requirement that a form must be provided upon which an employee may provide information considered by the employee to be relevant to the test, including the use of medication, and deletes the requirement that such information be taken into account in interpreting positive confirmed test results.

The bill replaces a requirement that a drug test specimen may be collected by a physician, physician assistant, registered professional nurse, licensed practical nurse, nurse practitioner, certified paramedic at scene of accident, or qualified lab employee with a requirement that a specimen may be collected by a person who meets the qualification standards for urine or oral fluid specimen collection as specified by the HHS or the USDOT. For alcohol testing, a person must meet the USDOT for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug testing laboratory. A person who directly supervises an employee subject to testing may not

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<sup>12</sup> This rule describes required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry. See <https://www.transportation.gov/odapc/part40> (last visited March 18, 2019).

serve as the specimen collector for that employee unless there is no other qualified specimen collector available.

The bill clarifies that a specimen amount should be sufficient for two independent drug tests - one to screen the specimen and one to confirm the screening results.

The bill extends from 210 days to one year the amount of time a specimen that produces a positive, confirmed test must be preserved.

The bill shortens from 180 days to 60 days the period after a positive test during which an employee or applicant may have the sample retested.

The bill provides that a second lab must test the specimen at the limit of detection for the drug or analyte confirmed by the original, and if the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive.

The bill deletes a requirement that an applicant or employee's explanation or challenge of a positive test must be provided to the applicant or employee.

Current law provides that an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. The bill removes the confirmation test as a condition, and creates an exception when a confirmed positive breath alcohol test was conducted in accordance with U.S. Department of Transportation alcohol testing procedures.

An employer that performs drug testing or specimen collection must use chain-of-custody procedures established by the Agency for Health Care Administration, or, added by the bill, procedures established by *the HHS, or the USDOT*.

### ***Confirmation Testing***

The bill removes a provision specifying that, if an initial drug test is negative, the employer may in its sole discretion seek a confirmation test, and removes a provision that only licensed or certified laboratories may conduct confirmation drug tests.

The bill provides that all laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the HHS or the USDOT, and removes a provision that the tests can be confirmed by methods approved by the AHCA or the U.S. Food and Drug Administration.

The bill provides that for a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with USDOT alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

***Employer Protection***

The bill provides that an employee or job applicant whose drug test result is confirmed *or verified* as positive shall not, by virtue of the result alone, be deemed to have a “handicap” or “disability” as defined under federal, state, or local handicap and disability discrimination laws.

***Drug-Testing Standards***

The bill creates a new subsection (9) in s. 440.102, F.S., requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatine, oxidants and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

***Drug-Testing Standards for Laboratories***

The bill removes a requirement that lab reports of drug tests must include any correlation between medication reported by the employee or applicant and the test result, consistent with lines 145-154 of the bill, which delete the requirement that an employee or applicant be provided a form to list currently or recently used medication.

**Cross Reference**

**Section 3** updates a cross reference in s. 443.101, F.S.

**Effective date**

**Section 4** provides that the bill takes effect July 1, 2019.

**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:**

Indeterminate. Employers may incur more costs resulting from the mandatory tripling of the number of tests required for follow-up testing. Relatedly, if the amended testing standards in the bill reduce the number of drug-testing facilities that can comply, those drug-testing facilities that can comply should see an increase in the number of tests they perform.

**C. Government Sector Impact:**

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 440.102 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 Commerce and Tourism on March 18, 2019:**

The CS makes changes to the drug-free workplace programs in Chapters 112 and 440, F.S., by requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatine, oxidants and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
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The Committee on Commerce and Tourism (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (13) through (17) of section 112.0455, Florida Statutes, are redesignated as subsections (14) through (18), respectively, a new subsection (13) is added to that section, and paragraph (b) of subsection (6) and paragraph (a) of present subsection (15) are amended, to read:

112.0455 Drug-Free Workplace Act.—



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(6) NOTICE TO EMPLOYEES.—

(b) Prior to testing, all employees and job applicants for employment shall be given a written policy statement from the employer which contains:

1. A general statement of the employer's policy on employee drug use, which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications shall be developed by the Agency for Health Care Administration.

5. The consequences of refusing to submit to a drug test.

6. Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

7. A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or



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40 explain the result to the employer within 5 working days after  
41 written notification of the positive test result. If an employee  
42 or job applicant's explanation or challenge is unsatisfactory to  
43 the employer, the person may contest the drug test result as  
44 provided by subsections (15) ~~(14)~~ and (16) ~~(15)~~.

45 8. A statement informing the employee or job applicant of  
46 his or her responsibility to notify the laboratory of any  
47 administrative or civil actions brought pursuant to this  
48 section.

49 9. A list of all drugs for which the employer will test,  
50 described by brand names or common names, as applicable, as well  
51 as by chemical names.

52 10. A statement regarding any applicable collective  
53 bargaining agreement or contract and the right to appeal to the  
54 Public Employees Relations Commission.

55 11. A statement notifying employees and job applicants of  
56 their right to consult the testing laboratory for technical  
57 information regarding prescription and nonprescription  
58 medication.

59 (13) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—  
60 Before a drug testing facility licensed under part II of chapter  
61 408 may perform any drug-screening test on a urine specimen  
62 collected in this state, prescreening tests must be performed to  
63 determine the validity of the specimen. The prescreening tests  
64 must be capable of detecting, or detecting and defeating, novel  
65 or emerging urine drug testing subversion technologies as  
66 described in this subsection.

67 (a) The drug-testing facility shall use urine sample  
68 validity screening tests that meet all of the following





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criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate between a creatinine level from an unadulterated urine sample and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug screening tests.

(b) The drug-testing facility may only use urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample



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validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug screening tests to a drug-testing facility located outside of this state unless such drug testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

~~(16)~~ ~~(15)~~ NONDISCIPLINE REMEDIES.—

(a) Any person alleging a violation of the provisions of this section, who ~~that~~ is not remediable by the commission or an arbitrator pursuant to subsection (15) ~~(14)~~, must institute a civil action for injunctive relief or damages, or both, in a court of competent jurisdiction within 180 days of the alleged violation, or be barred from obtaining the following relief. Relief is limited to:

1. An order restraining the continued violation of this section.

2. An award of the costs of litigation, expert witness fees, reasonable attorney's fees, and noneconomic damages provided that damages shall be limited to the recovery of damages directly resulting from injury or loss caused by each violation of this section.

Section 2. Present subsections (9) through (15) of section 440.102, Florida Statutes, are redesignated as subsections (10) through (16), respectively, a new subsection (9) is added to that section, and paragraphs (c), (e), and (q) of subsection



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(1), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (b) through (h), (j), (k), and (l) of subsection (5), subsection (6), paragraph (a) of subsection (7), and paragraphs (b) and (c) of present subsection (9) of that section are amended, to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(c) "Drug" means any form of alcohol, as defined in s. 322.01(2), including a distilled spirit, wine, a malt beverage, or an intoxicating preparation; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s. 812(c); ~~liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug;~~ or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all of such drugs.

(e) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered~~7~~ by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration~~7~~ for the purpose of determining the presence or



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absence of a drug or its metabolites. In the case of testing for the presence of alcohol, the test must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(q) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration, ~~or~~ the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

(a) One time only, before ~~prior to~~ testing, an employer shall give all employees and job applicants for employment a written policy statement that ~~which~~ contains:

1. A general statement of the employer's policy on employee drug use, which must identify:

a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications ~~to a medical review~~



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~~officer both before and after being tested.~~

5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the department.

6. The consequences of refusing to submit to a drug test.

7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.

8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration.

9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

10. A list of all drugs for which the employer will test, described by ~~brand name or~~ common name, as applicable, as well as by chemical name.

11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court.



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12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(4) TYPES OF TESTING.—

(a) An employer is required to conduct the following types of drug tests:

1. Job applicant drug testing.—An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant.

2. Reasonable-suspicion drug testing.—An employer must require an employee to submit to reasonable-suspicion drug testing.

3. Routine fitness-for-duty drug testing.—An employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

4. Followup drug testing.—If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a followup to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require followup testing. If followup testing is required, it must be conducted at least 6 times in the first year, and may be conducted twice for 1 additional year ~~once a year for a 2-year~~



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period after completion of the program. Advance notice of a followup testing date must not be given to the employee to be tested.

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(b) Specimen collection must be documented, and the documentation procedures shall include the—

~~1.~~ labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results. For saliva or breath alcohol testing, a specimen container is not required if the specimen is not being transported to a laboratory for analysis

~~2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed test result.~~

(c) Specimen collection, storage, and transportation to a laboratory ~~the testing site~~ shall be performed in a manner that reasonably precludes contamination or adulteration of specimens.

(d) Each confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed or certified laboratory



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as described in subsection (10) ~~(9)~~.

(e) A specimen for a drug test may be taken or collected by any person who meets the qualification standards for urine or oral fluid specimen collection as specified by the United States Department of Health and Human Services or the United States Department of Transportation. For alcohol testing, a person must meet the United States Department of Transportation standards for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug-testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available ~~of the following persons:-~~

~~1. A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.~~

~~2. A qualified person employed by a licensed or certified laboratory as described in subsection (9).~~

(f) A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two independent drug tests, one to screen the specimen and one for confirmation of the screening test results, at a laboratory as determined by the Agency for Health Care Administration.

(g) Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of





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at least 1 year after the confirmation test was conducted ~~210~~  
~~days after the result of the test was mailed or otherwise~~  
~~delivered to the medical review officer.~~ However, if an employee  
or job applicant undertakes an administrative or legal challenge  
to the test result, the employee or job applicant shall notify  
the laboratory and the sample shall be retained by the  
laboratory until the case or administrative appeal is settled.  
During the 60-day ~~180-day~~ period after written notification of a  
positive test result, the employee or job applicant who has  
provided the specimen shall be permitted by the employer to have  
a portion of the specimen retested, at the employee's or job  
applicant's expense, at another laboratory, licensed and  
approved by the Agency for Health Care Administration, chosen by  
the employee or job applicant. The second laboratory must test  
the specimen at the limit of detection for the drug or analyte  
confirmed by the original ~~at equal or greater sensitivity for~~  
~~the drug in question as the first~~ laboratory. If the drug or  
analyte is detected by the second laboratory, the result shall  
be reported as reconfirmed positive. The first laboratory that  
performed the test for the employer is responsible for the  
transfer of the portion of the specimen to be retested, and for  
the integrity of the chain of custody during such transfer.

(h) Within 5 working days after receipt of a positive  
verified ~~confirmed~~ test result from the medical review officer,  
an employer shall inform an employee or job applicant in writing  
of such positive test result, the consequences of such results,  
and the options available to the employee or job applicant. The  
employer shall provide to the employee or job applicant, upon  
request, a copy of the test results.



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(j) ~~The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and~~ All such documentation of a positive test shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.

(k) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been reviewed and verified by a confirmation test and by a medical review officer, except when a confirmed positive breath alcohol test was conducted in accordance with United States Department of Transportation alcohol testing procedures.

(l) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation to ensure proper recordkeeping, handling, labeling, and identification of all specimens tested.

(6) CONFIRMATION TESTING.—

(a) ~~If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test.~~

~~(b) Only licensed or certified laboratories as described in subsection (9) may conduct confirmation drug tests.~~

~~(c) All laboratory positive initial tests on a urine, oral~~



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fluid, blood, or hair specimen shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the United States Department of Health and Human Services or the United States Department of Transportation Agency for Health Care Administration or the United States Food and Drug Administration as such technology becomes available in a cost-effective form.

(b) ~~(d)~~ If a ~~an initial~~ drug test of an employee or job applicant is confirmed by the laboratory as positive, the employer's medical review officer shall provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(c) For a breath alcohol test, an initial positive result shall be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(7) EMPLOYER PROTECTION.—

(a) An employee or job applicant whose drug test result is confirmed or verified as positive in accordance with this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.



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(9) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—  
Before a drug-testing facility licensed under part II of chapter  
408 may perform any drug screening test on a urine specimen  
collected in this state, prescreening tests must be performed to  
determine the validity of the specimen. The prescreening tests  
must be capable of detecting, or detecting and defeating, novel  
or emerging urine drug-testing subversion technologies as  
described in this subsection.

(a) The drug-testing facility shall use urine sample  
validity screening tests that meet all of the following  
criteria:

1. A urine sample validity screening test for creatinine  
must use a 20 mg/dL cutoff concentration and must have minimal  
interferences from bilirubin and blood in the urine. The urine  
sample validity screening test must be able to discriminate  
between a creatinine level from an unadulterated urine sample  
and a creatinine level arising from overhydration or creatine or  
protein loading.

2. A urine sample validity screening test for oxidants must  
be able to detect the presence or effects of oxidant adulterants  
up to 6 days after sample collection, under the sample storage  
conditions outlined in the laboratory standards guideline  
adopted by rule by the Agency for Health Care Administration,  
and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to  
detect synthetic or freeze-dried urine substituted for the  
donor's urine for drug testing.

4. Urine sample validity screening tests must be validated  
for the detection of all of the additional adulterant classes



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represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug-screening tests.

(b) The drug-testing facility may only use urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug-screening tests to a drug-testing facility located outside of this state unless such drug testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

~~(10)(9)~~ DRUG-TESTING STANDARDS FOR LABORATORIES.—

(b) A laboratory may analyze initial or confirmation test specimens only if:

1. The laboratory obtains a license under part II of chapter 408 and s. 112.0455(18) ~~s. 112.0455(17)~~. Each applicant for licensure and each licensee must comply with all requirements of this section, part II of chapter 408, and applicable rules.

2. The laboratory has written procedures to ensure the



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chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls, including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(c) A laboratory shall disclose to the medical review officer a written positive confirmed test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result must, at a minimum, state:

1. The name and address of the laboratory that performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial tests and confirmation tests and the minimum cutoff levels of the tests.

~~5. Any correlation between medication reported by the employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result.~~



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A report must not disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section.

Section 3. Paragraph (b) of subsection (11) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(11) If an individual is discharged from employment for drug use as evidenced by a positive, confirmed drug test as provided in paragraph (1)(d), or is rejected for offered employment because of a positive, confirmed drug test as provided in paragraph (2)(c), test results and chain of custody documentation provided to the employer by a licensed and approved drug-testing laboratory is self-authenticating and admissible in reemployment assistance hearings, and such evidence creates a rebuttable presumption that the individual used, or was using, controlled substances, subject to the following conditions:

(b) Only laboratories licensed and approved as provided in s. 440.102(10) ~~s. 440.102(9)~~, or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

Section 4. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:



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A bill to be entitled  
An act relating to drug-free workplaces; amending s.  
112.0455, F.S.; requiring licensed drug-testing  
facilities to perform prescreening tests on urine  
specimens to determine their validity; specifying  
requirements for such prescreening tests; requiring  
such facilities to only use certain screening tests;  
authorizing such facilities to rely on the screening  
tests to determine if certain confirmation testing is  
required; providing that urine specimens may not be  
sent to an out-of-state facility unless the facility  
complies with certain requirements; authorizing the  
Agency for Health Care Administration to adopt rules;  
conforming cross-references; amending s. 440.102,  
F.S.; revising definitions; revising required  
information in a written policy statement provided to  
employees and job applicants before drug testing;  
revising the frequency of required followup drug  
testing; revising procedures for specimen collection,  
testing, and preservation; revising persons who may  
take or collect specimens for a drug test; revising  
requirements and procedures for retesting specimens;  
deleting and revising confidentiality requirements for  
employers relating to certain information; revising  
circumstances under which an employer may take certain  
actions relating to an employee or job applicant on  
the sole basis of certain positive test results;  
revising standards for chain-of-custody procedures;  
revising requirements and authorized actions relating





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to confirmation testing; requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine their validity; specifying requirements for such prescreening tests; requiring such facilities to only use certain screening tests; authorizing such facilities to rely on the screening tests to determine if certain confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the agency to adopt rules; conforming provisions to changes made by the act; conforming cross-references; amending s. 443.101, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the State of Florida has a profound interest in the health and welfare of its citizens, and

WHEREAS, new and emerging drug-testing subversion technologies represent a significant threat to the ability to properly identify those suffering from addiction and drug abuse, and

WHEREAS, the Legislature, therefore, seeks to require urine sample validity testing, such that those being tested can be properly and promptly identified for referral to drug treatment programs and other health care services, NOW, THEREFORE,

By Senator Baxley

12-01244-19

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A bill to be entitled

An act relating to drug-free workplaces; amending s. 440.102, F.S.; revising definitions; revising the contents of an employer policy statement with respect to employee drug use; revising the frequency of followup testing; revising specimen collection, verification, and documentation procedures; revising requirements for confirmation testing; conforming provisions to changes made by the act; revising minimum requirements for laboratory reports of a drug test result; providing an effective date.

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

Section 1. Paragraphs (c), (e), and (q) of subsection (1), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (b), (c), (e), (f), (g), (h), (j), (k), and (l) of subsection (5), subsection (6), paragraph (a) of subsection (7), and paragraph (c) of subsection (9) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(c) "Drug" means any form of alcohol, as defined in s. 322.01(2), including a distilled spirit, wine, a malt beverage, or an intoxicating preparation; any controlled substance

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

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identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s. 812(c); ~~liquor; an amphetamine; a cannabinoid; cocaine; phenylhydrazine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug;~~ or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all of such drugs.

(e) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration, for the purpose of determining the presence or absence of a drug or its metabolites. In the case of testing for the presence of alcohol, the test shall be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(q) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration, ~~or~~ the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

(a) One time only, before ~~prior to~~ testing, an employer shall give all employees and job applicants for employment a

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

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written policy statement that ~~which~~ contains:

1. A general statement of the employer's policy on employee drug use, which must identify:

a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications ~~to a medical review officer both before and after being tested.~~

5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the department.

6. The consequences of refusing to submit to a drug test.

7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.

8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if

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an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration.

9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

10. A list of all drugs for which the employer will test, described by ~~brand name or~~ common name, as applicable, as well as by chemical name.

11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court.

12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(4) TYPES OF TESTING.—

(a) An employer is required to conduct the following types of drug tests:

1. Job applicant drug testing.—An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant.

2. Reasonable-suspicion drug testing.—An employer must require an employee to submit to reasonable-suspicion drug testing.

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3. Routine fitness-for-duty drug testing.—An employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

4. Followup drug testing.—If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a followup to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require followup testing. If followup testing is required, it must be conducted at least six times in the first year, and may be conducted twice for 1 additional year ~~once a year for a 2-year period~~ after completion of the program. Advance notice of a followup testing date must not be given to the employee to be tested.

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(b) Specimen collection must be documented, and the documentation procedures shall include ~~the~~:

~~1.~~ labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results. For saliva or breath alcohol testing, a specimen container is not required if the specimen is not being transported to a laboratory for analysis

~~2. A form for the employee or job applicant to provide any~~

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~~information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed test result.~~

(c) Specimen collection, storage, and transportation to a laboratory ~~the testing site~~ shall be performed in a manner that reasonably precludes contamination or adulteration of specimens.

(e) A specimen for a drug test may be taken or collected by any person who meets the qualification standards for urine or oral fluid specimen collection as specified by the United States Department of Health and Human Services or the United States Department of Transportation. For alcohol testing, a person must meet the United States Department of Transportation standards for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available of the following persons:

~~1. A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency~~

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~~medical service or treatment.~~

~~2. A qualified person employed by a licensed or certified laboratory as described in subsection (9).~~

(f) A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two independent drug tests, one to screen the specimen and one for confirmation of the screening results, at a laboratory as determined by the Agency for Health Care Administration.

(g) Every specimen that produces a positive, confirmed test result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 1 year after the confirmation test was conducted ~~210 days after the result of the test was mailed or otherwise delivered to the medical review officer.~~ However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 60-day ~~180-day~~ period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test the specimen at the limit of detection for the drug or analyte confirmed by the original at equal or greater sensitivity for the drug in question as the first laboratory. If the drug or analyte is detected by the second laboratory, the result shall

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2019890

be reported as reconfirmed positive. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(h) Within 5 working days after receipt of a positive ~~verified~~ confirmed test result from the medical review officer, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(j) ~~The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and All such documentation of a positive test shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.~~

(k) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been reviewed and verified by a ~~confirmation test and by~~ a medical review officer, except when a confirmed positive breath alcohol test was conducted in accordance with United States Department of Transportation alcohol testing procedures.

(l) An employer that performs drug testing or specimen

12-01244-19 2019890\_\_  
 233 collection shall use chain-of-custody procedures established by  
 234 the Agency for Health Care Administration, the United States  
 235 Department of Health and Human Services, or the United States  
 236 Department of Transportation to ensure proper recordkeeping,  
 237 handling, labeling, and identification of all specimens tested.

(6) CONFIRMATION TESTING.—

(a) ~~If an initial drug test is negative, the employer may  
 in its sole discretion seek a confirmation test.~~

~~(b) Only licensed or certified laboratories as described in  
 subsection (9) may conduct confirmation drug tests.~~

~~(c) All laboratory positive initial tests on a urine, oral  
 fluid, blood, or hair specimen shall be confirmed using gas  
 chromatography/mass spectrometry (GC/MS) or an equivalent or  
 more accurate scientifically accepted method approved by the  
 United States Department of Health and Human Services or the  
 United States Department of Transportation Agency for Health  
 Care Administration or the United States Food and Drug  
 Administration as such technology becomes available in a cost-  
 effective form.~~

~~(b)(d)~~ If a ~~an~~ initial drug test of an employee or job  
 applicant is confirmed by the laboratory as positive, the  
 employer's medical review officer shall provide technical  
 assistance to the employer and to the employee or job applicant  
 for the purpose of interpreting the test result to determine  
 whether the result could have been caused by prescription or  
 nonprescription medication taken by the employee or job  
 applicant.

(c) For a breath alcohol test, an initial positive result  
 shall be confirmed by a second breath specimen taken and tested

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 262 using an evidential breath testing device listed on the  
 263 conforming products list issued by the National Highway Traffic  
 264 Safety Administration and conducted in accordance with United  
 265 States Department of Transportation alcohol testing procedures  
 266 authorized under 49 C.F.R. part 40, subparts J through M.

(7) EMPLOYER PROTECTION.—

(a) An employee or job applicant whose drug test result is  
 confirmed or verified as positive in accordance with this  
 section shall not, by virtue of the result alone, be deemed to  
 have a "handicap" or "disability" as defined under federal,  
 state, or local handicap and disability discrimination laws.

(9) DRUG-TESTING STANDARDS FOR LABORATORIES.—

(c) A laboratory shall disclose to the medical review  
 officer a written positive confirmed test result report within 7  
 working days after receipt of the sample. All laboratory reports  
 of a drug test result must, at a minimum, state:

1. The name and address of the laboratory that performed  
 the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative  
 results, as applicable.

3. A list of the drugs for which the drug analyses were  
 conducted.

4. The type of tests conducted for both initial tests and  
 confirmation tests and the minimum cutoff levels of the tests.

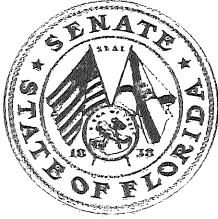
~~5. Any correlation between medication reported by the  
 employee or job applicant pursuant to subparagraph (5)(b)2. and  
 a positive confirmed drug test result.~~

A report must not disclose the presence or absence of any drug

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291 other than a specific drug and its metabolites listed pursuant  
292 to this section.

293 Section 2. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

### COMMITTEES:

Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**  
12th District

February 22, 2019

The Honorable Chair Joe Gruters  
324 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32309

Dear Chairman Gruters,

I would like to request that SB 890 Drug Free Workplaces be heard in the next available Commerce and Tourism Committee meeting.

This bill is to align Florida Statute 440.102 with the drug testing regulations and procedures of the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Transportation (DOT) as the recognized regulatory and procedural authorities for federal drug-free workplace standards.

I appreciate your favorable consideration.

Onward & Upward,

A handwritten signature in cursive script that reads "Dennis Baxley".

Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: Todd McKay, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

Bill Galvano  
President of the Senate

David Simmons  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-19

Meeting Date

890

Bill Number (if applicable)

Topic Drug-Free Workplaces

Amendment Barcode (if applicable)

Name Teresa Miller

Job Title Substance Abuse Prevention Advocate and Parent

Address 3608 W Corona

Phone 813 842 3073

Street

Tampa

FL

33629

City

State

Zip

Email tmiller@stopprdrug.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing substance Abuse Prevention

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Finance and Tax

---

BILL: CS/SB 1066

INTRODUCER: Commerce and Tourism Committee and Senators Baxley and Diaz

SUBJECT: Sales Tax Absorption

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	Fav/CS
2.			FT	
3.			RC	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1066 allows dealers to advertise the absorption of sales tax owed on the sale of property or services, which current law prohibits. The bill requires dealers who advertise tax absorption to show on invoices, charge tickets, or sales slips the amount of sales tax that was due and paid by the dealer. Dealers may not imply or indicate that a transaction is exempt from the state sales tax. A person who fails to add the tax to the selling price is guilty of a misdemeanor of the second degree, and the criminal penalty for failing to remit absorbed taxes is the same as the criminal penalty for failing to remit collected taxes.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Florida Sales and Use Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>1</sup> transient rentals,<sup>2</sup> rental of commercial real estate,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or

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<sup>1</sup> Section 212.04, F.S.

<sup>2</sup> Section 212.03, F.S.

<sup>3</sup> Section 212.031, F.S.

uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.<sup>4</sup> Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>5</sup> Sales tax receipts accounted for 77 percent of the state's General Revenue in Fiscal Year 2017-2018.<sup>6</sup>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."<sup>7</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 1.5 percent.<sup>8</sup>

### **Tax Absorption**

Section 212.07(4), F.S., prohibits dealers from advertising, directly or indirectly, that they will absorb, pay, or refund the purchaser all or any part of the sales tax due with the sale of their property or services. A person who violates this provision, whether by advertising or refunding, is guilty of a misdemeanor of the second degree.<sup>9</sup> A subsequent offense constitutes a misdemeanor of the first degree.<sup>10</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 212.07(4), F.S., to remove the prohibition on a dealer advertising or holding out that the dealer will absorb sales tax or refund a purchaser of the payment of sales tax. The bill allows a dealer to advertise that the dealer will absorb applicable sales tax, or refund the sales tax for the purchaser, subject to the following conditions:

- First, the dealer must expressly state on any charge ticket, sales slip, invoice, or other tangible evidence of sale provided to the purchaser that the dealer will pay the tax imposed in ch. 212, F.S. The dealer must not imply or state that the sale is exempt from taxes imposed in ch. 212, F.S.; and
- Second, the dealer must provide the amount of tax that was due on the charge ticket, sales slip, invoice, or other tangible evidence of sale given to the purchaser.

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<sup>4</sup> Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 162-168 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

<sup>5</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited March 18, 2019).

<sup>6</sup> Office of Economic and Demographic Research, Florida Legislature, *Florida Tax Handbook*, Sources of General Revenue, 16 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

<sup>7</sup> Section 212.054, F.S.

<sup>8</sup> Office of Economic and Demographic Research, Florida Legislature, *Florida Tax Handbook*, 2018 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

<sup>9</sup> Section 775.082(4)(b), F.S., "For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days" and s. 775.083(1)(e), F.S., "\$500, when the conviction is of a misdemeanor of the second degree..."

<sup>10</sup> Section 775.082(4)(a), F.S., "For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year" and s. 775.083(1)(d), F.S., "\$1,000, when the conviction is of a misdemeanor of the first degree."

A dealer may not advertise that the sales tax will not be added to the sales price on a transaction. If a dealer fails to add the price of the tax to the selling price, they are guilty of a misdemeanor of the second degree. A subsequent offense constitutes a misdemeanor of the first degree.

**Section 2** amends s. 212.15, F.S., stipulating that the failure to remit absorbed taxes has the same criminal penalties as the failure to remit collected taxes. If a dealer fails to remit absorbed taxes totaling less than \$300, the offense is a misdemeanor in the second degree.<sup>11</sup> If the total amount of stolen revenue is \$300 or more but less than \$20,000, the offense is a felony of the third degree.<sup>12</sup> If the total amount of stolen revenue is \$20,000 or greater but less than \$100,000, the offense is a felony of the second degree.<sup>13</sup> If the amount of stolen revenue is \$100,000 or greater, the offense is a felony of the first degree.<sup>14</sup>

**Section 3** provides an effective date of July 1, 2019.

#### **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.

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<sup>11</sup> Section 775.082(4)(b), F.S., “For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days” and s. 775.083(1)(e), F.S., “\$500, when the conviction is of a misdemeanor of the second degree...”

<sup>12</sup> Section 775.082(3)(e), F.S., “For a felony of the third degree, by a term of imprisonment not exceeding 5 years” and s. 775.083(1)(c), F.S., “\$5,000, when the conviction is of a felony of the third degree.”

<sup>13</sup> Section 775.082(3)(d), F.S., “For a felony of the second degree, by a term of imprisonment not exceeding 15 years” and s. 775.083(1)(b), F.S., “\$10,000, when the conviction is of a felony of the first or second degree.”

<sup>14</sup> Section 775.082(3)(b)1, F.S., “For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment” and s. 775.083(1)(b), F.S., “\$10,000, when the conviction is of a felony of the first or second degree.”

**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:**

The bill substantially amends sections 212.07 and 212.15 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism Committee on March 18, 2019:**

The committee substitute amends s. 212.15, F.S., to clarify that the failure to remit absorbed taxes has the same criminal penalties as the failure to remit collected taxes.

**B. Amendments:**

None.



915044

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
	.	
	.	
	.	

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The Committee on Commerce and Tourism (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 78 and 79  
insert:

Section 2. Subsection (2) of section 212.15, Florida  
Statutes, is amended to read:

212.15 Taxes declared state funds; penalties for failure to  
remit taxes; due and delinquent dates; judicial review.—

(2) Any person who, with intent to unlawfully deprive or  
defraud the state of its moneys or the use or benefit thereof,



915044

fails to remit taxes collected or absorbed under this chapter is guilty of theft of state funds, punishable as follows:

(a) If the total amount of stolen revenue is less than \$300, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction, the offender is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is \$300 or more, but less than \$20,000, the offense is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the total amount of stolen revenue is \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the total amount of stolen revenue is \$100,000 or more, the offense is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

And the title is amended as follows:

Delete line 12

and insert:

revising a criminal penalty; amending s. 212.15, F.S.;  
providing a criminal penalty for the failure to remit  
absorbed sales taxes with certain intent; providing an



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effective



By Senator Baxley

12-01408A-19

20191066\_\_

A bill to be entitled

An act relating to sales tax absorption; amending s. 212.07, F.S.; deleting prohibitions against a dealer advertising or holding out to the public that he or she will absorb all or part of the sales and use tax or will relieve the purchaser of all or part of the tax; authorizing dealers, subject to specified conditions, to advertise or hold out to the public that they will absorb all or part of the tax or refund any part thereof to the purchaser; providing that such dealers are solely responsible and liable for the tax; revising a criminal penalty; providing an effective date.

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

Section 1. Subsection (4) of section 212.07, Florida Statutes, is amended, and subsection (2) of that section is republished, to read:

212.07 Sales, storage, use tax; tax added to purchase price; tax absorption ~~dealer not to absorb~~; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(2) A dealer shall, as far as practicable, add the amount of the tax imposed under this chapter to the sale price, and the amount of the tax shall be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale. Such tax shall constitute a part of such price, charge, or proof of sale which shall be a debt from the

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20191066\_\_

purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Where it is impracticable, due to the nature of the business practices within an industry, to separately state Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale, the department may establish an effective tax rate for such industry. The department may also amend this effective tax rate as the industry's pricing or practices change. Except as otherwise specifically provided, any dealer who neglects, fails, or refuses to collect the tax herein provided upon any, every, and all retail sales made by the dealer or the dealer's agents or employees of tangible personal property or services which are subject to the tax imposed by this chapter shall be liable for and pay the tax himself or herself.

(4) (a) A dealer engaged in any business taxable under this chapter may not advertise or hold out to the public, in any manner, directly or indirectly, that ~~he or she will absorb all or any part of the tax, or that he or she will relieve the purchaser of the payment of all or any part of the tax, or that the tax will not be added to the selling price of the property or services sold or released. However, such dealer may advertise or hold out to the public, directly or indirectly or, when added, that he or she will absorb all or any part of such tax or that it or any part thereof will be refunded to the purchaser, either directly or indirectly, subject to both of the following conditions:~~

1. In so advertising or holding out to the public, the dealer shall expressly state on any charge ticket, sales slip, invoice, or other tangible evidence of sale given to the

12-01408A-19

20191066\_\_

59 purchaser that such dealer will pay the tax imposed by this  
60 chapter to the state. The dealer may not indicate or imply that  
61 the transaction is exempt or excluded from the tax imposed by  
62 this chapter.

63 2. A charge ticket, sales slip, invoice, or other tangible  
64 evidence of sale given to the purchaser must separately state  
65 the amount of such tax in accordance with subsection (2).

66 (b) Notwithstanding any law to the contrary, if a dealer  
67 directly or indirectly advertises or holds out to the public  
68 that the dealer will pay the tax to the purchaser subject to the  
69 conditions in subparagraphs (a)1. and 2., the dealer is solely  
70 responsible and liable for any tax imposed by this chapter  
71 either directly or indirectly by any method whatsoever.

72 (c) A person who violates this subsection ~~provision~~ with  
73 respect to failing to add the tax to the selling price  
74 advertising or refund is guilty of a misdemeanor of the second  
75 degree, punishable as provided in s. 775.082 or s. 775.083. A  
76 second or subsequent offense constitutes a misdemeanor of the  
77 first degree, punishable as provided in s. 775.082 or s.  
78 775.083.

79 Section 2. This act shall take effect July 1, 2019.

# THE FLORIDA SENATE

**COMMITTEES:**

Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

**JOINT COMMITTEE:**

Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**

12th District

March 8, 2019

The Honorable Chairman Joe Gruters  
324 Senate Office Building  
Tallahassee, FL 32399

Dear Chairman Gruters,

I would like to request that SB 1066 Tax Absorption be heard in your next Commerce and Tourism committee meeting.

This bill corrects a quirk in Florida law that prohibits businesses from voluntarily paying the sales tax on behalf of their consumers. Retailers in most states—be they brick-and-mortar businesses or online vendors—have the option of directly shouldering all or a portion of a buyer's sales tax burden themselves and advertising to their customers that they as the seller will pay it.

Florida has a law specifically prohibiting retailers from engaging in such advertising, much less choosing to directly pay the sales tax on behalf of the consumer even when the retailer makes it explicitly clear that the sale is subject to sales tax.

This extreme stance makes Florida an outlier and places Florida-based businesses at a competitive disadvantage against their counterparts in most other states, including interstate online retailers.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: Todd McKay, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

Bill Galvano  
President of the Senate

David Simmons  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2019

Meeting Date

10660

Bill Number (if applicable)

Topic

JALCO TAX ABSTENTION

Amendment Barcode (if applicable)

Name

RALPH ARZA (Arza)

Job Title

Address

7711 N. MILITARY TRAIL #1010

Phone

561-899-2035

Street

N. TOWN BENCH GARDEN, FL 33410

City

State

Zip

Email

RARZAG@PAINTARZA.COM

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

B & H PHOTO

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

---

BILL: SB 1162

INTRODUCER: Senator Gainer

SUBJECT: Northwest Florida Rural Inland Affected Counties Recovery Fund

DATE: March 15, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	<b>Favorable</b>
2.			ATD	
3.			AP	

---

**I. Summary:**

SB 1162 creates the Northwest Florida Rural Inland Affected Counties Recovery Fund (Fund) within the Department of Economic Opportunity (DEO), to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland counties affected by the Deepwater Horizon Oil Spill. The bill designates the following counties as rural inland affected counties: Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, and Washington County.

The bill also:

- Directs future Legislatures to appropriate to the Fund 5 percent of future settlement payments received by the state pursuant to Florida's claims for economic damages caused by the Deepwater Horizon Oil Spill;
- Requires the DEO to establish an application procedure and scoring process used by the DEO to grant awards to organizations or local governments within the rural inland affected counties;
- Lists the eligible projects and programs that may be provided awards by the DEO;
- Establishes criteria for projects and programs that should be given priority by the DEO; and
- Requires the DEO to review and certify applications according to the economic development incentive application process specified in s. 288.061, F.S., and in consultation with Enterprise Florida, Inc., the Florida Tourism Marketing Corporation, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission.

The bill directs future Legislatures to appropriate funds, but contains no current appropriations.

The bill is effective July 1, 2019.

## II. Present Situation:

### Deepwater Horizon Oil Spill

On April 20, 2010, an offshore drilling rig, known as Deepwater Horizon, exploded in the Gulf of Mexico.<sup>1</sup> The explosion claimed the lives of 11 crewmembers<sup>2</sup> and caused nearly five million barrels of crude oil to spill into the Gulf of Mexico.<sup>3</sup> The five states bordering the Gulf of Mexico (Alabama, Florida, Louisiana, Mississippi, and Texas) were quickly determined to have experienced the most devastating economic and environmental effects of the oil spill.<sup>4</sup>

On July 6, 2012, President Obama signed into law the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) in an effort to provide a mechanism for funding restoration of the Gulf Coast region.<sup>5</sup> The RESTORE Act required 80 percent of administrative and civil penalties paid by responsible parties<sup>6</sup> under provisions of the federal Clean Water Act to be deposited into the Gulf Coast Restoration Trust Fund.<sup>7</sup> The RESTORE Act set forth the following framework for allocation of the Trust Fund:

- 35 percent equally divided among the five states;
- 30 percent to the Gulf Coast Ecosystem Restoration Council;
- 30 percent to the Oil Spill Restoration Impact;
- 2.5 percent to the Gulf Coast Ecosystem Restoration Science Observation Monitoring and Technology Program; and
- 2.5 percent to Centers of Excellence.<sup>8</sup>

In addition to penalties imposed under the Clean Water Act, responsible parties were liable for Natural Resource Damage Assessment Penalties under the Oil Pollution Act of 1990 and criminal penalties asserted by the National Fish and Wildlife Foundation.<sup>9</sup> The funds awarded to the Gulf States were determined pursuant to a consent decree, which approved a \$20.8 billion

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<sup>1</sup> Campbell Robertson, *Gulf Spill Is the Largest of Its Kind, Scientists Say*, The New York Times, Aug. 2, 2010, available at <http://www.nytimes.com/2010/08/03/us/03spill.html> (last visited March 15, 2019).

<sup>2</sup> Bradley Blackburn, *BP Oil Spill: Families Gather to Honor 11 Who Died, Express Frustration with BP, Transocean*, ABC News, May 25, 2010, available at <http://abcnews.go.com/WN/bp-oil-spill-transocean-holds-memorial-11-lost/story?id=10739080> (last visited March 15, 2019).

<sup>3</sup> Robertson, *supra* note 1.

<sup>4</sup> Exec. Order No. 13554, 75 Fed. Reg. 62313, (October 5, 2010), available at <https://obamawhitehouse.archives.gov/the-press-office/2010/10/05/executive-order-13554-gulf-coast-ecosystem-restoration-task-force> (last visited March 15, 2019).

<sup>5</sup> Pub. L. No. 112-141 (113<sup>th</sup> Congress). Codified at 33 U.S.C. 1321.

<sup>6</sup> Transocean Ltd., British Petroleum (BP), and The Halliburton Company were among the parties found to be responsible.

<sup>7</sup> The remaining 20 percent of the administrative and civil penalties are required to be deposited into the federal Oil Spill Liability Trust Fund, which funds removal costs or damages resulting from discharges of oil. See 33 U.S.C. 1321.

<sup>8</sup> A table of Projected BP Annual Deposits into the Gulf Coast Restoration Trust Fund is available at [https://www.treasury.gov/services/restore-act/Documents/BP\\_Estimated\\_Deposits\\_Schedule\\_June302016.pdf](https://www.treasury.gov/services/restore-act/Documents/BP_Estimated_Deposits_Schedule_June302016.pdf) (last visited March 15, 2019).

<sup>9</sup> Consent Decree, In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010 (no. 2179, M.D.L., April 4, 2016), available as document no. 15, at <https://www.justice.gov/enrd/file/838066/download> (last visited March 15, 2019).

settlement of a civil lawsuit filed by the United States and the five Gulf States against the parties responsible for the oil spill.<sup>10</sup>

### ***Economic Loss Claims***

In an agreement separate from the civil lawsuit, BP also agreed to pay a total of \$4.9 billion to the five Gulf States and up to \$1 billion to local government entities for economic damage claims related to the oil spill.<sup>11</sup> Pursuant to the agreement, Florida will receive a total of \$2 billion over an 18-year period.<sup>12</sup> Attorney General Pam Bondi received BP's initial settlement payment of \$400 million in July of 2016, and the funds were placed into the state General Revenue Fund.<sup>13</sup> Subsequent settlement payments are scheduled to be paid annually to the state in the amount of \$106,666,666 from 2019 until 2033.<sup>14</sup>

### **Florida Legislation**

#### ***Triumph Gulf Coast, Inc.***

In 2013, the Legislature created the Gulf Coast Economic Corridor Act (the Act) to provide a long-term source of funding for economic recovery and enhancement efforts in the Gulf Coast region to help businesses, individuals, and local governments recover from the Deepwater Horizon oil spill.<sup>15</sup> The Act created Triumph Gulf Coast, Inc. (Triumph Gulf Coast), a nonprofit corporation, administratively housed under the DEO.<sup>16</sup>

The duties of Triumph Gulf Coast include:

- Responsibly and prudently managing all funds received and ensuring that the use of funds is in accordance with applicable laws, bylaws, and contractual requirements;
- Administering the program set forth by the Act;
- Monitoring, reviewing, and annually evaluating awardees and their projects or programs to determine whether awards should be continued, terminated, reduced, or increased; and
- Operating in a transient manner, by maintaining a website that provides public access to information, notice of meetings, awards, and the status of projects and programs.<sup>17</sup>

In 2017, the Legislature created the Triumph Gulf Coast Trust Fund within the DEO as a depository for a portion of the settlement payments received by the state.<sup>18</sup> During the same legislative session, the Legislature amended the Act to update the criteria for awards and

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<sup>10</sup> A flowchart of the funds awarded in the approved settlement is available at <http://www.oceanconservancy.org/places/gulf-of-mexico/spill-funds-flowchart-spring.pdf> (last visited March 15, 2019).

<sup>11</sup> Attorney General Pam Bondi, *Deepwater Horizon Oil Spill Settlement Fact Sheet* [http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/\\$file/BP+Fact+Sheet.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/$file/BP+Fact+Sheet.pdf) (last visited March 15, 2019).

<sup>12</sup> Consent Decree, In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010 (no. 2179, M.D.L., April 4, 2016), available as document no. 15435-2.

<sup>13</sup> Court settlement funds negotiated by the state are placed in the General Revenue Fund pursuant to s. 216.216, F.S.

<sup>14</sup> Document no. 15435-2, *supra* note 12.

<sup>15</sup> Section 288.8011, F.S.

<sup>16</sup> Sections 288.8013(1), F.S.

<sup>17</sup> Section 288.8016, F.S.

<sup>18</sup> Chapter 2017-64, F.S.

priorities granted by Triumph Gulf Coast, to address additional operations and requirements of Triumph Gulf Coast, and to provide an appropriation for the settlement payments.<sup>19</sup>

Pursuant to s. 288.8013, F.S., 75 percent of the payments received by the state pursuant to the settlement agreement must be immediately transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund.<sup>20</sup> Of the settlement moneys received on or before July 1, 2017, 75 percent (roughly \$300 million), was appropriated to Triumph Gulf Coast for allocation by its board of directors.<sup>21</sup> For settlement payments received by the state after July 1, 2017, 75 percent of the moneys (roughly \$80 million per annual payment) must be deposited into the Triumph Gulf Coast Trust Fund and released to Triumph Gulf Coast no later than 30 days after such funds are transferred to the Triumph Gulf Coast Trust Fund.<sup>22</sup>

As of March 15, 2019, the 2019 settlement payment (roughly \$106,666,666) has not yet been received by the state.

### **Economic Development Incentive Application Process**

Section 288.061, F.S., specifies the process by which the Division of Strategic Business Development of the DEO and designated staff of Enterprise Florida, Inc., must review a submitted economic development incentive application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant.

The DEO must recommend to its executive director to approve or disapprove an applicant business. If review of the application demonstrates that the application is incomplete, the executive director must notify the applicant business within the first 5 business days after receiving the application.

The DEO must review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives proposed for the project. The term "economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment, which includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives. Within 10 business days after the DEO receives the submitted economic development incentive application, the executive director must approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of that decision, unless the business requests an extension of that time.

The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The DEO may enter into one agreement or contract covering all of the state incentives that are being provided to the

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<sup>19</sup> See Ch. 2017-63, F.S.

<sup>20</sup> The remaining 25 percent of all payments to the state pursuant to the settlement agreement were not addressed, and as a result, remain in the state's General Revenue Fund, available for appropriation by the Legislature.

<sup>21</sup> Chapter 2017-63, Laws of Fla.

<sup>22</sup> Section 288.8013(2)(a)2., F.S.



applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature; the release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.

The DEO must validate contractor performance and report such validation in the annual incentives report required of Enterprise Florida, Inc.

After an economic development incentive application is approved, the awardee must provide, in each year that the DEO is required to validate contractor performance, a signed written declaration stating that the awardee has reviewed the information and that the information is true, correct, and complete to the best of the awardee's knowledge and belief.

### **III. Effect of Proposed Changes:**

#### **Northwest Florida Rural Inland Affected Counties Recovery Fund**

The bill creates s. 288.8055, F.S., to establish the Northwest Florida Rural Inland Affected Counties Recovery Fund (Fund) within the DEO. The Fund is created to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland affected counties, which will encourage job creation, capital investment, and the strengthening and diversification of the economies of such counties by promoting tourism, trade, and economic development.

#### ***Definitions***

The bill provides the following definitions:

- “Fund” means the Northwest Florida Rural Inland Affected Counties Recovery Fund;
- “Rural inland affected county” means Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, or Washington County; and
- “Settlement agreement” means the agreement entitled “Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising From the *Deepwater Horizon* Incident,” which was entered into on October 5, 2015, in the case styled: *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL 2179 in the United States District Court for the Eastern District of Louisiana.

#### ***Settlement Funds***

The bill specifies that 5 percent of all payments to the state received pursuant to the settlement agreement after July 1, 2019, shall be appropriated annually by the Legislature to the Fund. The bill clarifies that the transfer of moneys to the Fund shall occur after the transfer of moneys to the Triumph Gulf Coast Trust Fund, and that the transfer of money to the Fund shall not diminish the amount of money transferred to the Triumph Gulf Coast Trust Fund. Under the bill, future settlement payments received by the state after July 1, 2019, in the amount of \$106,666,666 annually, will be appropriated as follows:

- Approximately \$80 million to Triumph Gulf Coast; and

- If a future Legislature appropriated it, approximately \$5.3 million to the Northwest Florida Rural Inland Affected Counties Recovery Fund.<sup>23</sup>

The bill also provides that, notwithstanding s. 216.301, F.S., moneys appropriated to the Fund are not subject to reversion.

### ***Application for Awards***

Under the bill, the DEO must grant awards to organizations or local governments within the rural inland affected counties for infrastructure projects and workforce programs that meet the priorities of economic recovery, diversification, and enhancement.

The DEO must establish an application procedure for awards and a scoring process for the selection of infrastructure projects and workforce programs that have the potential to generate increased economic activity in the rural inland affected counties. The DEO is required to review and certify applications according to the economic development incentive application process in s. 288.061, F.S., and in consultation with Enterprise Florida, Inc., the Florida Tourism Marketing Corporation, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, as appropriate. The application review must include an evaluation of the economic benefit of the infrastructure project or workforce program and its long-term viability. The bill specifies that the DEO shall have final approval of any awards provided.

### ***Awards and Priorities***

Awards may be provided for:

- Local match requirements for the Rural Infrastructure Fund in s. 288.0655, F.S.;
- Infrastructure planning, design, construction, expansion, or maintenance projects that meet the priorities of the program;
- Infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities necessary to induce the relocation or expansion of specific employment opportunities;
- Grants to support workforce programs that provide participants in the rural inland affected counties with transferable sustainable workforce skills;
- Grants to the Florida Tourism Industry Marketing Corporation created under s. 288.1226, F.S., for the purpose of advertising and promoting tourism and agricultural or agricultural-based products marketed under the “Fresh From Florida” or “From Florida” logos and for promoting infrastructure projects and workforce programs on behalf of the rural inland affected counties; or
- Grants to regionally based economic development organizations representing the rural inland affected counties for the purpose of building the professional capacity of such organizations and providing technical assistance to businesses served by such organizations;

The DEO is required to give priority to projects and programs that:

- Generate the maximum estimated economic benefits, based on tools and models not generally employed by economic input-output analyses, including cost-benefit, return-on-

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<sup>23</sup> The remaining 20 percent of the settlement payments received after July 1, 2019 (approximately \$21.3 million of each annual settlement payment) will remain in General Revenue Fund, available for appropriation by the Legislature.

investment, or dynamic scoring techniques, to determine how the long-term economic growth potential of the rural inland affected counties may be enhanced by the award;

- Increase household income above the national average in the rural inland affected counties;
- Leverage or further enhance key assets, including K-20 educational institutions, research facilities, and military bases, in the rural inland affected counties;
- Partner with local governments to provide funds, infrastructure, land, or other assistance to the rural inland affected counties;
- Benefit the environment and economy of the rural inland affected counties;
- Provide outcome measures;
- Partner with K-20 educational training institutions or school districts located within the rural inland affected counties;
- Are recommended by the board of county commissioners of the rural inland affected county in which such project or program will be located; or
- Partner with convention and visitor bureaus, tourist development councils, or chambers of commerce located within the rural inland affected counties.

#### **Effective Date**

The bill provides an effective date of July 1, 2019.

#### **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:**

Indeterminate.

**C. Government Sector Impact:**

The DEO may incur costs associated with developing the application procedure and the granting of awards, as required by the bill.

The bill provides that 5 percent of the BP settlement payments received after July 1, 2019 “shall be appropriated annually” to the fund created in the bill. If the intent is to appropriate the payments without further legislative action in subsequent fiscal years, the language “shall be appropriated annually” should be clarified to read “is appropriated annually.”

If future appropriations are made to the Fund, such appropriations would reduce General Revenue Funds by approximately \$5.3 million annually.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 51-52 of the bill create the Northwest Florida Rural Inland Affected Counties Recovery Fund within the DEO. Art. III, s. 19(f), of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of created a trust fund. State trust funds terminate not more than 4 years after their initial creation unless re-created. If the fund created by the bill is a trust fund, it should be created in a separate bill. If it is not a trust fund, but merely a program that will be funded out of an existing DEO trust fund, then the terminology could be changed to so clarify.

The bill provides that “organizations” are eligible to receive grant funds without defining the term, which would appear to make the program open to private entities. The bill appears to allow the DEO to grant awards to organizations without the approval or support of the project by a local government.

The bill is silent as to contract and reporting requirements for grant awardees.

Nothing in the bill prohibits the DEO from awarding all available funds to one project, or financing 100 percent of a project.

The bill requires the DEO to establish an application procedure for awards and a scoring process, including how to model economic benefits, but also requires that the DEO certify applications pursuant to s. 288.061, F.S., which specifies that “economic benefits” are defined in 288.005, F.S., as the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment.

**VIII. Statutes Affected:**

This bill creates section 288.8055 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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By Senator Gainer

2-01787A-19

20191162\_\_

A bill to be entitled

An act relating to the Northwest Florida Rural Inland Affected Counties Recovery Fund; creating s. 288.8055, F.S.; providing legislative intent; providing definitions; creating the Northwest Florida Rural Inland Affected Counties Recovery Fund within the Department of Economic Opportunity; requiring certain payments to be appropriated annually to the fund; prohibiting such payments from diminishing funds transferred to the Triumph Gulf Coast Trust Fund; requiring the department to grant awards to organizations and local governments for specified infrastructure projects and workforce programs; requiring the department to establish an application procedure and prioritize projects and programs that meet certain requirements; requiring the department, in consultation with specified entities, to review and certify applications; exempting certain funds from reversion; providing an effective date.

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

Section 1. Section 288.8055, Florida Statutes, is created to read:

288.8055 Northwest Florida Rural Inland Affected Counties Recovery Fund.-

(1) The Legislature recognizes that as a result of the Deepwater Horizon disaster, the rural inland affected counties of Northwest Florida continue to face extraordinary challenges

Page 1 of 5

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

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in significantly improving their economies, specifically in terms of household income, job creation, average wages, and strong tax bases. The Legislature also recognizes that this area is designated as a rural area of opportunity by the Governor pursuant to s. 288.0656. Therefore, the Legislature intends to provide a long-term source of funding for economic recovery and enhancement efforts of the rural inland affected counties.

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

(a) "Fund" means the Northwest Florida Rural Inland Affected Counties Recovery Fund created in this section.

(b) "Rural inland affected county" means Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, or Washington County.

(c) "Settlement agreement" means the agreement entitled "Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising from the Deepwater Horizon Incident," which was entered into on October 5, 2015, in the case styled In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL 2179 in the United States District Court for the Eastern District of Louisiana.

(3) The Northwest Florida Rural Inland Affected Counties Recovery Fund is created within the department to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland affected counties which will encourage job creation, capital investment, and the strengthening and diversification of the economies of such counties by promoting tourism, trade, and economic development.

(4) After the transfer of funds to the Triumph Gulf Coast

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

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Trust Fund specified in s. 288.8013, five percent of all payments to the state received pursuant to the settlement agreement after July 1, 2019, shall be appropriated annually by the Legislature to the fund. This subsection shall not diminish the funds transferred to the Triumph Gulf Coast Trust Fund.

(5) The department shall grant awards to organizations or local governments within the rural inland affected counties for infrastructure projects and workforce programs that meet the priorities for economic recovery, diversification, and enhancement. Awards may be provided for:

(a) Local match requirements of s. 288.0655.

(b) Infrastructure planning, design, construction, expansion, or maintenance projects that meet such priorities.

(c) Infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities necessary to induce the relocation or expansion of specific employment opportunities.

(d) Grants to support workforce programs that provide participants in the rural inland affected counties with transferable sustainable workforce skills.

(e) Grants to the Florida Tourism Industry Marketing Corporation created under s. 288.1226 for the purpose of advertising and promoting tourism and agricultural or agricultural-based products marketed under the "Fresh From Florida" or "From Florida" logos and for promoting infrastructure projects and workforce programs on behalf of the rural inland affected counties.

(f) Grants to regionally based economic development organizations representing the rural inland affected counties

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for the purpose of building the professional capacity of such organizations and providing technical assistance to businesses served by such organizations.

(6) The department shall establish an application procedure for awards and a scoring process for the selection of infrastructure projects and workforce programs that have the potential to generate increased economic activity in the rural inland affected counties, giving priority to such projects and programs that:

(a) Generate maximum estimated economic benefits, based on tools and models not generally employed by economic input-output analyses, including cost-benefit, return-on-investment, or dynamic scoring techniques, to determine how the long-term economic growth potential of the rural inland affected counties may be enhanced by the award.

(b) Increase household income above the national average in the rural inland affected counties.

(c) Leverage or further enhance key assets, including K-20 educational institutions, research facilities, and military bases, in the rural inland affected counties.

(d) Partner with local governments to provide funds, infrastructure, land, or other assistance to the rural inland affected counties.

(e) Benefit the environment and economy of the rural inland affected counties.

(f) Provide outcome measures.

(g) Partner with K-20 educational institutions or school districts located within the rural inland affected counties.

(h) Are recommended by the board of county commissioners of

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20191162\_\_

the rural inland affected county in which such project or  
program will be located.

(i) Partner with convention and visitor bureaus, tourist  
development councils, or chambers of commerce located within the  
rural inland affected counties.

(7) Applications for awards shall be submitted to the  
department. The department, in consultation with Enterprise  
Florida, Inc., the Florida Tourism Industry Marketing  
Corporation, the Department of Environmental Protection, and the  
Florida Fish and Wildlife Conservation Commission, as  
appropriate, shall review and certify applications pursuant to  
s. 288.061. The review shall include an evaluation of the  
economic benefit of the infrastructure project or workforce  
program and its long-term viability. The department shall have  
final approval of any awards provided pursuant to this section.

(8) Notwithstanding s. 216.301, funds appropriated for the  
purposes of this section are not subject to reversion.

Section 2. This act shall take effect July 1, 2019.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Finance and Tax, *Chair*  
Agriculture, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Military and Veterans Affairs and Space

### SENATOR GEORGE B. GAINER

2nd District

February 28, 2019

Re: SB 1162

Dear Chair Gruters,

I am respectfully requesting Senate Bill 1162, related to the Northwest Florida Rural Inland Affected Counties Recovery Fund, be placed on the agenda for the next meeting of the Commerce and Tourism Committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in blue ink that reads "George B. Gainer". The signature is fluid and cursive, with the first name "George" being the most prominent.

Senator George Gainer  
District 2

Cc. Todd McKay, Madeline Reeve, Josh Barnhill, Victoria Brill, GeeDee Kerr

#### REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

03.18.2019

*Meeting Date*

SB 1162

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Roy Baker

Job Title Business Development Coordinator

Address 4636 Highway 90, Suite K

Phone 850-633-4119

*Street*

Marianna

FL

32446

*City*

*State*

*Zip*

Email royb@opportunityflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Opportunity Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-18-2019  
Meeting Date

SB 1162  
Bill Number (if applicable)

Topic Northwest FL Rural Inland Recovery fund *Affected Counties*

Amendment Barcode (if applicable)

Name David Melvin

Job Title CEO Melvin Engineering

Address 4428 Lafayette St.  
Street

Phone 850-482-3045

Marianna, FL 32448  
City State Zip

Email davidmelvin@melvineng.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/18/19

Meeting Date

SB 1162

Bill Number (if applicable)

Topic Inland Counties

Amendment Barcode (if applicable)

Name James Peacock

Job Title County Commissioner - Jackson

Address 3235 Wisteria Ln

Phone 850-209-7377

Street

Grand Ridge FL

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Jackson County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

SB1162

Bill Number (if applicable)

Topic NW FL Rural Inland Recovery

Amendment Barcode (if applicable)

Name Meghan Holley

Job Title Executive Assistant

Address 4318 Lafayette Street

Phone 850-482-8060

Street

Marianna

FL

32446

City

State

Zip

Email meghan@jacksoncounty.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Jackson County Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/18/19

Meeting Date

SB 1162

Bill Number (if applicable)

Topic NOEL Rural Infant Recovery

Amendment Barcode (if applicable)

Name Wilanne Daniels (Wilanne Daniels)

Job Title County Administrator

Address 2814 Madison St  
Street

Phone (850) 693 6657

Monroe, FL 32448  
City State Zip

Email wildan@jacksonville.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

March 18, 2019

*Meeting Date*

SB 1162

*Bill Number (if applicable)*

Topic Northwest Florida Rural Inland Counties

*Amendment Barcode (if applicable)*

Name M. Lane Stephens

Job Title Partner

Address 111 N. Calhoun St.

Phone \_\_\_\_\_

*Street*

Tallahassee

FL

32351

Email lane@scggov.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Quincy, FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

1162

Bill Number (if applicable)

Topic NW Fla. Rural Recovery

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118 B Thomasville Rd.

Phone 850-508-5492

Street

Talla.

Fl.

32303

City

State

Zip

Email cdoolin@nettally.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SMALL COUNTY COALITION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1708

INTRODUCER: Commerce and Tourism Committee and Senator Rouson

SUBJECT: Tourist Development Councils

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	<b>Fav/CS</b>
2.			CA	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1708 permits counties with a population of 900,000 or greater to form more than one tourist development council. The bill removes tourist development council membership composition requirements for counties with more than one tourist development council. Tourist development councils will not be required to have two elected municipal officials or six individuals involved in the tourism industry, in the event that they are not the only tourist development council in the county.

If a county has more than one tourist development council, a recommendation for a tourist development tax funded public facility project must originate from the tourist development council for the area where the proposed project is located.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Tourist Development Taxes

Florida law permits counties to impose local option taxes on short-term<sup>1</sup> rentals or leases of accommodations.<sup>2</sup> The taxes are generally referred to as “tourist development taxes,” but consist of several separate tax levies. The taxes include:

- 1 or 2 Percent Tax:<sup>3</sup> This tax may be levied by the county’s governing board at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:<sup>4</sup> This tax may be levied by an extraordinary vote of a county’s governing board, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.
- High Tourism Impact Tax:<sup>5</sup> By extraordinary vote of the governing board of the county, a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.<sup>6</sup>
- Professional Sports Franchise Facility Tax:<sup>7</sup> In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied to pay debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:<sup>8</sup> A county that levies the professional sports franchise facility tax may levy an additional 1 percent tax to be used for the same purposes. This tax must be approved by a majority plus one vote of the membership of the board of county commissioners.

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<sup>1</sup> Section 125.0104(3)(a), F.S. provides that the tax applies to rentals or leases of 6 months or less.

<sup>2</sup> Section 125.0104, F.S.

<sup>3</sup> Section 125.0104(3)(c), F.S.

<sup>4</sup> Section 125.0104(3)(d), F.S.

<sup>5</sup> Section 125.0104(3)(m), F.S.

<sup>6</sup> A county may be designated as having a “high tourism impact” by the Department of Revenue as provided by s. 125.0104(3)(m)2, F.S. The tax is levied by Broward, Monroe, Orange, Osceola, Palm Beach, and Pinellas counties. Hillsborough, Lee, and Walton counties are eligible to levy it.

<sup>7</sup> Section 125.0104(3)(l), F.S.

<sup>8</sup> Section 125.0104(3)(n), F.S.

Depending on a county's eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.<sup>9</sup>

	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	9	65
Levying:	63	53	44	6	30

These local option taxes may be administered by the Department of Revenue or by one or more units of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.<sup>10</sup>

As a requirement for adopting tourist development taxes, a county's tourist development council<sup>11</sup> must prepare a plan for tourist development and present it before the governing board of the county. The plan must include the anticipated revenue derived from the tax for the first 24 months of implementation, the tax district where the tax will be imposed, and a list prioritizing the uses of the revenue. The county's governing board must approve any changes to the plan after the levy has been enacted.<sup>12</sup>

Local option tourist development tax revenues may be used for capital construction of tourist-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used to:

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
  - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
  - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- Promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- Promote and advertise tourism in the state;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies; or
- Finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.<sup>13</sup>

<sup>9</sup> Office of Economic and Demographic Research, *2018 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties*, available at <http://edr.state.fl.us/content/local-government/data/county-municipal/2018LOTTRates.pdf>, (published August 23, 2018).

<sup>10</sup> See ss. 125.0104(3)(b) and (d), F.S.

<sup>11</sup> Also referred to as a "tourism" development council.

<sup>12</sup> See ss. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

<sup>13</sup> Section 125.0104(5)(a), F.S.

### **County Tourist Development Councils**

The governing board of each county that levies tourist development taxes must form a tourist development council. Section 125.0104(4)(e), F.S., provides the authority and requirements for county tourist development councils and their memberships. Requirements include:

- The council must be called “ (name of county) Tourist Development Council”;
- The council shall be composed of nine members appointed by the governing board of the county;
- A member of the county governing board shall serve as a member of the council;
- Two members of the council must be elected municipal officials;
- Six members of the council must be involved in the tourism industry, of whom no less than three and no more than four shall be owners or operators of motels, hotels, recreational vehicles parks, or other tourist accommodations in the county;
- All members of the council shall be electors of the county;
- The governing board of the county may elect a chair for the council or allow the council to elect its own chair;
- The chair shall be appointed or elected annually and may be reappointed or elected;
- Members of the council shall serve staggered 4 year terms;
- The council shall meet at least once each quarter;
- The council shall recommend to the governing board of the county special projects and uses for tourist development tax revenue;
- The council shall continuously review expenditures of revenues from the tourist development taxes; and
- The council shall report unauthorized/questionable expenditures from the tourist development tax revenues to the county governing board and Department of Revenue for their review.

### **County Population Estimates**

The provisions put forth in CS/SB 1708 apply to counties with a population of 900,000 or more according to the latest decennial census. According to the last census in 2010 the following six counties have populations of 900,000 or more:<sup>14</sup>

1. Miami-Dade, population 2,496,435
2. Broward, population 1,748,066
3. Palm Beach, population 1,320,134
4. Hillsborough, population 1,299,226
5. Orange, population 1,145,956
6. Pinellas, population 916,542

According to the latest population estimates by the Office of Economic and Development Research (EDR), Duval will pass the population threshold of 900,000 by the 2020 census.<sup>15</sup>

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<sup>14</sup> See Office of Economic and Demographic Research, <http://edr.state.fl.us/Content/population-demographics/data/index-censusdata.cfm> (last visited March 18, 2019).

<sup>15</sup> Office of Economic and Demographic Research, *The Florida Legislature Econographic News*, 2019 Volume 1, available at <http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited March 18, 2019).

**III. Effect of Proposed Changes:**

CS/SB 1708 allows counties that levy tourist development taxes and have a population of 900,000 or greater according to the latest decennial census to form more than one tourist development council. Once a county has elected to form more than one tourist development council, their councils become exempt from the membership composition requirements set forth in s. 125.0104(4)(e), F.S. Specifically, they will not be required to have two elected municipal officials or six individuals involved in the tourism industry on their tourist development councils.

Proposed public facility projects for tourist development tax revenue must be recommended by the tourist development council designated for the area where the project is located.

The bill takes effect July 1, 2019.

**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:**

None.

**C. Government Sector Impact:**

The bill does not address how tourist development tax revenue would be apportioned in the counties that create more than one tourist development council.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 125.0104(4)(c), F.S., requires a county that is considering the levying of tourist development taxes to form a tourist development council prior to levying the tax. It is the tourist development council's responsibility to present to a plan for tourist development which includes anticipated tourist development tax revenues and expense allocations to the county governing board. The county governing board shall adopt the plan as part of the ordinance levying the tax.<sup>16</sup> The bill does not rectify the creation of additional tourist development councils with this subsection's requirement for the council to exist prior to the levying of tourist development taxes.

**VIII. Statutes Affected:**

This bill substantially amends section 125.0104 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 Commerce and Tourism Committee on March 18, 2019:**

The committee substitute clarifies the membership requirements for tourist development councils in counties that have more than one. In the event that a county has more than one tourist development council, those councils are not required to have two municipal elected officials or six individuals in the tourism industry.

The committee substitute requires proposed public facility projects for tourist development tax revenues must be recommended by the tourist development council for the area where the public facility is located, if the proposed project is located in a county with more than one tourist development council.

**B. Amendments:**

None.

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

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<sup>16</sup> Section 125.0104(4)(d), F.S.



230224

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
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	.	

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The Committee on Commerce and Tourism (Rouson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (4) of section  
125.0104, Florida Statutes, is amended, paragraph (f) is added  
to that subsection, and paragraph (a) of subsection (5) of that  
section is amended, to read:

125.0104 Tourist development tax; procedure for levying;  
authorized uses; referendum; enforcement.—



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(4) ORDINANCE LEVY TAX; PROCEDURE.—

(b) At least 60 days before ~~prior to~~ the enactment of the ordinance levying the tax, the governing board of the county shall adopt a resolution that establishes and appoints ~~establishing and appointing~~ the members of the county tourist development council, ~~as prescribed in paragraph (e) or, if there is more than one tourist development council, paragraph (f), and that indicates indicating~~ the intention of the county to consider the enactment of an ordinance levying and imposing the tourist development tax.

(f)1. Notwithstanding any other law, a county with a population of 900,000 or more, according to the last decennial census, may adopt a resolution that establishes and appoints members of more than one tourist development council upon a finding that more than one tourist development council best serves that county's tourism industry needs. Upon the adoption of such resolution, the county must organize its tourist development councils in accordance with the requirements provided in subparagraph 2. instead of the requirements provided in paragraph (e).

2. The governing board of a county as described in this paragraph which levies and imposes a tourist development tax under this section shall appoint for each tourist development council it establishes an advisory council to be known as the "(name) Tourist Development Council." Each council shall be established by ordinance and shall be composed of a minimum of nine members who are appointed by the governing board. All members of the councils shall be electors of the county. The governing board of the county shall have the option of





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designating the chairs of the councils or allowing the councils to elect their chairs. The chairs shall annually be appointed or elected and may be reelected or reappointed. The members of the councils shall serve for staggered terms of 4 years. The terms of office of the original members shall be prescribed in the resolution required under paragraph (b). The councils shall meet at least once each quarter and, from time to time, shall make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution. A council shall continuously review expenditures of revenues from the tourist development trust fund and shall receive, at least quarterly, expenditure reports from the county governing board or its designee. Expenditures that the councils believe to be unauthorized shall be reported to the county governing board and the Department of Revenue. The governing board and the department shall review the findings of the councils and take appropriate administrative or judicial action to ensure compliance with this section.

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:

a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in



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which the tax is levied;

b. Auditoriums that are publicly owned but are operated by organizations that are exempt from federal taxation pursuant to 26 U.S.C. s. 501(c)(3) and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied; or

c. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied;

2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency;

5. To finance beach park facilities, or beach, channel, estuary, or lagoon improvement, maintenance, renourishment, restoration, and erosion control, including construction of beach groins and shoreline protection, enhancement, cleanup, or



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restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, channel, estuary, lagoon, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist development tax may be used for beach park facilities; or

6. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to paragraph (4)(e) or at least one of the tourist development councils created pursuant to paragraph (4)(f). Tax revenues may be used for any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the public facilities into service. As used in this subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities. Tax revenues may be used for



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these purposes only if the following conditions are satisfied:

a. In the county fiscal year immediately preceding the fiscal year in which the tax revenues were initially used for such purposes, at least \$10 million in tourist development tax revenue was received;

b. The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;

c. No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues, and sources of funding for the remaining cost are identified and confirmed by the county governing board;

d. At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism as provided by this subsection; and

e. An independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

Section 2. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:



230224

156                               A bill to be entitled  
157       An act relating to tourist development councils;  
158       amending s. 125.0104, F.S.; conforming provisions to  
159       changes made by the act; authorizing certain counties  
160       to adopt a resolution that establishes and appoints  
161       members of more than one tourist development council  
162       upon a certain finding; requiring that such counties  
163       organize their tourist development councils in  
164       accordance with specified requirements upon the  
165       adoption of such resolution; conforming a provision to  
166       changes made by the act; providing an effective date.



409022

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
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The Committee on Commerce and Tourism (Rouson) recommended the following:

**Senate Amendment to Amendment (230224)**

Delete lines 117 - 118  
and insert:  
paragraph (4) (e) or by at least one of the tourist development  
councils created pursuant to paragraph (4) (f) for such council's  
designated area. Tax revenues may

By Senator Rouson

19-01737B-19

20191708\_\_

A bill to be entitled

An act relating to tourist development councils;  
amending s. 125.0104, F.S.; authorizing certain  
counties to adopt a resolution that establishes and  
appoints members of more than one tourist development  
council upon a certain finding; exempting such  
counties from organizing their tourist development  
councils in accordance with specified requirements of  
membership composition upon the adoption of such  
resolution; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (4) of  
section 125.0104, Florida Statutes, to read:

125.0104 Tourist development tax; procedure for levying;  
authorized uses; referendum; enforcement.—

(4) ORDINANCE LEVY TAX; PROCEDURE.—

(f) Notwithstanding any other law, a county with a  
population of 900,000 or more, according to the last decennial  
census, may adopt a resolution that establishes and appoints  
members of more than one tourist development council upon a  
finding that more than one tourist development council best  
serves that county's tourism industry needs. Upon the adoption  
of such resolution, the county is not required to organize its  
tourist development councils in accordance with the requirements  
of membership composition in paragraph (e).

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Gruters, Chair  
Commerce and Tourism Committee

**Subject:** Committee Agenda Request

**Date:** March 15, 2019

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I respectfully request that **Senate Bill # 1708**, relating to Tourist Development Councils, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in blue ink that reads "Darryl Rouson".

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Senator Darryl Rouson  
Florida Senate, District 19



## THE FLORIDA SENATE

**APPEARANCE RECORD**

3/18/19

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

*Meeting Date*

1708

*Bill Number (if applicable)*Topic Tourist Development Councils*Amendment Barcode (if applicable)*Name Foyt Ralston

Job Title \_\_\_\_\_

Address 317 East Park AvePhone 850-294-5390*Street*TallahasseeFL32301*City**State**Zip*Email foyt@capadvocates.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing South Pinellas Regional Development CouncilAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SR 1808

INTRODUCER: Senator Taddeo

SUBJECT: Film and Television Production

DATE: March 15, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Pre-meeting</b>
2.			RC	

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**I. Summary:**

SR 1808 recognizes the value of film and television production as an economic driver and creator of high-wage jobs. The resolution encourages the continuing collaboration of public- and private-sector efforts in program and partnership development, and encourages the Florida Office of Film and Entertainment's collaborative programs and partnerships for national and international marketing.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

**II. Present Situation:**

Florida has a rich history in the motion picture industry, dating back to the winter headquarters opened in North Florida by film studios in the early 20<sup>th</sup> century

**Industry Incentives**

The state did not have an official mechanism to encourage the development of the industry until the creation of the Office of Film and Entertainment (Office) within the Department of Economic Opportunity in 1999. The Office is tasked with promoting film, television, and digital media production through facilitating access to filming locations, serving as a liaison between the film industry and government entities, administering economic incentives, and marketing the state as a premier production center.

The Office administers the Entertainment Industry Sales Tax Exemption Program, which offers tax exemptions to companies that create qualified productions in Florida. The office approved 954 applications for the sales tax exemption during Fiscal Year 2017-2018, resulting in an

estimated 32,000 Florida jobs and \$1 billion in Florida expenditures.<sup>1</sup> Several local governments, including Miami-Dade and Hillsborough Counties, provide production incentives in the form of grants and rebates.

### **Tourism**

As one of Florida's main economic drivers, the tourism industry has capitalized on the many well-known films and television shows the state has provided a backdrop for. Tourism spurred by the entertainment industry encourages tourists to visit production sets and associated amusement activities in destinations they might not otherwise be drawn to; visitors also participate in film tourism activities while at particular destinations as a result of entertainment marketing efforts. Though no official state studies have been conducted, the Motion Picture Association of America estimated that at least 4.4 million of Florida's visitors in 2013 can be attributed to film induced tourism.<sup>2</sup>

### **Film Schools**

Florida has numerous film schools; two of the schools, the Ringling College of Art and Design Film Department and the Florida State University College of Motion Picture Arts, consistently rank among the top film schools in the nation.<sup>3</sup> Previous state incentive programs included provisions that would ensure entertainment projects employed graduates of Florida's film schools and made use of schools' production facilities.

## **III. Effect of Proposed Changes:**

SR 1808 recognizes the value of film and television production as an economic driver and creator of high-wage jobs. The resolution encourages the continuing collaboration of public- and private-sector efforts in program and partnership development, and encourages the Florida Office of Film and Entertainment's collaborative programs and partnerships for national and international marketing.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>1</sup> Florida Office of Film and Entertainment, *Fiscal Year 2017-2018 Annual Report* (2018), available at [https://filminflorida.com/wp-content/uploads/2018/11/Office-of-Film-and-Entertainment-Annual-Report-FY-2017-2018\\_FINAL.pdf](https://filminflorida.com/wp-content/uploads/2018/11/Office-of-Film-and-Entertainment-Annual-Report-FY-2017-2018_FINAL.pdf).

<sup>2</sup> Motion Picture Association of America, *Economic and Social Impacts of the Florida Film and Entertainment Industry Financial Incentive Program* (2013), available at <https://www.mpaa.org/wp-content/uploads/2014/01/Economic-and-Social-Impacts-of-the-Florida-Film-and-Entertainment-Industry-Financial-Incentive-Program.pdf>.

<sup>3</sup> *The Top 25 American Film Schools*, The Hollywood Reporter (Aug. 2018), <https://www.hollywoodreporter.com/lists/top-25-american-film-schools-ranked-1134785/item/2018-top-25-film-schools-florida-state-university-1134838> (last visited March 15, 2019).

**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:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

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

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By Senator Taddeo

40-01332-19

20191808\_\_

# Senate Resolution

A resolution recognizing the value of film and television production as an economic driver and a creator of high-wage jobs, encouraging the collaboration of public-sector and private-sector efforts through the development of programs and partnerships, and encouraging the Florida Office of Film and Entertainment's continued support of various collaborative programs and partnerships for national and international marketing.

WHEREAS, this state has a rich history as a primary center for film and television production in the United States and, with its natural scenic beauty and diverse environment, has long been considered one of the premier locations for film and television production in the world, and

WHEREAS, historically, this state has maintained a highly trained and professional film and television production workforce, a wide variety of support businesses essential to film and television production, and a resilient infrastructure capable of supporting film and television production, and

WHEREAS, this state's nationally acclaimed colleges and universities continue to produce talented filmmakers, many of whom are on scholarships funded by this state and would prefer to remain in this state upon graduation, but often decide to relocate in pursuit of more favorable economic environments, and

WHEREAS, tourism is a principal component of this state's economy, the opportunity to tour filming locations is widely acknowledged as a boon to tourism, and this state recognizes

Page 1 of 2

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

40-01332-19

20191808\_\_

that film production contributes substantially to tourism in this state, and

WHEREAS, traditionally, this state has supported the film and television industry through financial incentives, tax exemptions, and marketing, and

WHEREAS, counties and local communities also are engaging in efforts to reinvigorate film and television production across the state, and

WHEREAS, in its November 2018 analysis of this state's film and television industry, Florida TaxWatch, Inc., encouraged the private sector to develop its own incentive and subsidy programs and this approach has received public support, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Senate recognizes the value of film and television production as an economic driver and a creator of high-wage jobs.

BE IT FURTHER RESOLVED that the Senate encourages the continued collaboration of both public-sector and private-sector efforts to develop programs and partnerships related to film and television production.

BE IT FURTHER RESOLVED that the Senate supports and encourages the Florida Office of Film and Entertainment as it continues to promote such partnerships, including national and international collaborative programs, in its national and international marketing efforts.

Page 2 of 2

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

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

---

BILL: SB 754

INTRODUCER: Senator Stewart

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: March 15, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	<b>Favorable</b>
2.	Harmsen	McKay	CM	<b>Favorable</b>
3.			RC	

---

**I. Summary:**

SB 754 prohibits motor vehicle repair shops and their employees from offering an inducement to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair. This prohibition also applies to individuals who are not employees of the repair shop, but are compensated for their solicitation of insurance claims.

**II. Present Situation:**

**Automobile Insurance**

A consumer who purchases only the minimum insurance coverages required by law, personal injury protection coverage and property damage liability coverage, does not have first-party insurance coverage for the repair or replacement of a windshield. Conversely, a consumer who purchases comprehensive coverage, which generally pays for damages to the insured automobile caused by events other than a collision, has insurance coverage if his or her windshield is damaged or broken.<sup>1</sup> Lenders often require borrowers to purchase comprehensive coverage, so consumers who owe money on their vehicles will often qualify for windshield repair or replacement without having to pay a deductible.<sup>2</sup>

A “deductible” is the amount the insured must pay before the insurance company pays any amount on an insurance claim. Section 627.7288, F.S. states:

The deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or

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<sup>1</sup> See, Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited March 15, 2019).

<sup>2</sup> *Id.*

combined additional coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.<sup>3, 4</sup>

### Windshield Replacement and Repair

Florida law does not have specific requirements applicable to insurance claims made as a result of a damaged windshield. The claims are handled according to the terms of the insurance policy. Current law does not prohibit an insurer from requiring an inspection of a damaged windshield before it authorizes its repair as a term of the insurance policy.

Many Florida insurers set up a network of providers that will provide windshield repair or replacement services at negotiated rates. Some glass shops do not participate in the insurer's provider network. To claim benefits from an insured's automobile insurer, the "out-of-network" shop often obtains an assignment of benefits from the insured. Florida law allows an insured to assign the benefits (payment) of his or her insurance policy to a third party, in this case, the out-of-network glass shop. The assignee glass shop can negotiate with the insurer or file a lawsuit against the insurance company if the two sides do not agree on the claim amount.<sup>5</sup>

### Windshield Litigation

The Department of Financial Services provided the following information on the number of auto glass lawsuits brought pursuant to an assignment of benefits.<sup>6</sup>

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass Lawsuits	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	26,664	17,399

Some insurers argue that the increase in litigation is caused by the ability of some vendors to execute an assignment of benefits and recover attorney fees under s. 627.428, F.S., which allows the insured or assignee to obtain attorney fees from the insurer if the insured or assignee obtains a judgment against the insurer.<sup>7</sup> This statute does not allow an insurer that prevails in a case involving an insured or assignee to recover attorney fees.<sup>8</sup> The purpose of the statute is to "discourage contesting of valid claims of insureds against insurance companies ... and to

<sup>3</sup> Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. *See* Ch. 79-241, Laws of Florida.

<sup>4</sup> Florida, Kentucky, and South Carolina prohibit insurers from requiring a deductible for windshield claims. *See*, s. 627.7288, F.S.; KRS § 304.20-060; and South Carolina Department of Insurance, *Automobile Insurance*, <https://doi.sc.gov/588/Automobile-Insurance> (last visited Mar. 15, 2019). Massachusetts, Arizona, and New York allow insureds to purchase a policy with no deductible for windshield claims. *See*, ARS § 20-264; MGLA 175 §1130; NY INS § 3411(k).

<sup>5</sup> Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).

<sup>6</sup> Data provided by the Department of Financial Services for calendar years 2006-2018 (on file with the Senate Committee on Banking and Insurance).

<sup>7</sup> The Florida Supreme Court has recognized the right of assignees to obtain attorney fees under s. 627.428, F.S. (and its predecessor statute) since at least 1972. *See All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So.2d 131 (Fla. 1972). The First District Court of Appeal has recognized the right since at least 1961. *See Travelers Insurance Co. v. Tallahassee Bank and Trust Co.*, 133 So.2d 463 (Fla. 1<sup>st</sup> DCA 1961).

<sup>8</sup> Insurers can recover attorney fees in some cases by using offers of judgment and proposals for settlements. *See* s. 768.79, F.S., and Fla.R.Civ.P. 1.442.



reimburse successful insureds reasonably for their outlays for attorney's fees when they are compelled to defend or to sue to enforce their contracts.”<sup>9</sup>

Insurers further allege that some vendors obtain an assignment of benefits from the insured and inflate the cost of the claim when they bill the insurance company.<sup>10</sup> Insurers also believe that many windshield claims brought by assignees are fraudulent.<sup>11</sup> In such cases, the insurer must determine whether to pay what it believes to be an inflated or fraudulent claim or pay its own attorneys to litigate the case and risk having to pay the other side's attorney fees if it does not prevail.<sup>12</sup>

Conversely, auto glass vendors contend that insurers will only pay the price they pay to the preferred vendors and that litigation is necessary to force the insurers to pay the “prevailing competitive price” pursuant to the insurance policy language.<sup>13</sup>

### **Florida Motor Vehicle Repair Act**

Motor vehicle repair shops in Florida are regulated by the Department of Agriculture and Consumer Services (DACS) under the Florida Motor Vehicle Repair Act.<sup>14</sup> This Act requires that all motor vehicle repair shops, with limited exceptions, register with the DACS.<sup>15</sup> A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.<sup>16</sup> Under the Act, it is unlawful for a motor vehicle repair shop or its employee to engage in various activities such as misrepresenting that repairs have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.<sup>17</sup> The Act provides for various remedies for unlawful acts by motor vehicle repair shops, including notices of noncompliance, administrative fines, orders to cease and desist, probation of registrants, and suspension or revocation of registrations.<sup>18</sup> In addition, a customer injured by a violation of the Motor Vehicle Repair Act may bring an action against a repair shop. The prevailing party is entitled to damages plus court costs and reasonable attorney fees.<sup>19</sup>

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<sup>9</sup> *Roberts v. Carter*, 350 So.2d 78, 79 (Fla. 1977).

<sup>10</sup> Harold Kim and Mark Wilson, *Florida Lawmakers Must Fix Assignment of Benefits Crisis*, PENSACOLA NEWS JOURNAL, Feb. 18, 2019, available at <https://www.pnj.com/story/news/2019/02/18/florida-lawmakers-must-fix-assignment-benefits-crisis-guestview/2904516002/> (last visited March 15, 2019).

<sup>11</sup> *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

<sup>12</sup> Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

<sup>13</sup> See *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918 (M.D. Florida March 17, 2017) at p. 1. (discussing a class action lawsuit against Geico by VIP Auto Glass).

<sup>14</sup> See ss. 559.901-559.9221, F.S.

<sup>15</sup> See s. 559.904, F.S.

<sup>16</sup> See s. 559.903(6) and (7), F.S.

<sup>17</sup> See s. 559.920, F.S.

<sup>18</sup> See s. 559.921, F.S.

<sup>19</sup> See s. 559.921(1), F.S.

## Inducements

Some auto glass repair and replacement shops currently offer “rewards” for service, such as a prepaid gift card, if a consumer files a qualified insurance claim for his or her windshield replacement.<sup>20</sup>

Several industries bar incentives or inducements in exchange for an act that would earn the inducer additional income. For example:

- Healthcare providers are prohibited from offering a kickback to any person in exchange for patient referrals;<sup>21</sup>
- Athlete agents may not offer anything of value to a student athlete to induce him or her to enter into an agreement of representation;<sup>22</sup>
- Public adjusters are subject to prosecution for an unfair and deceptive insurance practice if he or she offers an inducement to an insured in exchange for the insured’s submission of an insurance claim;<sup>23</sup> and
- Insurance agents are barred from offering inducements in many settings, including offering a rebate to induce a consumer to enter into an insurance contract, or offering a reduced fee for provision of title insurance.<sup>24</sup>

### III. Effect of Proposed Changes:

The bill provides that a motor vehicle repair shop may not provide an inducement in the form of a rebate, gift, gift card, cash, coupon, or any other thing of value, in exchange for making an insurance claim for motor vehicle glass replacement or repair. An employee of the motor vehicle repair shop and a nonemployee who is compensated for soliciting insurance claims based on the repair of a motor vehicle glass replacement or repair are both also prohibited from offering such inducements. Motor vehicle repair shops would be subject to disciplinary actions by the DACS for violations of the bill’s provisions.

**Section 2** provides an effective date of July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>20</sup> See, e.g.: <https://www.americanautoglass.biz/auto-glass-replacement.html>, and <https://expressautoglass.biz/windshield-replacement-gift-card.php> (last visited Mar. 15, 2019).

<sup>21</sup> Section 456.054, F.S.

<sup>22</sup> Section 468.456(1)(f), F.S.

<sup>23</sup> Section 626.854(7)(a)2., F.S.

<sup>24</sup> Section 626.9541, F.S.

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:

Motor vehicle repair shops will be prohibited from providing certain inducements to customers; this may negatively affect their businesses.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 559.920 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

---

By Senator Stewart

13-01096-19

2019754\_\_

A bill to be entitled

An act relating to motor vehicle insurance coverage for windshield glass; amending s. 559.920, F.S.; prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons; providing an effective date.

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

Section 1. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It shall be a violation of this act for any motor vehicle repair shop or employee thereof to:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department;

(2) Make or charge for repairs which have not been expressly or impliedly authorized by the customer;

(3) Misrepresent that repairs have been made to a motor vehicle;

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle;

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great

Page 1 of 3

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

13-01096-19

2019754\_\_

damage to the vehicle;

(6) Fraudulently alter any customer contract, estimate, invoice, or other document;

(7) Fraudulently misuse any customer's credit card;

(8) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading;

(9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;

(10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop;

(11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;

(12) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work;

(13) Willfully depart from or disregard accepted practices and professional standards;

(14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not

Page 2 of 3

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

13-01096-19

2019754\_\_

reasonably have been notified;

(15) Conduct the business of motor vehicle repair in a location other than that stated on the registration certificate;

(16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year; ~~or~~

(17) Offer to a customer a rebate, gift, gift card, cash, coupon, or any other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including an offer made through a nonemployee who is compensated for the solicitation of insurance claims; or

(18)~~(17)~~ Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joe Gruters, Chair  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** March 13, 2019

---

I respectfully request that **Senate Bill #: 754** relating to Motor Vehicle Insurance Coverage for Windshield Glass, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

---

Senator Linda Stewart  
Florida Senate, District 13

c.c. Todd McKay, Staff Director  
Madeline Reeves, Committee Administrative Assistant

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-18-19

Meeting Date

7521

Bill Number (if applicable)

Topic no pass on public adjustments

Amendment Barcode (if applicable)

Name Ashley Kalifeh (Kalifeh)

Job Title Lobbyist/Attorney

Address 101 E. College Ave #102

Phone 222-9075

Street

City

State

Zip

Email akalifeh@capmiami.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/18/19

Meeting Date

754

Bill Number (if applicable)

Topic Motor Vehicle Insurance Coverage for Windshield Glass

Amendment Barcode (if applicable)

Name Ben Stearns (Stearns)

Job Title Attorney

Address 315 South Monroe Street, Suite 501  
Street

Phone 850-224-1585

Tallahassee FL 32301  
City State Zip

Email bstearns@corl-henfield.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAMIC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19  
Meeting Date

754  
Bill Number (if applicable)

Topic Windshield Glass Insurance

Amendment Barcode (if applicable)

Name Logan McFaddin

Job Title Regional Manager

Address 215 S Monroe St. Suite 720

Phone 850-681-2615

Street

Tallahassee

FL

32301

City

State

Zip

Email logan.mcfaddin@apci.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing APCIA - American Property Casualty Insurance Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/18/19  
Meeting Date

754  
Bill Number (if applicable)

Topic Windshield Replacement

Amendment Barcode (if applicable)

Name Latie Webb

Job Title \_\_\_\_\_

Address 119 E Park Ave  
Street

Phone 850 228 6010

Tall FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Geico

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/19

Meeting Date

754

Bill Number (if applicable)

Topic Glass Ins Repairs

Amendment Barcode (if applicable)

Name Todd Palmer

Job Title Owner

Address 5821 Silver Moon Ave

Phone 813-802-2516

Street

City

Tampa

State

Fl.

Zip

33625

Email todd@tampabay.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Mr. Auto Glass

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/18/19

Meeting Date

SB 754

Bill Number (if applicable)

Topic

~~Keith Seaman~~ MOTOR VEHICLE  
COVERAGE FOR INSURANCE GLASS

Amendment Barcode (if applicable)

Name

KEITH SEAMANN

Job Title

G.M. GLASS REPLACEMENTS LLC

Address

6034 CHESTER AVE SUITE 204

Phone

904.733.2315

Street

JACKSONVILLE, FL

State

32217

Zip

Email

KEITH.SEAMANN@  
GMGLASS.COM

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

GLASS REPLACEMENTS LLC

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: CS/SB 1412

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Sales Tax Holiday for Disaster Preparedness Supplies

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	Fav/CS
2.			FT	
3.			AP	

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1412 establishes a 14-day period, from June 1 through June 14, 2019, during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. The bill provides a list of 11 items that are exempt from sales tax during the sales tax holiday. The bill allows the Department of Revenue (department) to adopt emergency rules in order to implement the sales tax holiday.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue fund to the department in fiscal year 2018-2019 to administer the sales tax holiday.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Florida Sales and Use Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>1</sup> transient rentals,<sup>2</sup> rental of commercial real estate,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection

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<sup>1</sup> Section 212.04, F.S.

<sup>2</sup> Section 212.03, F.S.

<sup>3</sup> Section 212.031, F.S.

of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.<sup>4</sup> Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>5</sup> Sales tax receipts accounted for 77 percent of the state's General Revenue in Fiscal Year 2017-2018.<sup>6</sup>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."<sup>7</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 1.5 percent.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill establishes a 14-day period, from June 1 through June 14, 2019, during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. The following items are exempt:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- An item typically sold or advertised as a ground anchor system or tie-down kit selling for \$50 or less;
- A gas or diesel fuel tank selling for \$25 or less;
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A non-electric food storage cooler selling for \$30 or less;
- A portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less;
- Reusable ice selling for \$10 or less;
- Impact-resistant windows, when sold in units of 20 or fewer; and
- Impact-resistant doors, when sold in units of 10 or fewer.

The exemptions for the impact-resistant windows and doors apply to purchases made by an owner of residential real property where such products will be installed.

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<sup>4</sup> See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 162-168 (2018).

<sup>5</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited March 18, 2019).

<sup>6</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, Sources of General Revenue, 16 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

<sup>7</sup> Section 212.054, F.S.

<sup>8</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2018 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

Sales within public lodging establishments,<sup>9</sup> theme parks or entertainment complexes,<sup>10</sup> or airports<sup>11</sup> are not exempt from taxes under this bill.

The bill authorizes the department to adopt emergency rules in order to implement the sales tax exemption.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the department in Fiscal Year 2018-2019 to administer this sales tax holiday.

#### **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:

None.

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<sup>9</sup> Section 509.013(4), F.S.

<sup>10</sup> Section 509.013(9), F.S.

<sup>11</sup> Section 330.27(2), F.S.



C. Government Sector Impact:

The bill appropriates an unspecified amount in nonrecurring funds from the General Revenue Fund to the department in Fiscal Year 2018-2019 to administer this sales tax holiday.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends chapter 212 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism Committee on March 18, 2019:**

The committee substitute appropriates \$70,072 to the Department of Revenue to administer the sales tax holiday.

B. Amendments:

None.



472172

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/15/2019	.	
	.	
	.	
	.	

---

The Committee on Commerce and Tourism (Gruters) recommended the following:

**Senate Amendment**

Delete line 55  
and insert:  
Section 2. For the 2018-2019 fiscal year, the sum of  
\$70,072



936362

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
	.	
	.	
	.	

---

The Committee on Commerce and Tourism (Gruters) recommended the following:

**Senate Amendment**

Delete line 55

and insert:

Section 2. For the 2018-2019 fiscal year, the sum of  
\$70,072

By Senator Gruters

23-01005A-19

20191412\_\_

A bill to be entitled

An act relating to a sales tax holiday for disaster preparedness supplies; providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; providing applicability for certain exemptions; authorizing the Department of Revenue to adopt emergency rules; specifying locations where the exemptions do not apply; providing an appropriation; providing an effective date.

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

Section 1. Disaster preparedness supplies; sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from June 1, 2019, through June 14, 2019, on the retail sale of:

(a) A portable self-powered light source selling for \$20 or less.

(b) A portable self-powered radio, two-way radio, or weather-band radio selling for \$50 or less.

(c) A tarpaulin or any other flexible waterproof sheeting selling for \$50 or less.

(d) An item normally sold as, or generally advertised as, a ground anchor system or tie-down kit and selling for \$50 or less.

(e) A gas or diesel fuel tank selling for \$25 or less.

(f) A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt,

23-01005A-19

20191412\_\_

or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.

(g) A nonelectric food storage cooler selling for \$30 or less.

(h) A portable generator used to provide light or communications or preserve food in the event of a power outage and selling for \$750 or less.

(i) Reusable ice selling for \$10 or less.

(j) Impact-resistant windows, when sold in units of 20 or fewer.

(k) Impact-resistant doors, when sold in units of 10 or fewer.

The exemptions under paragraphs (j) and (k) apply to purchases made by an owner of residential real property where the impact-resistant windows or impact-resistant doors will be installed.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to implement this section.

(3) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

Section 2. For the 2018-2019 fiscal year, the sum of \$ in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing this act.

23-01005A-19

20191412\_\_

59

Section 3. This act shall take effect upon becoming a law.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-18-19

Meeting Date

1412

Bill Number (if applicable)

Topic Sales Tax Holiday - Disaster Preparedness

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Dir. Gov Affairs

Address 227 S Adams St.

Phone 352.359.6835

Street

Tallahassee

City

FL

State

32301

Zip

Email Jake@fdl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/19/19

Meeting Date

1412

Bill Number (if applicable)

Topic

Hurricane Preparedness

Amendment Barcode (if applicable)

Name

Scott Jenkins

Job Title

Lobbyist

Address

113 E. College Ave Ste 200

Phone

950 601-0829

Street

TLH

FL

32301

Email

scottjenkins@pgtinnovations.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

PGT Innovations

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

---

BILL: CS/SB 1652

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Consumer Fraud, Identity Theft, and Skimmer Working Group

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			GO	
3.			RC	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1652 creates the Consumer Fraud, Identity Theft, and Skimmer Working Group (Working Group) adjunct to Florida Department of Agriculture and Consumer Services (Department). Identity theft, credit card fraud, and consumer financial fraud often occur as a result of the use of a credit card skimmer at gas stations. The Working Group must submit a plan to combat these frauds at Florida retail gas stations by December 31, 2021.

**II. Present Situation:**

**Consumer Fraud and Identity Theft**

The Federal Trade Commission (FTC) received 210,174 complaints from Florida consumers regarding fraud and related crimes in 2018, making Florida the leading state for reports of such crimes per capita.<sup>1</sup> One technology that is used in the commission of these crimes is a credit card skimmer (skimmer).

A skimmer is an electronic device that attaches to point of sale card readers (e.g., gas station pumps and automated teller machines) to collect a consumer's credit or debit card information

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<sup>1</sup> Federal Trade Commission, *Consumer Sentinel Network Data Book 2018*, 31 (Feb. 2019), available at [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer\\_sentinel\\_network\\_data\\_book\\_2018\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf) (last visited Mar. 18, 2019).



when a card is swiped through the reader.<sup>2</sup> The thief can sell the consumer's information or use the information to make illegal purchases.<sup>3</sup> The Department has discovered and removed 2,400 skimmers since 2015.<sup>4</sup> The use, possession, or sale of a skimmer is punishable as a second-degree felony under Florida law.<sup>5</sup>

## **Department of Agriculture and Consumer Services**

### ***Generally***

The Department has broad duties, including safeguarding the public from deceptive business practices, supporting Florida's agricultural economy, and administering the state's firearms licensing scheme.<sup>6</sup> Twelve divisions and six offices within the Department support its mission.<sup>7</sup> The Division of Consumer Services inspects all measuring devices used in selling or distributing fuel at retail gas pumps and ensures the use of security mechanisms on gas pumps that help to prevent the use of skimmers.<sup>8</sup> This Division also provides consumer education regarding a variety of scams and frauds that target Florida residents, include identity theft and credit card fraud.<sup>9</sup>

### ***Advisory Committees***

The Commissioner of Agriculture has statutory authority to appoint advisory committees to assist the Department with its duties and responsibilities. Current advisory committees that operate under the Department include the State Agricultural Advisory Council; the Agricultural Feed, Seed, and Fertilizer Advisory Council; the Florida Consumers' Council; and the Florida Young Farmer and Rancher Advisory Council, among others.<sup>10</sup>

Section 570.232, F.S., limits an advisory committee's powers to the consideration and study of its area of responsibility and other matters submitted to it by the Agriculture Commissioner or division directors. In addition, the advisory committee may develop proposed laws, other regulations, and policies for submission to only the Agriculture Commissioner and the Department's division directors.

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<sup>2</sup> Florida Department of Agriculture and Consumer Services, *Card Skimmers*, <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud/Card-Skimmers> (last visited Mar. 18, 2019).

<sup>3</sup> Federal Trade Commission, *Avoid Skimmers at the Pump* (June 22, 2017), <https://www.consumer.ftc.gov/blog/2017/06/avoid-skimmers-pump> (last visited Mar. 18, 2019).

<sup>4</sup> Florida Department of Agriculture and Consumer Services, *Commissioner Nikki Fried on Gas Skimmers*, *National Consumer Protection Week* (Mar. 6, 2019), <https://www.freshfromflorida.com/News-Events/Press-Releases/2019-Press-Releases/Commissioner-Nikki-Fried-on-Gas-Skimmers-National-Consumer-Protection-Week> (last visited Mar. 18, 2019).

<sup>5</sup> Section 817.625(2), F.S. A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

<sup>6</sup> Florida Department of Agriculture and Consumer Services, *About*, <https://www.freshfromflorida.com/About/> (last visited Mar. 18, 2019).

<sup>7</sup> Florida Department of Agriculture and Consumer Services, *Divisions & Offices*, <https://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 18, 2019).

<sup>8</sup> Section 525.07, F.S.; Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited Mar. 18, 2019).

<sup>9</sup> See, e.g., Florida Department of Agriculture and Consumer Services, *Scams and Fraud*, <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud> (last visited Mar. 18, 2019).

<sup>10</sup> Sections 570.23, 570.541, 570.543, and 570.843, F.S.

The composition of such advisory committees, the terms of their members' service, and the specific procedures required at each of their meetings are further outlined by s. 570.232, F.S., as follows:

- Advisory committees may exist for no more than 3 years, unless reestablished before expiration;
- The Agriculture Commissioner appoints all members of an advisory committee;
- Advisory committees must meet at least one time each year to elect officers;
- The secretary of each advisory committee must keep a complete record of each meeting, and preserve those records on file with the Department; and
- Members of an advisory committee may not receive compensation for their service.

### **III. Effect of Proposed Changes:**

CS/SB 1652 creates the Consumer Fraud, Identity Theft, and Skimmer Working Group to operate as an advisory committee adjunct to Department. The Working Group must meet at least four times each year that it exists to produce a recommendation of how to counter fraud and related thefts that occur as a result of activity at Florida retail gas stations. The Working Group must submit this recommendation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2021.

The Working Group's membership must consist of the following:

- A representative of the Department, appointed by the Commissioner of Agriculture, who will serve as chair;
- A representative of the Department of Legal Affairs, appointed by the Attorney General;
- Two representatives of the Department of Financial Services, appointed by the Chief Financial Officer (CFO);
- Two representatives appointed by the Governor;
- A representative of the Department of Law Enforcement, appointed by its executive director;
- A representative appointed by the President of the Senate;
- A representative appointed by the Speaker of the House of Representatives;
- An assistant state attorney, appointed by the Attorney General;
- An active law enforcement officer, appointed by the Commissioner of Agriculture;
- A victim of identity theft, appointed by the Commissioner of Agriculture;
- A person who represents credit reporting agencies, appointed by the Commissioner of Agriculture; and
- A representative of a major credit card company, appointed by the Commissioner of Agriculture.

The Working Group is subject to s. 570.232, F.S., which provides general meeting, quorum, and membership requirements as discussed above. Additionally, members of the Working Group may not receive reimbursement for per diem or travel expenses, pursuant to s. 570.232, F.S.

The bill takes effect July 1, 2019.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

Any public records or open meetings issues are addressed in SB 7084 (2019 Regular Session).

**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:**

None.

**C. Government Sector Impact:**

The Department may incur costs related to the provision of administrative and staff support services and meeting space for the Working Group.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 570.232, F.S., provides that advisory committees cannot exist for more than 3 years. The Working Group's plan is due on December 31, 2021, but it is unclear whether the Working Group continues to exist after this deadline. The Legislature may wish to consider adding a sunset date to clarify the lifespan of the Working Group.

**VIII. Statutes Affected:**

This bill creates s. 570.233, F.S.

**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 Commerce and Tourism on March 18, 2019:**

- Clarifies the Working Group’s governance, duties, and responsibilities that are subject to s. 570.232, F.S.; and
- Increases the Working Group appointments made by the Governor and CFO from one to two members, each.

**B. Amendments:**

None.

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

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617258

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
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	.	
	.	

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The Committee on Commerce and Tourism (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 20 - 49

and insert:

Group is created adjunct to the department as an advisory committee as provided in s. 570.232. The advisory committee shall comply with the requirements of s. 570.232, except as otherwise provided in this section.

(2) The working group's express purpose is to develop a plan to combat identity theft, credit card fraud, and consumer



617258

financial fraud at retail petroleum facilities in this state.

(3) The working group is composed of the following members:

(a) One representative of the Department of Agriculture and Consumer Services, who shall be the chair of the working group, appointed by the Commissioner of Agriculture.

(b) One representative of the Department of Legal Affairs appointed by the Attorney General.

(c) One assistant state attorney appointed by the Attorney General.

(d) Two representatives of the Department of Financial Services appointed by the Chief Financial Officer.

(e) Two representatives appointed by the Governor.

(f) One representative from the Department of Law Enforcement appointed by the executive director of the Department of Law Enforcement.

(g) One representative appointed by the President of the Senate.

(h) One representative appointed by the Speaker of the House of Representatives.

(i) One of each of the following, appointed by the Commissioner of Agriculture:

1. An active law enforcement officer;

2. A person who has been a victim of identity theft;

3. A representative of the credit reporting agencies; and

4. A representative of a major credit card company.

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

And the title is amended as follows:

Delete lines 5 - 7



617258

40 and insert:

41 Skimmer Working Group within the Department of  
42 Agriculture and Consumer Services according to  
43 specified provisions; specifying the purpose and  
44 membership of

By Senator Gruters

23-01379B-19

20191652\_\_

A bill to be entitled

An act relating to the Consumer Fraud, Identity Theft, and Skimmer Working Group; creating s. 570.233, F.S.; creating the Consumer Fraud, Identity Theft, and Skimmer Working Group as an advisory committee adjunct to the Department of Agriculture and Consumer Services for a specified purpose; specifying the membership of the working group; providing meeting requirements; requiring the working group to submit a specified plan to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Section 570.233, Florida Statutes, is created to read:

570.233 Consumer Fraud, Identity Theft, and Skimmer Working Group.—

(1) The Consumer Fraud, Identity Theft, and Skimmer Working Group is created as an advisory committee adjunct to the Department of Agriculture and Consumer Services for the express purpose of developing a plan to combat identity theft, credit card fraud, and consumer financial fraud at retail petroleum facilities in this state.

(2) The working group is composed of the following members:

(a) One representative of the Department of Agriculture and Consumer Services, who shall be the chair of the working group, appointed by the Commissioner of Agriculture.

(b) One representative of the Department of Legal Affairs

Page 1 of 2

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

23-01379B-19

20191652\_\_

appointed by the Attorney General.

(c) One assistant state attorney appointed by the Attorney General.

(d) One representative of the Department of Financial Services appointed by the Chief Financial Officer.

(e) One representative appointed by the Governor.

(f) One representative from the Department of Law Enforcement appointed by the executive director of the Department of Law Enforcement.

(g) One representative appointed by the President of the Senate.

(h) One representative appointed by the Speaker of the House of Representatives.

(i) One of each of the following, appointed by the Commissioner of Agriculture:

1. An active law enforcement officer;

2. A person who has been a victim of identity theft;

3. A person representing the credit reporting agencies; and

4. A representative of a major credit card company.

(3) The working group is subject to s. 570.232.

(4) The working group shall meet and conduct meetings as necessary, but at least four times per year, to complete a plan to combat identity theft, credit card fraud, and consumer financial fraud at retail petroleum facilities in this state. The working group shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2021.

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-18-19

Meeting Date

1652

Bill Number (if applicable)

Topic Skimmer Fraud Wk Group

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Leg. Affairs Director

Address 400 S Monroe St

Phone 850 617 7700

Street

Tallahassee FL 32395

City

State

Zip

Email emily.buckley@flsen.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Dep. Ag & Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-19

Meeting Date

11652

Bill Number (if applicable)

Topic

Skimmer Working Group

Name

Emily Duda Buckley

Job Title

Leg Affairs Director

Address

400 S Monroe St

Street

Phone

850 617 7700

Tallahassee

City

FL

State

32399

Zip

Email

emily.buckley@flsen.gov

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Dept Ag + Consumer Services

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/14/14)



# 2019 FDLE LEGISLATIVE BILL ANALYSIS



## BILL INFORMATION

<b>BILL NUMBER:</b>	HB 1239
<b>BILL TITLE:</b>	<u>Consumer Fraud, Identity Theft, and Skimmer Working Group</u>
<b>BILL SPONSOR:</b>	Brown
<b>EFFECTIVE DATE:</b>	July 1, 2019

## COMMITTEES OF REFERENCE

1)
2)
3)
4)
5)

## CURRENT COMMITTEE

--

## SIMILAR BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

## PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

## IDENTICAL BILLS

<b>BILL NUMBER:</b>	SB 1652
<b>SPONSOR:</b>	Gruters

## Is this bill part of an agency package?

No

## BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	March 06, 2019
<b>LEAD AGENCY ANALYST:</b>	Sherry Gomez
<b>ADDITIONAL ANALYST(S):</b>	Jasen Wells, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jason Jones; Jeff Dambly
<b>FISCAL ANALYST:</b>	Cynthia Barr

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Creates petroleum skimming device working group as advisory committee adjunct to Department of Agriculture and Consumer Services (DACS) for specified purpose; specifies membership of working group; provides meeting requirements; requires working group to submit specified plan to Governor and Legislature by specified date.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

Credit card fraud and identity theft is a continually evolving problem which requires dynamic planning built on timely and actionable criminal intelligence.

#### 2. EFFECT OF THE BILL:

Creates the "Consumer Fraud, Identity Theft and Skimmer Working Group" as an advisory committee adjunct to DACS to develop a plan to combat identity theft, credit card fraud and consumer financial fraud at retail petroleum facilities in this state. The department will appoint a representative to the group.

#### 3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☐

If yes, explain:	
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

#### 4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

#### 5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☒ N ☐

If yes, provide a description:	The working group shall complete a plan to combat identity theft, credit card fraud, and consumer financial fraud at retail petroleum facilities in this state. The plan shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
Date Due:	December 31, 2021
Bill Section Number:	(4)

#### 6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☐

Board:	
Board Purpose:	
Who Appointments:	

Appointee Term:	
Changes:	
Bill Section Number(s):	

### FISCAL ANALYSIS

#### 1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☐

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

#### 2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☐

Revenues:	
Expenditures:	Minimal impact.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

#### 3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☐

Revenues:	
Expenditures:	
Other:	

#### 4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☐

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

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### TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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### FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	
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### LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	This bill provides the potential that some working group members are not currently in the field of law enforcement. However, the working group is required to make strategic recommendations, which may require the review of sensitive criminal investigative or intelligence information. If the group were to do so in public, or if non-law enforcement task force members were to obtain such information, that information may no longer be exempt from public records. In the bill's current format, it could inadvertently cause damaging releases of active criminal investigative or intelligence information. Currently, the bill would create a body that may need to meet sunshine meeting requirements. Respectfully recommend for the working group to be able to maintain any confidentiality or exemption otherwise pertinent to such information. Also respectfully recommend the group be able to engage in closed sessions to discuss active intelligence or investigative information. Finally, recommend that the group's report(s) remain exempt from public records disclosure until finalized.
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### ADDITIONAL COMMENTS

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SPB 7084

INTRODUCER: Commerce and Tourism Committee

SUBJECT: Public Records and Public Meetings/Consumer Fraud, Identity Theft, and Skimmer Working Group

DATE: March 18, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay		<b>CM Submitted as Comm. Bill/Fav.</b>

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## **I. Summary:**

SPB 7084 creates a public records and open meetings exemption for certain information obtained by and discussed at the Consumer Fraud, Identity Theft, and Skimmer Working Group as created by SB 1652. The bill repeals the exemption on October 2, 2024, unless reenacted by the Legislature.

The bill takes effect upon passage of SB 1652 or similar legislation, if adopted in the same legislative session or an extension thereof.

## **II. Present Situation:**

### **Public Records Law**

The Florida Constitution provides the public the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act. The Public Records Act states:

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

[I]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or the method of transmission.<sup>5</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>6</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>7</sup>

The Legislature may create an exemption to public records requirements.<sup>8</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>9</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

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<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>8</sup> FLA. CONST., art. I, s. 24(c).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).



## Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>14</sup> Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting where official acts are taken or public business is transacted or discussed.<sup>15</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>16</sup>

Section 286.011, F.S., which is known as the “Government in the Sunshine Law,”<sup>17</sup> or the “Sunshine Law,”<sup>18</sup> requires all meetings of any board or commission of any state or local agency or authority where official acts are to be taken be open to the public.<sup>19</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>20</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or operates in a manner that unreasonably restricts the public’s access to the facility.<sup>21</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>22</sup> Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>23</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>24</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>25</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>26</sup> A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>27</sup>

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<sup>14</sup> FLA. CONST., art. I, s. 24(b).

<sup>15</sup> *Id.*

<sup>16</sup> FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

<sup>17</sup> *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

<sup>18</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

<sup>19</sup> Section 286.011(1)-(2), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 286.011(6), F.S.

<sup>22</sup> Section 286.011(2), F.S.

<sup>23</sup> Section 286.011(1), F.S.

<sup>24</sup> Section 286.011(3), F.S.

<sup>25</sup> FLA. CONST., art. I, s. 24(c).

<sup>26</sup> *Id.*

<sup>27</sup> See *supra* note 12.

## Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records exemptions.<sup>28</sup> The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment. The Legislature must reenact an exemption in order to save the exemption from repeal.<sup>29</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary to accomplish the stated purpose of the exemption.<sup>30</sup> The Legislature must find that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. An exemption serves an identifiable purpose if it meets one of the following criteria:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>31</sup>
- Prevents the release of sensitive personal information that would be defamatory or would jeopardize an individual's safety;<sup>32,33</sup> or
- Protects trade or business secrets.<sup>34</sup>

The OGSR requires specific questions be considered during the review process.<sup>35</sup> The OGSR asks the Legislature to question carefully the purpose and necessity of reenacting the exemption.

A public necessity statement and a two-thirds vote of the members present and voting in each house of the Legislature are required for final passage if the Legislature expands an exemption.<sup>36</sup> A public necessity statement and a two-thirds vote of the members present and voting in each house of the Legislature are not required for final passage if the exemption is reenacted without substantive changes or if the exemption is narrowed. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.<sup>37</sup>

<sup>28</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>29</sup> Section 119.15(3), F.S.

<sup>30</sup> Section 119.15(6)(b), F.S.

<sup>31</sup> Section 119.15(6)(b)1., F.S.

<sup>32</sup> Section 119.15(6)(b)2., F.S.

<sup>33</sup> Only personal identifying information is exempt if this public purpose is cited as the basis of an exemption.

<sup>34</sup> Section 119.15(6)(b)3., F.S.

<sup>35</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>36</sup> FLA. CONST., art. I, s. 24(c).

<sup>37</sup> Section 119.15(7), F.S.

## Consumer Fraud, Identity Theft, and Skimmer Working Group

The Consumer Fraud, Identity Theft, and Skimmer Working Group (Working Group), is created by SB 1652 (2019 Regular Session) adjunct to the Department of Agriculture and Consumer Services (Department). The Working Group is tasked with studying identity theft, credit card fraud, and consumer financial fraud at Florida gas stations, and creating a plan to combat such crime. The Working Group's membership includes law enforcement officials and at least one assistant state attorney.

Florida's public records laws currently make most information obtained by the Department open to the public.<sup>38</sup> Additionally, an "ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law."<sup>39</sup> Most recently, the Legislature created an exemption for information held by the Department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency, which is confidential or exempt under the laws of that state or federal agency.<sup>40</sup> However, this exemption does not apply to investigations made by a new advisory committee.

As created, then, any information obtained or discussed by the Working Group is subject to disclosure under chs. 119 and 286, F.S. The Florida Department of Law Enforcement suggests that this presents a hurdle to the Working Group's mission because it will stifle the disclosure of pertinent information from law enforcement to the Working Group.<sup>41</sup>

## Law Enforcement Records

Section 119.071(2), F.S., exempts various records and information often held by law enforcement agencies from public inspection, including the following information:

- Active criminal intelligence information;<sup>42</sup>
- Active criminal investigative information;<sup>43</sup>
- Surveillance techniques, procedures, or personnel;<sup>44</sup>
- Information that reveals the identity, telephone number, address, or personal assets of a victim of a crime and that also identifies that person as the victim of a crime;<sup>45</sup> and

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<sup>38</sup> See *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4<sup>th</sup> DCA 1977), *cert. denied* 360 So. 2d 1247 (Fla. 1978).

<sup>39</sup> *Spillis Candela & Partners Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988).

<sup>40</sup> Section 570.077, F.S. (2016).

<sup>41</sup> Florida Department of Law Enforcement, HB 1239 Agency Analysis (Mar. 6, 2019), on file with the Senate Committee on Commerce and Tourism).

<sup>42</sup> Section 119.071(2)(c)1., F.S. "Criminal intelligence information" includes information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Section 119.011(3)(a), F.S.

<sup>43</sup> Section 119.071(2)(c)1., F.S. "Criminal investigative information" is information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory test reports of investigators or informants, or any type of surveillance." Section 119.011(3)(b), F.S.

<sup>44</sup> Section 119.071(2)(d), F.S.

<sup>45</sup> Section 119.071(2)(j), F.S.

- The personal assets of a victim of a crime, other than the property that was stolen or destroyed during the criminal activity.<sup>46</sup>

These exemptions apply only while the information is in a law enforcement record, and therefore do not apply to agency investigations.

### III. Effect of Proposed Changes:

**Section 1** amends s. 570.233, F.S., to provide that any criminal intelligence information, investigative information, and surveillance techniques, procedures, or personnel, and any other information held by a law enforcement agency that is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and that is obtained by the Consumer Fraud, Identity Theft, and Skimmer Working Group during its development of the plan required under s. 570.233, F.S., retains its exempt or confidential or exempt status when held by the Working Group.

This section also provides that portions of meetings of the Working Group where confidential or exempt information is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The exemption is subject to the OGSR and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill creates a new public records exemption, and therefore requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

**Section 2** provides a statement of public necessity as required by the Florida Constitution. It states that sensitive law enforcement and personal information of victims of financial crimes would be disclosed and open communication and coordination between the parties involved in the Working Group's development of its plan would be hampered without the exemption. Additionally, it states that the public record and open meeting exemptions are required to preserve the exempt or confidential and exempt status of information that is currently classified as such.

**Section 3** provides an effective date that is contingent upon, and concurrent with, passage of SB 1652, which has an effective date of July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>46</sup> Section 119.071(2)(i), F.S.

**B. Public Records/Open Meetings Issues:****Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for a public records exemption to pass.

**Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution, requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The State Constitution provides that an exemption must state with specificity the public necessity of the exemption. The bill appears to articulate the public policy necessitating the public records exemption with sufficient specificity.

**Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides that information that is confidential and exempt from s. 119.07(1), F.S., remain confidential and exempt when held by the Working Group. The bill allows a record created by the Working Group that identifies the victim of identity theft, credit card fraud, or consumer financial fraud to remain confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

**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:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 570.233 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/18/2019	.	
	.	
	.	
	.	

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The Committee on Commerce and Tourism (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (5), (6), and (7) are added to  
section 570.233, Florida Statutes, as created by SB 1652, 2019  
Regular Session, to read:

570.233 Consumer Fraud, Identity Theft, and Skimmer Working  
Group.—

(5)(a) Any criminal intelligence information, investigative



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information, and surveillance techniques, procedures, or personnel, and any other information held by a law enforcement agency that is exempt or confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and that is obtained by the Consumer Fraud, Identity Theft, and Skimmer Working Group in developing the plan required under this section, retains its exempt or confidential and exempt status when held by the working group.

(6) Those portions of meetings of the working group at which criminal intelligence information, investigative information, or surveillance techniques, procedures, or personnel, or any other information held by a law enforcement agency that is exempt or confidential and exempt, is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(7) Subsections (5) and (6) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that all criminal intelligence information, investigative information, and surveillance techniques, procedures, or personnel, and any other information held by a law enforcement agency that is exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain exempt or confidential and exempt after it is obtained by the Consumer Fraud, Identity Theft, and Skimmer Working Group. Otherwise, sensitive law enforcement information and personal information of victims of financial





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crimes would be disclosed, and open communication and coordination among the parties involved in the working group would be hampered. Additionally, premature release of such information could frustrate or thwart a criminal investigation and lead to further criminal activity. The release of such information by the Department of Agriculture and Consumer Services would undermine the specific statutory exemption protecting that information. The harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

(2) The Legislature further finds that it is a public necessity that portions of meetings of the Consumer Fraud, Identity Theft, and Skimmer Working Group at which criminal intelligence information, investigative information, or surveillance techniques, procedures, or personnel, or any other information held by a law enforcement agency, that is exempt or confidential and exempt, is discussed be exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The failure to close portions of meetings at which exempt or confidential and exempt information is discussed would defeat the purpose of the public records exemption. Further, the Legislature finds that the exemption is narrowly tailored to apply to only certain portions of meetings of the working group to allow for public oversight.

Section 3. This act shall take effect on the same date that SB 1652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.



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

And the title is amended as follows:

    Delete everything before the enacting clause  
and insert:

        A bill to be entitled  
  
    An act relating to public records and public meetings;  
amending s. 570.233, F.S.; specifying that certain  
information held by a law enforcement agency that is  
obtained by the Consumer Fraud, Identity Theft, and  
Skimmer Working Group, which is exempt or confidential  
and exempt from public records requirements, retains  
its protected status; providing an exemption from  
public meetings requirements for portions of working  
group meetings at which such exempt or confidential  
and exempt information is discussed; providing for  
future legislative review and repeal; providing  
statements of public necessity; providing a contingent  
effective date.

FOR CONSIDERATION By the Committee on Commerce and Tourism

577-02962-19

20197084pb

A bill to be entitled

An act relating to public records and public meetings; amending s. 570.233, F.S.; specifying that information obtained by the Consumer Fraud, Identity Theft, and Skimmer Working Group, which is exempt or confidential and exempt from public records requirements, retains its protected status; providing an exemption from public records requirements for identifying information concerning a victim of identity theft, credit card fraud, or consumer financial fraud in records created by the working group; providing an exemption from public meetings requirements for portions of working group meetings at which exempt or confidential and exempt information or the identity of a victim of identity theft, credit card fraud, or consumer financial fraud is discussed; providing for future legislative review and repeal; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsections (5), (6), and (7) are added to section 570.233, Florida Statutes, as created by SB 1652, 2019 Regular Session, to read:

570.233 Consumer Fraud, Identity Theft, and Skimmer Working Group.—

(5) (a) Any information that is exempt or confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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

577-02962-19

20197084pb

Constitution and that is obtained by the Consumer Fraud, Identity Theft, and Skimmer Working Group in developing the plan required under this section retains its exempt or confidential and exempt status when held by the working group.

(b) Any information contained in a record created by the working group which reveals the identity of a victim of identity theft, credit card fraud, or consumer financial fraud is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(6) Those portions of meetings of the working group at which exempt or confidential and exempt information or the identity of a victim of identity theft, credit card fraud, or consumer financial fraud is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(7) Subsections (5) and (6) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that information that is exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain exempt or confidential and exempt when held by the Consumer Fraud, Identity Theft, and Skimmer Working Group and that any information contained in a record created by the working group which reveals the identity of a victim of identity theft, credit card fraud, or consumer financial fraud be confidential and exempt from public records requirements. Otherwise, sensitive personal information concerning victims of identity theft,

Page 2 of 3

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

577-02962-19

20197084pb

59 credit card fraud, or consumer financial fraud would be  
60 disclosed, and open communication and coordination among the  
61 parties involved in the working group would be hampered. The  
62 harm that would result from the release of such information  
63 substantially outweighs any public benefit that would be  
64 achieved by disclosure.

65 (2) The Legislature further finds that it is a public  
66 necessity that portions of meetings of the Consumer Fraud,  
67 Identity Theft, and Skimmer Working Group at which exempt or  
68 confidential and exempt information or the identity of a victim  
69 of identity theft, credit card fraud, or consumer financial  
70 fraud is discussed be exempt from s. 286.011, Florida Statutes,  
71 and s. 24(b), Article I of the State Constitution. The failure  
72 to close portions of meetings at which exempt or confidential  
73 and exempt information or the identity of a victim of identity  
74 theft, credit card fraud, or consumer financial fraud is  
75 discussed would defeat the purpose of the public records  
76 exemption. Further, the Legislature finds that the exemption is  
77 narrowly tailored to apply to only certain portions of meetings  
78 of the working group to allow for public oversight.

79 Section 3. This act shall take effect on the same date that  
80 SB 1652 or similar legislation takes effect, if such legislation  
81 is adopted in the same legislative session or an extension  
82 thereof and becomes law.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-18-19

Meeting Date

7084

Bill Number (if applicable)

Topic Public Records Skinner Wk Group

Amendment Barcode (if applicable)

Name Emily Dada Buckley

Job Title Leg Affairs Director

Address 400 S Monroe St

Phone 850 617 7700

Street

Tallahassee

City

FL

State

32399

Zip

Email emily.buckley@freshfromflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Dept Ag & Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-18-19

Meeting Date

7084

Bill Number (if applicable)

552118

Amendment Barcode (if applicable)

Topic Public Records Skimmer Wk Group

Name Emily Duda Buckley

Job Title Leg. Affairs Director

Address 400 S Monroe St

Street

Tallahassee

City

FL

State

32399

Zip

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Dept. of Ag + Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

# CourtSmart Tag Report

Room: EL 110

Case No.:

Caption: Senate Committee on Commerce and Tourism

Type:

Judge:

Started: 3/18/2019 1:33:35 PM

Ends: 3/18/2019 2:20:17 PM

Length: 00:46:43

1:33:34 PM The meeting called to order by Vice Chair Torres  
1:33:42 PM CAA Madeline Reeve calls the roll  
1:33:49 PM Quorum announced  
1:33:59 PM Vice Chair Torres with opening comments  
1:34:16 PM Tab 1 SB 890-Drug-free Workplaces, by Senator Baxley  
1:34:21 PM Senator Baxley explains the bill  
1:35:17 PM Senator Stewart with question  
1:35:32 PM Senator Baxley responds  
1:36:11 PM Amendment Barcode 441768 by Senator Baxley  
1:36:11 PM Chair recognizes Senator Baxley to explain the amendment  
1:36:25 PM Senator Baxley explains the amendment  
1:38:29 PM Senator Baxley waives close on amendment  
1:38:43 PM Amendment adopted  
1:38:51 PM Appearance Form - Teresa Miller, Substance Abuse Prevention Advocate and Parent speaks in support  
1:40:35 PM No questions/debate  
1:40:43 PM Senator Baxley waives close on bill  
1:40:52 PM Roll call by CAA  
1:40:55 PM CS/SB 890 is reported favorably  
1:41:11 PM Gavel turned over to Chair Gruters  
1:41:18 PM Chair Gruters moves to Tab 2- SB 1066, Sales Tax Absorption by Senator Baxley  
1:41:26 PM Senator Baxley explains the bill  
1:42:58 PM Senator Torres with question  
1:43:04 PM Senator Baxley responds  
1:43:44 PM Late-filed amendment Barcode 915044 by Senator Baxley  
1:43:50 PM Without objection - amendment introduced  
1:43:57 PM Senator Baxley explains the amendment  
1:44:07 PM Senator Baxley waives close on amendment  
1:44:13 PM Late-filed amendment adopted  
1:44:24 PM Appearance Form - Ralph Arza, B and H Photo waives in support  
1:44:43 PM Senator Baxley waives close on bill  
1:44:51 PM Roll call on CS/SB 1066  
1:45:02 PM CS/SB 1066 reported favorably  
1:45:07 PM Tab 4-SB 1708 Tourist Development Councils by Senator Rouson  
1:45:14 PM Senator Rouson explains the bill  
1:45:53 PM Senator Stewart with question  
1:45:59 PM Senator Rouson responds  
1:46:46 PM Senator Hutson with question  
1:46:52 PM Senator Rouson responds  
1:47:38 PM Amendment Barcode 230224 and an amendment to the amendment Barcode 409022  
1:47:48 PM Senator Rouson explains the amendment to the amendment  
1:48:05 PM Senator Rouson waives close on the amendment to the amendment  
1:48:16 PM Amendment to the amendment Barcode 409022 adopted  
1:48:24 PM Main amendment Barcode 230224 explained by Senator Rouson  
1:48:41 PM Senator Rouson waives close on amendment as amended  
1:48:51 PM Amendment Barcode 230224 is adopted  
1:48:58 PM Appearance Foyt Ralston, South Pinellas Regional Development Counsel waives in support  
1:49:10 PM Senator Rouson waives close  
1:49:18 PM Roll call on CS/SB 1708  
1:49:21 PM CS/SB 1708 reported favorably  
1:49:31 PM Tab 6-SB 754, Motor Vehicle Insurance Coverage for Windshield Glass by Senator Stewart  
1:49:50 PM Senator Stewart explains the bill  
1:51:14 PM Appearance Forms

1:51:20 PM Ben Stearns, Attorney with NAMIC waives in support  
 1:51:27 PM Logan McFaddin, Regional Manager American Property Casualty Insurance Association waives in support  
 1:51:35 PM Katie Webb, GEICO waives in support  
 1:51:41 PM Chair recognizes Keith Seamann Glass Replacements, LLC.  
 1:52:15 PM Keith Seamann speaks against the bill  
 1:53:44 PM Chair recognizes Todd Palmer, Mr Auto Glass  
 1:56:50 PM Todd Palmer speaks against the bill  
 1:56:56 PM Senator Torres with question  
 1:57:04 PM Mr. Palmer responds  
 1:58:04 PM Ashley Kalifeh, Lobbyist/Attorney, Safelite speaks  
 2:00:08 PM Senator Stewart closes on bill  
 2:00:33 PM Roll Call on SB 754  
 2:00:36 PM Senate Bill 754 reported favorably  
 2:00:49 PM Chair Gruters turns gavel over to Senator Torres  
 2:00:57 PM Tab 7-SB 1412, Sales Tax Holiday for Disaster Preparedness Supplies by Senator Gruters  
 2:01:05 PM Senator Gruters explains the bill  
 2:01:23 PM Amendment Barcode 936362 by Chair Gruters  
 2:01:48 PM Chair Gruters waives close on amendment  
 2:01:54 PM Amendment adopted  
 2:02:10 PM Appearance Forms  
 2:02:16 PM Scott Jenkins, PGT Innovations waives in support  
 2:02:23 PM Jake Farmer, Florida Retail Federation waives in support  
 2:02:32 PM Chair Gruters closes on bill  
 2:02:55 PM Roll call on CS/SB 1412  
 2:02:58 PM CS/SB 1412 reported favorably  
 2:03:14 PM Vice Chair Torres keeps gavel  
 2:03:23 PM Tab 8 SB 1652-Consumer Fraud, Identity Theft, and Skimmer Working Group by Chair Gruters  
 2:03:35 PM Chair Gruters explains the bill  
 2:04:16 PM Amendment Barcode 617258  
 2:04:19 PM Chair Gruters explains the amendment  
 2:04:30 PM Senator Hutson with question  
 2:04:45 PM Appearance Form- Emily Buckley, Department of Agriculture and Consumer Services in support  
 2:05:10 PM Chair Gruters waives close on amendment  
 2:05:15 PM Amendment Barcode 617258 adopted  
 2:05:28 PM Appearance Form  
 2:05:33 PM Emily Buckley speaks in support  
 2:06:18 PM Chair Gruters closes on bill  
 2:06:29 PM Roll call on CS/SB 1652  
 2:06:57 PM CS/SB 1652 reported favorably  
 2:07:21 PM Tab 9-SPB 7084, Public Records and Public Meetings/Consumer Fraud, Identity Theft, and Skimmer Working Group, by Commerce and Tourism  
 2:07:33 PM Senator Gruters explains the strike-all amendment Barcode 552118  
 2:08:29 PM Appearance form on strike-all amendment  
 2:08:37 PM Emily Buckley waives in support  
 2:08:50 PM Chair Gruters waives close  
 2:08:53 PM Amendment adopted  
 2:09:06 PM Appearance on bill as amended  
 2:09:14 PM Emily Buckley waives in support  
 2:09:22 PM Chair Gruters waives close  
 2:09:28 PM Roll call on SPB 7084  
 2:09:31 PM SPB 7084 reported favorably  
 2:09:44 PM Gavel returned to Chair Gruters  
 2:09:58 PM Tab 5 TP'd SR 1808 Film and Television Production by Senator Taddeo  
 2:10:18 PM Temporary recess  
 2:10:27 PM Recording Paused  
 2:11:09 PM Recording Resumed  
 2:11:16 PM Tab 3 SB 1162-Northwest Florida Rural Inland Affected Counties Recovery Fund by Senator Gainer  
 2:11:21 PM Senator Gainer explains the bill  
 2:13:24 PM Senator Stewart with question  
 2:13:32 PM Senator Gainer responds  
 2:13:44 PM Senator Stewart with follow-up



2:13:52 PM Senator Gainer responds  
2:14:07 PM Senator Hutson with question  
2:14:13 PM Senator Gainer responds  
2:14:31 PM Appearance Forms  
2:14:35 PM Chris Doolin, Small County Coalition speaks in support  
2:16:11 PM Lane Stephens, City of Quincy waives in support  
2:16:19 PM Wilanne Daniels County Administrator waives in support  
2:16:24 PM Meghan Holley Jackson County Chamber of Commerce waives in support  
2:16:31 PM David Melvin waives in support  
2:16:38 PM James Peacock County Commissioner speaks in support  
2:17:27 PM Roy Baker in waives in support  
2:17:36 PM Senator Torres in debate  
2:18:24 PM Senator Hutson in debate  
2:18:49 PM Senator Wright in debate  
2:19:07 PM Chair Gruters in debate and with comments  
2:19:14 PM Senator Gainer waives close  
2:19:30 PM Roll call on SB 1162  
2:19:35 PM SB 1162 reported favorably  
2:19:56 PM Senator Hutson moves to adjourn  
2:20:09 PM Meeting adjourned

